

SA 4631. Mr. LIEBERMAN (for himself and Mr. McCain) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4632. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4633. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4634. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4635. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4636. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4637. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4638. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 4467 submitted by Mr. LIEBERMAN and intended to be proposed to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4639. Mrs. FEINSTEIN (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4640. Mrs. FEINSTEIN (for herself, Mr. BOND, and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4641. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4642. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4643. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4644. Mr. BYRD proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4645. Mr. McCain submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4646. Mr. McCain submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4647. Mr. McCain submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4648. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4649. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4650. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4651. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4652. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4653. Mr. DURBIN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4654. Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, and Mr. ALLEN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4655. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4656. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4657. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4658. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4659. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4660. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4661. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4662. Mr. SMITH, of Oregon submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4663. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4664. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4665. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4666. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4667. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4668. Mr. McCain submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4669. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4670. Mr. CONRAD (for himself, Mrs. HUTCHISON, Mr. HELMS, Mr. JOHNSON, Mr. GRASSLEY, Mr. BREAUX, and Mrs. CARNAHAN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4671. Mr. GREGG (for himself, Mr. HOLLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4672. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4673. Mr. REID (for Mr. BYRD) proposed an amendment to amendment SA 4644 proposed by Mr. BYRD to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4674. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4675. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4676. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4677. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4678. Mrs. FEINSTEIN (for herself and Mr. McCain) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4563. Mr. BAYH (for himself, Mr. SHELBY, Mr. SESSIONS, Mr. HUTCHINSON, Mr. MCCONNELL, and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 211, between lines 9 and 10, insert the following:

TITLE VI—STRENGTHENED TEMPORARY FLIGHT RESTRICTIONS FOR THE PROTECTION OF CHEMICAL WEAPONS STORAGE DEPOTS

SEC. 601. ENFORCEMENT OF TEMPORARY FLIGHT RESTRICTIONS.

(a) **IMPROVED ENFORCEMENT.**—The Secretary of Defense shall request the Administrator of the Federal Aviation Administration to enforce temporary flight restrictions applicable to Department of Defense depots for the storage of lethal chemical agents and munitions.

(b) **ASSESSMENT OF USE OF COMBAT AIR PATROLS AND EXERCISES.**—The Secretary shall assess the effectiveness, in terms of deterrence and capabilities for timely response, of current requirements for carrying out combat air patrols and flight training exercises involving combat aircraft over the depots referred to in such subsection.

SEC. 602. REPORTS ON UNAUTHORIZED INCURSIONS INTO RESTRICTED AIRSPACE.

(a) **REQUIREMENT FOR REPORT.**—The Administrator of the Federal Aviation Administration shall submit to Congress a report on each incursion of an aircraft into airspace in the vicinity of Department of Defense depots for the storage of lethal chemical agents and munitions in violation of temporary flight restrictions applicable to that airspace. The report shall include a discussion of the actions, if any, that the Administrator has taken or is taking in response to or as a result of the incursion.

(b) **TIME FOR REPORT.**—The report required under subsection (a) regarding an incursion described in such subsection shall be submitted not later than 30 days after the occurrence of the incursion.

SEC. 603. REVIEW AND REVISION OF TEMPORARY FLIGHT RESTRICTIONS.

(a) **REQUIREMENT TO REVIEW AND REVISE.**—The Secretary of Defense shall—

(1) review the temporary flight restrictions that are applicable to airspace in the vicinity of Department of Defense depots for the storage of lethal chemical agents and munitions, including altitude and radius restrictions; and

(2) request the Administrator of the Federal Aviation Administration to revise the restrictions, in coordination with the Secretary, to ensure that the restrictions are sufficient to provide an opportunity for—

(A) timely detection of incursions of aircraft into such airspace; and

(B) timely response to protect such agents and munitions effectively from threats associated with the incursions.

(b) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the actions taken under subsection (a). The report shall contain the following:

(1) The matters considered in the review required under that subsection.

(2) The revisions of temporary flight restrictions that have been made or requested as a result of the review, together with a discussion of how those revisions ensure the attainment of the objectives specified in paragraph (2) of such subsection.

SA 4564. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 13 and 14, insert the following:

SEC. 173. EMPLOYMENT LIMITATIONS.

(a) **SENIOR EXECUTIVE SERVICE NONCAREER APPOINTEES.**—

(1) **IN GENERAL.**—Notwithstanding section 3134(d) of title 5, United States Code, the number of Senior Executive Service positions in the Department which are filled by noncareer appointees in any fiscal year may not at any time exceed 5 percent of the average number of senior executives employed in Senior Executive Service positions in the Department during the preceding fiscal year.

(2) **AVERAGE NUMBER OF SENIOR EXECUTIVES.**—For purposes of this subsection, the average number of senior executives em-

ployed in Senior Executive Service positions in the Department during a fiscal year shall be equal to 25 percent of the sum of the total number of senior executives employed in Senior Executive Service positions in the Department on the last day of each quarter of such fiscal year.

(b) **SCHEDULE C APPOINTEES.**—The number of positions in the Department which may be excepted from the competitive service, on a temporary or permanent basis, because of their confidential or policy-determining character may not at any time exceed the equivalent of 15 positions.

SA 4565. Mr. FEINGOLD (for himself, Ms. COLLINS, and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, strike line 17 and all that follows through page 112, line 4, and insert the following:

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to be headed by a director, which shall oversee and coordinate departmental programs for and relationships with State and local governments.

(b) **RESPONSIBILITIES.**—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland;

(4) develop a process for receiving meaningful input from State and local government to assist the development of the Strategy and other homeland security activities; and

(5) prepare an annual report, that contains—

(A) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(B) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(C) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(D) proposals to increase the coordination of Department priorities within each State and between the States.

(c) **HOMELAND SECURITY LIAISON OFFICERS.**—

(1) **DESIGNATION.**—The Secretary shall designate in each State and the District of Columbia not less than 1 employee of the Department to serve as the Homeland Security Liaison Officer in that State or District.

(2) **DUTIES.**—Each Homeland Security Liaison Officer designated under paragraph (1) shall—

(A) provide State and local government officials with regular information, research, and technical support to assist local efforts at securing the homeland;

(B) provide coordination between the Department and State and local first responders, including—

- (i) law enforcement agencies;
- (ii) fire and rescue agencies;
- (iii) medical providers;
- (iv) emergency service providers; and
- (v) relief agencies;

(C) notify the Department of the State and local areas requiring additional information, training, resources, and security;

(D) provide training, information, and education regarding homeland security for State and local entities;

(E) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(F) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(G) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner;

(H) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security;

(I) consult with State and local government officials, including emergency managers, to coordinate efforts and avoid duplication; and

(J) coordinate with Homeland Security Liaison Officers in neighboring States to—

- (i) address shared vulnerabilities; and
- (ii) identify opportunities to achieve efficiencies through interstate activities.

(d) **FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS AND STATE, LOCAL, AND CROSS-JURISDICTIONAL ISSUES.**—

(1) **IN GENERAL.**—There is established an Interagency Committee on First Responders and State, Local, and Cross-jurisdictional Issues (in this section referred to as the "Interagency Committee"), that shall—

(A) ensure coordination, with respect to homeland security functions, among the Federal agencies involved with—

- (i) State, local, and regional governments;
 - (ii) State, local, and community-based law enforcement;
 - (iii) fire and rescue operations; and
 - (iv) medical and emergency relief services;
- (B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) **MEMBERSHIP.**—The Interagency Committee shall be composed of—

(A) a representative of the Office for State and Local Government Coordination;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee.

(3) **ADMINISTRATION.**—The Department shall provide administrative support to the Interagency Committee and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) **LEADERSHIP.**—The members of the Interagency Committee shall select annually a chairperson.

(5) **MEETINGS.**—The Interagency Committee shall meet—

(A) at the call of the Secretary; or

(B) not less frequently than once every 3 months.

(e) **ADVISORY COUNCIL FOR THE INTER-AGENCY COMMITTEE.**—

(1) **ESTABLISHMENT.**—There is established an Advisory Council for the Interagency Committee (in this section referred to as the “Advisory Council”).

(2) **MEMBERSHIP.**—

(A) **IN GENERAL.**—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee.

(B) **DUTIES.**—The Advisory Council shall—

(i) develop a plan to disseminate information on first response best practices;

(ii) identify and educate the Secretary on the latest technological advances in the field of first response;

(iii) identify probable emerging threats to first responders;

(iv) identify needed improvements to first response techniques and training;

(v) identify efficient means of communication and coordination between first responders and Federal, State, and local officials;

(vi) identify areas in which the Department can assist first responders; and

(vii) evaluate the adequacy and timeliness of resources being made available to local first responders.

(C) **REPRESENTATION.**—The Interagency Committee shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) **CHAIRPERSON.**—The Advisory Council shall select annually a chairperson from among its members.

(4) **COMPENSATION OF MEMBERS.**—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) **MEETINGS.**—The Advisory Council shall meet with the Interagency Committee not less frequently than once every 3 months.

SA 4566. Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. AKAKA, and Mr. LEAHY) submitted an amendment intended to

be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, insert between lines 9 and 10 the following:

TITLE VI—PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES

SEC. 601. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) **CLARIFICATION OF DISCLOSURES COVERED.**—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation”;

(2) in subparagraph (B)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation (other than a violation of this section)”; and

(3) by adding at the end the following:

“(C) a disclosure that—

“(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is evidence of—

“(I) any violation of any law, rule, or regulation;

“(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(III) a false statement to Congress on an issue of material fact; and

“(ii) is made to—

“(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

“(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

“(III) an employee of the executive branch or Congress who has the appropriate security clearance for access to the information disclosed.”.

(b) **COVERED DISCLOSURES.**—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking “This subsection” and inserting the following:

“This subsection”; and

(2) by adding at the end the following:

“In this subsection, the term ‘disclosure’ means a formal or informal communication or transmission.”.

(c) **REBUTTABLE PRESUMPTION.**—Section 2302(b) of title 5, United States Code, is

amended by adding after the matter following paragraph (12) (as amended by subsection (b) of this section) the following:

“For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence.”.

(d) **NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.**—

(1) **PERSONNEL ACTION.**—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking “and” after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

“(xii) a suspension, revocation, or determination relating to a security clearance;

“(xiii) an investigation of an employee or applicant for employment because of any activity protected under this section; and”.

(2) **PROHIBITED PERSONNEL PRACTICE.**—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking “or” at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

“(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”; or

“(14) conduct, or cause to be conducted, an investigation of an employee or applicant for employment because of any activity protected under this section.”.

(3) **BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.**—

(A) **IN GENERAL.**—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

“§ 7702a. Actions relating to security clearances

“(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance, the Merit Systems Protection Board or a court—

“(1) shall determine whether section 2302 was violated;

“(2) may not order the President to restore a security clearance; and

“(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

“(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance was made in violation of section 2302, the affected agency shall conduct a review of that suspension, revocation, or other determination, giving great weight to the Board or court judgment.

“(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, or other determination was made in violation of section 2302, the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, or other determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance.

“(c) An allegation that a security clearance was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.”.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

“7702a. Actions relating to security clearances.”.

(e) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or”.

(f) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking “agency involved” and inserting “agency where the prevailing party is employed or has applied for employment”.

(g) COMPENSATORY DAMAGES.—Section 1214(g)(2) of title 5, United States Code, is amended by inserting “compensatory or” after “forseeable”.

(h) DISCIPLINARY ACTION.—Section 1215 of title 5, United States Code, is amended in subsection (a), by striking paragraph (3) and inserting the following:

“(3)(A) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1000.

“(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under section 2303(b)(8) or (9), the Board shall impose disciplinary action if the Board finds that protected activity was a significant motivating factor in the decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.”.

(i) DISCLOSURES TO CONGRESS.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) Each agency shall establish a process that provides confidential advice to employees on making a lawful disclosure to Congress of information that is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”.

(j) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.”.

(2) JUDICIAL REVIEW OF MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board's decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on February 1, 2003, this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board's decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.”.

(k) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b) of title 5, United States Code, is amended by striking paragraph (1) and inserting the following:

“(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

“(B) During the 5-year period beginning on February 1, 2003, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit or the United States Court of Appeals for the circuit in which the petitioner resides. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.”.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703 of title 5, United States Code, is amended by striking subsection (d) and inserting the following:

“(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on February 1, 2003, this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in any appellate court of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”.

(1) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN FEDERAL EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

SA 4567. Mr. LEVIN (for himself and Mr. MCCONNELL, submitted an amendment intended to be proposed to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PRIVATE SECURITY OFFICERS RECORD REVIEWS.

(a) FINDINGS.—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication fa-

cilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(b) DEFINITIONS.—In this section:

(1) EMPLOYEE.—The term “employee” includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term “authorized employer” means any person that—
(A) employs private security officers; and
(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term “private security officer”—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes; but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term “security services” means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term “State identification bureau” means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(c) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this section.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this section.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee

received by the authorized employer pursuant to this section.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this section, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this section in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this section, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, and destruction of information and audits, and recordkeeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTY.—Whoever falsely certifies that he meets the applicable standards for an authorized employer or who knowingly and intentionally uses any information obtained pursuant to this section other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees pursuant to regulations promulgated under paragraph (2) to process background checks provided for by this section;

(ii) notwithstanding the provisions of section 3302 of title 31, United States Code, retain and use such fees for salaries and other expenses incurred in providing such processing; and

(iii) establish such fees at a level to include an additional amount to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) STATE COSTS.—Nothing in this section shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this section.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this section by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this paragraph.

SA 4568. Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. REID, Mr. JEFFORDS, Mr. CARPER, and Mr. TORRICELLI) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 170 and insert the following:
SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit facilities and equipment;

(2) review all available information on vulnerabilities of the aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit modes of transportation to terrorist attack; and

(3) review the steps taken by public and private entities since September 11, 2001, to improve aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security to determine their effectiveness at protecting passengers, freight (including hazardous materials), and transportation infrastructure from terrorist attack.

(b) REPORT.—

(1) CONTENT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress, the Secretary, and the Secretary of Transportation a comprehensive report, without compromising national security, containing—

(A) the findings and conclusions from the reviews conducted under subsection (a); and

(B) proposed steps to improve any deficiencies found in aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security, including, to the extent possible, the cost of implementing the steps.

(2) FORMAT.—The Comptroller General may submit the report in both classified and redacted format if the Comptroller General determines that such action is appropriate or necessary.

(c) RESPONSE OF THE SECRETARY.—

(1) IN GENERAL.—Not alter than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(A) the response of the Department to the recommendations of the report; and

(B) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

(2) FORMATS.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is necessary or appropriate.

(d) REPORTS PROVIDED TO COMMITTEES.—In furnishing the report required by subsection (b), and the Secretary's response and recommendations under subsection (c), to the Congress, the Comptroller General and the Secretary, respectively, shall ensure that the report, response, and recommendations are transmitted to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, and the House of Representatives Committee on Transportation and Infrastructure.

SA 4569. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Insert after section 172, the following:

SEC. 173. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking “(a)”; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

SA 4570. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 147, after line 25, add the following:

(e) INFORMATION ANALYSIS REPORT.—

(1) PURPOSES.—The purposes of this subsection are to—

(A) require the Secretary, for the first 5 years after the date of enactment of this Act, to submit a semi-annual report to Congress on—

(i) the specific policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the Federal government, including the Federal Bureau of Investigation, and between the Federal Government, State and local governments, local law enforcement, and intelligence agencies;

(ii) the specific policies and procedures for the tasking of information between the Department and the Federal Government, including the Federal Bureau of Investigation, and between the Federal Government, State and local governments, local law enforcement, and intelligence agencies; and

(iii) the nature of law enforcement information the Department has received from the Federal Bureau of Investigation and State and local law enforcement agencies;

(B) provide relevant information to Congress to assist in determining if the sharing of intelligence between the Department and the Federal Bureau of Investigation is working efficiently and effectively; and

(C) enable Congress to accurately determine if the Department is working effectively with the Federal, State, and local law enforcement agencies so that an accurate and useful exchange of information occurs between the Department and such agencies.

(2) REPORTING REQUIREMENTS.—

(A) IN GENERAL.—The Department shall study the issues under subparagraph (B) and submit a report of such study to Congress not less than every 6 months during the 5 years following enactment of this Act, without disclosing the actual substance of any information relating to national security.

(B) ISSUES TO BE STUDIED.—The report under subparagraph (A) shall include—

(i) the policies and procedures developed by the Department—

(I) to obtain relevant information from the Federal Government (including the Federal Bureau of Investigation) and State and local law enforcement agencies;

(II) to request follow-up information and investigation from such entities; and

(III) for sharing information with other Federal, State, and local government agencies;

(ii) the specific rules and practices developed between the Department and other Federal, State, and local government agencies;

(iii) the nature and type of information—

(I) shared with Federal, State, and local government agencies; and

(II) related to law enforcement, intelligence, and homeland security that was received by the Department during the relevant reporting period, including reports, documents, summaries, tapes, and photographs;

(iv) a list of the agencies that have received information under clause (iii)(I), including whether the information was provided by the Department upon the request of such agency;

(v) a summary of the items received by the Department from the Federal Bureau of Investigation, including—

(I) individual witness grand jury transcripts;

(II) notes of witness interviews

(III) wire-tap applications;

(IV) wire-tap transcripts (including actual tapes);

(V) search warrant applications;

(VI) search warrants;

(VII) photographs;

(VIII) videos;

(IX) computer disks;

(X) summary reports; and

(XI) any other relevant items;

(vi) the nature of the follow-up requests made by the Department—

(I) for information and intelligence from the Federal Bureau of Investigation;

(II) for raw intelligence data from the Federal Bureau of Investigation; and

(III) that required additional investigation by the Federal Bureau of Investigation;

(vii) the nature of each follow-up request made by the Department to the Federal Bureau of Investigation, including whether the request related to a witness interview, subpoena information, surveillance, or undercover work;

(viii) the efforts that have been made by the Department and the Federal Bureau of Investigation to improve interdepartmental communication, including the development of computer programs to facilitate electronic communication between the Department and the Federal Bureau of Investigation;

(ix) the general nature of investigations conducted by analysts of the Department and any similar analyses performed by the Federal Bureau of Investigation; and

(x) the identification of the method of transmission of all information provided to

the Department, whether transmitted by mail, computer, or messenger.

SA 4571. Mr. NELSON of Nebraska submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In the amendment strike all after the first word and insert the following:

SEC. . EMPLOYEE RIGHTS.

(a) **DEFINITION.**—In this section, the term “primary job duty” means a job duty that occupies not less than 25 percent of the job duties of an employee of the Department.

(b) **TRANSFERRED AGENCIES.**—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(c) **TRANSFERRED EMPLOYEES.**—An employee, or class of employees who share the same job duties, transferred to the Department under this Act, in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section, unless—

(1) the primary job duty of the employee or class of employees has materially changed after the transfer;

(2) the primary job duty of the employee or class of employees after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism; and

(3) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(d) **OTHER AGENCIES AND EMPLOYEES.**—

(1) **EXCLUSION OF SUBDIVISION.**—Subject to subsection (b), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title, unless—

(A) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(2) **EXCLUSION OF EMPLOYEE.**—Subject to subsection (c), an employee of the Department or class of employees of the Department who share the same job duties shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless—

(A) the primary job duty of the employee or class of employees consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(e) **PRIOR EXCLUSION.**—Subsections (b) through (d) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(f) **REMOVAL FROM UNIT DURING PENDENCY OF PROCEEDING.**—No employee or class of employees of the Department shall be a member of a unit during the pendency of any proceeding before the Federal Labor Relations Authority in which the Department has asserted that the employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code.

(g) **NATIONAL SECURITY SHOWING REBUTTABLE ONLY BY CLEAR AND CONVINCING EVIDENCE.**—In any proceeding referred to in subsection (f), if the Department has made the showing regarding national security as set forth in subsection (c)(3) and subsection (d)(2)(B), the showing may be rebutted only by clear and convincing evidence.

(h) **EXPEDITED REVIEW.**—The Authority shall grant priority consideration to a unit clarification petition with respect to which the Department asserts that any employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code. In any such proceeding, the parties shall follow the following expedited procedures:

(1) The Department shall provide any information requested by the Regional Director of the Authority within 10 days after the request is made.

(2) A hearing on the petition shall be commenced within 15 days of receipt of the requested information, if any, by the Authority and the parties.

(3) If briefs are filed after the conclusion of the hearing, the Regional Director shall issue a decision within 30 days after the receipt of the briefs, and if no briefs are filed, no later than 45 days after the conclusion of the hearings.

(4) The parties shall have 15 days to appeal after the receipt of the decision of the Regional Director.

(5) If the Authority does not accept the appeal within 30 days, the Regional Director's decision becomes final.

(6) If the Authority accepts the appeal, a decision by the Authority shall issue within 30 days.

(7) There shall be no judicial review of the decision of the Authority.

SEC. . PREEMPTED PROVISIONS.

Notwithstanding any other provision of this Act, including any effective date provision, the following provisions of this Act shall not take effect:

(1) § 187(f)(1).

The provisions of this section shall take effect one day after the date of this bill's enactment.

SA 4572. Mr. CLELAND submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, strike lines 9 through 13 and insert the following:

(10) Consulting with the Centers for Disease Control and Prevention in the administration by the Centers of the Strategic National Stockpile.

On page 72, line 22, strike all through page 73, line 2.

SA 4573. Mrs. BOXER (for herself, Mr. INOUE, and Mr. CAMPBELL) proposed an amendment to amendment SA 4472 proposed by Mr. BYRD to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 64, between lines 15 and 16, insert the following:

SEC. 1 . IMPERIAL PROJECT.

Notwithstanding any other provision of law, none of the funds provided by this Act or under any other Act may be used by the Secretary of the Interior to determine the validity of mining claims of, or to approve the plan of operations submitted by, the Glamis Imperial Corporation for the Imperial project, an open-pit gold mine located on public land administered by the Bureau of Land Management in Imperial County, California.

SA 4574. Mr. BURNS (for Mr. BROWN-BACK) proposed an amendment to amendment SA 4472 proposed by Mr. BYRD to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; as follows:

On page 64, between lines 15 and 16, insert the following:

SEC. 1 . EFFECT OF CERTAIN PROVISIONS ON DECISION AND INDIAN LAND.

(a) **IN GENERAL.**—Nothing in section 134 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (115 Stat. 443) affects the decision of the United States Court of Appeals for the 10th Circuit in *Sac and Fox Nation v. Norton*, 240 F.3d 1250 (2001).

(b) **USE OF CERTAIN INDIAN LAND.**—Nothing in this section permits the conduct of gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on land described in section 123 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 944), or land that is contiguous to that land, regardless of whether the land or contiguous land has been taken into trust by the Secretary of the Interior.

SA 4575. Mr. NELSON of Nebraska submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . EMPLOYEE RIGHTS.

(a) **DEFINITION.**—In this section, the term “primary job duty” means a job duty that occupies not less than 25 percent of the job duties of an employee of the Department.

(b) **TRANSFERRED AGENCIES.**—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(c) **TRANSFERRED EMPLOYEES.**—An employee, or class of employees who share the same job duties, transferred to the Department under this Act, in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section, unless—

(1) the primary job duty of the employee or class of employees has materially changed after the transfer;

(2) the primary job duty of the employee or class of employees after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism; and

(3) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(d) OTHER AGENCIES AND EMPLOYEES.—

(1) EXCLUSION OF SUBDIVISION.—Subject to subsection (b), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title, unless—

(A) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(2) EXCLUSION OF EMPLOYEE.—Subject to subsection (c), an employee of the Department or class of employees of the Department who share the same job duties shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless—

(A) the primary job duty of the employee or class of employees consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(e) PRIOR EXCLUSION.—Subsections (b) through (d) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(f) REMOVAL FROM UNIT DURING PENDENCY OF PROCEEDING.—No employee or class of employees of the Department shall be a member of a unit during the pendency of any proceeding before the Federal Labor Relations Authority in which the Department has asserted that the employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code.

(g) NATIONAL SECURITY SHOWING REBUTTABLE ONLY BY CLEAR AND CONVINCING EVIDENCE.—In any proceeding referred to in subsection (f), if the Department has made the showing regarding national security as set forth in subsection (c)(3) and subsection (d)(2)(B), the showing may be rebutted only by clear and convincing evidence.

(h) EXPEDITED REVIEW.—The Authority shall grant priority consideration to a unit clarification petition with respect to which the Department asserts that any employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code. In any such proceeding, the parties shall follow the following expedited procedures:

(1) The Department shall provide any information requested by the Regional Director of the Authority within 10 days after the request is made.

(2) A hearing on the petition shall be commenced within 15 days of receipt of the requested information, if any, by the Authority and the parties.

(3) If briefs are filed after the conclusion of the hearing, the Regional Director shall issue a decision within 30 days after the receipt of the briefs, and if no briefs are filed, no later than 45 days after the conclusion of the hearings.

(4) The parties shall have 15 days to appeal after the receipt of the decision of the Regional Director.

(5) If the Authority does not accept the appeal within 30 days, the Regional Director's decision becomes final.

(6) If the Authority accepts the appeal, a decision by the Authority shall issue within 30 days.

(7) There shall be no judicial review of the decision of the Authority.

SEC. ____ . PREEMPTED PROVISIONS.

Notwithstanding any other provision of this Act, including any effective date provision, the following provisions of this Act shall not take effect:

(1) Sec. 187(f)(1).

SA 4576. Mr. NELSON of Nebraska submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . EMPLOYEE RIGHTS.

(a) DEFINITION.—In this section, the term “primary job duty” means a job duty that occupies not less than 25 percent of the job duties of an employee of the Department.

(b) TRANSFERRED AGENCIES.—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(c) TRANSFERRED EMPLOYEES.—An employee, or class of employees who share the same job duties, transferred to the Department under this Act, in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section, unless—

(1) the primary job duty of the employee or class of employees has materially changed after the transfer;

(2) the primary job duty of the employee or class of employees after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism; and

(3) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(d) OTHER AGENCIES AND EMPLOYEES.—

(1) EXCLUSION OF SUBDIVISION.—Subject to subsection (b), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title, unless—

(A) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(2) EXCLUSION OF EMPLOYEE.—Subject to subsection (c), an employee of the Department or class of employees of the Department who share the same job duties shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless—

(A) the primary job duty of the employee or class of employees consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(B) it is demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(e) PRIOR EXCLUSION.—Subsections (b) through (d) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(f) REMOVAL FROM UNIT DURING PENDENCY OF PROCEEDING.—No employee or class of employees of the Department shall be a member of a unit during the pendency of any proceeding before the Federal Labor Relations Authority in which the Department has asserted that the employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code.

(g) NATIONAL SECURITY SHOWING REBUTTABLE ONLY BY CLEAR AND CONVINCING EVIDENCE.—In any proceeding referred to in subsection (f), if the Department has made the showing regarding national security as set forth in subsection (c)(3) and subsection (d)(2)(B), the showing may be rebutted only by clear and convincing evidence.

(h) EXPEDITED REVIEW.—The Authority shall grant priority consideration to a unit clarification petition with respect to which the Department asserts that any employee or class of employees may not be included in a unit under section 7112(b)(6) of title 5, United States Code. In any such proceeding, the parties shall follow the following expedited procedures:

(1) The Department shall provide any information requested by the Regional Director of the Authority within 10 days after the request is made.

(2) A hearing on the petition shall be commenced within 15 days of receipt of the requested information, if any, by the Authority and the parties.

(3) If briefs are filed after the conclusion of the hearing, the Regional Director shall issue a decision within 30 days after the receipt of the briefs, and if no briefs are filed, no later than 45 days after the conclusion of the hearings.

(4) The parties shall have 15 days to appeal after the receipt of the decision of the Regional Director.

(5) If the Authority does not accept the appeal within 30 days, the Regional Director's decision becomes final.

(6) If the Authority accepts the appeal, a decision by the Authority shall issue within 30 days.

(7) There shall be no judicial review of the decision of the Authority.

SEC. ____ . PREEMPTED PROVISIONS.

Notwithstanding any other provision of this Act, including any effective date provision, the following provisions of this Act shall not take effect:

(1) Sec. 187(f)(1).

SA 4577. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 133(c)(4).

SA 4578. Mr. GRASSLEY (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland

Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 210, strike lines 10 and 11 and insert the following:

TITLE VI—FEDERAL BUREAU OF INVESTIGATION REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the “Federal Bureau of Investigation Reform Act of 2002”.

Subtitle A—Improving FBI Oversight

SEC. 611. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

“(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

“(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

“(4) may investigate allegations of criminal wrongdoing or administrative misconduct, including a failure to properly discipline employees, by a person who is the head of any agency or component of the Department of Justice; and

“(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General, who is authorized to take appropriate disciplinary action.”; and

(2) by adding at the end the following:

“(d) If the Attorney General does not follow any recommendation of the Inspector General made under subsection (b)(5), the Attorney General shall submit a report to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives that sets forth the recommendation of the Inspector General and the reasons of the Attorney General for not following that recommendation.

“(e) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice shall report that information to the Inspector General.”.

SEC. 612. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Justice shall direct that 1 official from the office of the Inspector General be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2003.

(2) CONTINUATION OF OVERSIGHT.—The Inspector General may continue individual oversight in accordance with paragraph (1) after September 30, 2003, at the discretion of the Inspector General.

(b) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.

—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives, a plan for oversight of the Federal Bureau of Investigation, which plan may include—

(1) an audit of the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation;

(2) an audit and evaluation of programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action;

(3) a review of the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility;

(4) an investigation of allegations of serious misconduct by personnel of the Federal Bureau of Investigation;

(5) a review of matters relating to any other program or operation of the Federal Bureau of Investigation that the Inspector General determines requires review; and

(6) an identification of resources needed by the Inspector General to implement a plan for oversight of the Federal Bureau of Investigation.

(c) REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning—

(1) whether there should be established, within the Department of Justice, a separate office of the Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation;

(2) what changes have been or should be made to the rules, regulations, policies, or practices governing the Federal Bureau of Investigation in order to assist the Office of the Inspector General in effectively exercising its authority to investigate the conduct of employees of the Federal Bureau of Investigation;

(3) what differences exist between the methods and practices used by different Department of Justice components in the investigation and adjudication of alleged misconduct by Department of Justice personnel;

(4) what steps should be or are being taken to make the methods and practices described in paragraph (3) uniform throughout the Department of Justice; and

(5) whether a set of recommended guidelines relating to the discipline of Department of Justice personnel for misconduct should be developed, and what factors, such as the nature and seriousness of the misconduct, the prior history of the employee, and the rank and seniority of the employee at the time of the misconduct, should be taken into account in establishing such recommended disciplinary guidelines.

Subtitle B—Whistleblower Protection

SEC. 621. INCREASING PROTECTIONS FOR FBI WHISTLEBLOWERS.

Section 2303 of title 5, United States Code, is amended to read as follows:

“§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

“(a) DEFINITION.—In this section, the term ‘personnel action’ means any action described in clauses (i) through (x) of section 2302(a)(2)(A).

“(b) PROHIBITED PRACTICES.—Any employee of the Federal Bureau of Investiga-

tion who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau or because of—

“(1) any disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose), a supervisor of the employee, the Inspector General for the Department of Justice, or a Member of Congress that the employee reasonably believes evidences—

“(A) a violation of any law, rule, or regulation; or

“(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(2) any disclosure of information by the employee to the Special Counsel of information that the employee reasonably believes evidences—

“(A) a violation of any law, rule, or regulation; or

“(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

“(c) INDIVIDUAL RIGHT OF ACTION.—Chapter 12 of this title shall apply to an employee of the Federal Bureau of Investigation who claims that a personnel action has been taken under this section against the employee as a reprisal for any disclosure of information described in subsection (b)(2).

“(d) REGULATIONS.—The Attorney General shall prescribe regulations to ensure that a personnel action under this section shall not be taken against an employee of the Federal Bureau of Investigation as a reprisal for any disclosure of information described in subsection (b)(1), and shall provide for the enforcement of such regulations in a manner consistent with applicable provisions of sections 1214 and 1221, and in accordance with the procedures set forth in sections 554 through 557 and 701 through 706.”.

Subtitle C—FBI Security Career Program

SEC. 631. SECURITY MANAGEMENT POLICIES.

The Attorney General shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in security positions in the Federal Bureau of Investigation.

SEC. 632. DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) IN GENERAL.—Subject to the authority, direction, and control of the Attorney General, the Director of the Federal Bureau of Investigation (referred to in this subtitle as the “Director”) shall carry out all powers, functions, and duties of the Attorney General with respect to the security workforce in the Federal Bureau of Investigation.

(b) POLICY IMPLEMENTATION.—The Director shall ensure that the policies of the Attorney General established in accordance with this title are implemented throughout the Federal Bureau of Investigation at both the headquarters and field office levels.

SEC. 633. DIRECTOR OF SECURITY.

The Director shall appoint a Director of Security, or such other title as the Director may determine, to assist the Director in the performance of the duties of the Director under this title.

SEC. 634. SECURITY CAREER PROGRAM BOARDS.

(a) ESTABLISHMENT.—The Director, acting through the Director of Security, shall establish a security career program board to

advise the Director in managing the hiring, training, education, and career development of personnel in the security workforce of the Federal Bureau of Investigation.

(b) COMPOSITION OF BOARD.—The security career program board shall include—

(1) the Director of Security (or a representative of the Director of Security);

(2) the senior officials, as designated by the Director, with responsibility for personnel management;

(3) the senior officials, as designated by the Director, with responsibility for information management;

(4) the senior officials, as designated by the Director, with responsibility for training and career development in the various security disciplines; and

(5) such other senior officials for the intelligence community as the Director may designate.

(c) CHAIRPERSON.—The Director of Security (or a representative of the Director of Security) shall be the chairperson of the board.

(d) SUBORDINATE BOARDS.—The Director of Security may establish a subordinate board structure to which functions of the security career program board may be delegated.

SEC. 635. DESIGNATION OF SECURITY POSITIONS.

(a) DESIGNATION.—The Director shall designate, by regulation, those positions in the Federal Bureau of Investigation that are security positions for purposes of this title.

(b) REQUIRED POSITIONS.—In designating security positions under subsection (a), the Director shall include, at a minimum, all security-related positions in the areas of—

(1) personnel security and access control;

(2) information systems security and information assurance;

(3) physical security and technical surveillance countermeasures;

(4) operational, program, and industrial security; and

(5) information security and classification management.

SEC. 636. CAREER DEVELOPMENT.

(a) CAREER PATHS.—The Director shall ensure that appropriate career paths for personnel who wish to pursue careers in security are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior security positions and shall make available published information on those career paths.

(b) LIMITATION ON PREFERENCE FOR SPECIAL AGENTS.—

(1) IN GENERAL.—Except as provided in the policy established under paragraph (2), the Attorney General shall ensure that no requirement or preference for a Special Agent of the Federal Bureau of Investigation (referred to in this subtitle as a “Special Agent”) is used in the consideration of persons for security positions.

(2) POLICY.—The Attorney General shall establish a policy that permits a particular security position to be specified as available only to Special Agents, if a determination is made, under criteria specified in the policy, that a Special Agent—

(A) is required for that position by law;

(B) is essential for performance of the duties of the position; or

(C) is necessary for another compelling reason.

(3) REPORT.—Not later than December 15 of each year, the Director shall submit to the Attorney General a report that lists—

(A) each security position that is restricted to Special Agents under the policy established under paragraph (2); and

(B) the recommendation of the Director as to whether each restricted security position should remain restricted.

(c) OPPORTUNITIES TO QUALIFY.—The Attorney General shall ensure that all personnel,

including Special Agents, are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior security positions.

(d) BEST QUALIFIED.—The Attorney General shall ensure that the policies established under this title are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

(e) ASSIGNMENTS POLICY.—The Attorney General shall establish a policy for assigning Special Agents to security positions that provides for a balance between—

(1) the need for personnel to serve in career enhancing positions; and

(2) the need for requiring service in each such position for sufficient time to provide the stability necessary to carry out effectively the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(f) LENGTH OF ASSIGNMENT.—In implementing the policy established under subsection (b)(2), the Director shall provide, as appropriate, for longer lengths of assignments to security positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Director shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in a security position by a person serving in a security position in the same security career field.

(h) BALANCED WORKFORCE POLICY.—In the development of security workforce policies under this title with respect to any employees or applicants for employment, the Attorney General shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

SEC. 637. GENERAL EDUCATION, TRAINING, AND EXPERIENCE REQUIREMENTS.

(a) IN GENERAL.—The Director shall establish education, training, and experience requirements for each security position, based on the level of complexity of duties carried out in the position.

(b) QUALIFICATION REQUIREMENTS.—Before being assigned to a position as a program manager or deputy program manager of a significant security program, a person—

(1) must have completed a security program management course that is accredited by the Intelligence Community-Department of Defense Joint Security Training Consortium or is determined to be comparable by the Director; and

(2) must have not less than 6 years experience in security, of which not less than 2 years were performed in a similar program office or organization.

SEC. 638. EDUCATION AND TRAINING PROGRAMS.

(a) IN GENERAL.—The Director, in consultation with the Director of Central Intelligence and the Secretary of Defense, shall establish and implement education and training programs for persons serving in security positions in the Federal Bureau of Investigation.

(b) OTHER PROGRAMS.—The Director shall ensure that programs established under subsection (a) are established and implemented, to the maximum extent practicable, uniformly with the programs of the Intelligence Community and the Department of Defense.

SEC. 639. OFFICE OF PERSONNEL MANAGEMENT APPROVAL.

(a) IN GENERAL.—The Attorney General shall submit any requirement that is estab-

lished under section 637 to the Director of the Office of Personnel Management for approval.

(b) FINAL APPROVAL.—If the Director does not disapprove the requirements established under section 637 within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director of the Office of Personnel Management.

Subtitle D—FBI Counterintelligence Polygraph Program

SEC. 641. DEFINITIONS.

In this subtitle:

(1) POLYGRAPH PROGRAM.—The term “polygraph program” means the counterintelligence screening polygraph program established under section 642.

(2) POLYGRAPH REVIEW.—The term “Polygraph Review” means the review of the scientific validity of the polygraph for counterintelligence screening purposes conducted by the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

SEC. 642. ESTABLISHMENT OF PROGRAM.

Not later than 6 months after publication of the results of the Polygraph Review, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation and the Director of Security of the Federal Bureau of Investigation, shall establish a counterintelligence screening polygraph program for the Federal Bureau of Investigation that consists of periodic polygraph examinations of employees, or contractor employees of the Federal Bureau of Investigation who are in positions specified by the Director of the Federal Bureau of Investigation as exceptionally sensitive in order to minimize the potential for unauthorized release or disclosure of exceptionally sensitive information.

SEC. 643. REGULATIONS.

(a) IN GENERAL.—The Attorney General shall prescribe regulations for the polygraph program in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

(b) CONSIDERATIONS.—In prescribing regulations under subsection (a), the Attorney General shall—

(1) take into account the results of the Polygraph Review; and

(2) include procedures for—

(A) identifying and addressing false positive results of polygraph examinations;

(B) ensuring that adverse personnel actions are not taken against an individual solely by reason of the physiological reaction of the individual to a question in a polygraph examination, unless—

(i) reasonable efforts are first made independently to determine through alternative means, the veracity of the response of the individual to the question; and

(ii) the Director of the Federal Bureau of Investigation determines personally that the personnel action is justified;

(C) ensuring quality assurance and quality control in accordance with any guidance provided by the Department of Defense Polygraph Institute and the Director of Central Intelligence; and

(D) allowing any employee or contractor who is the subject of a counterintelligence screening polygraph examination under the polygraph program, upon written request, to have prompt access to any unclassified reports regarding an examination that relates to any adverse personnel action taken with respect to the individual.

SEC. 644. REPORT ON FURTHER ENHANCEMENT OF FBI PERSONNEL SECURITY PROGRAM.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the

Director of the Federal Bureau of Investigation shall submit to Congress a report setting forth recommendations for any legislative action that the Director considers appropriate in order to enhance the personnel security program of the Federal Bureau of Investigation.

(b) **POLYGRAPH REVIEW RESULTS.**—Any recommendation under subsection (a) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

Subtitle E—FBI Police

SEC. 651. DEFINITIONS.

In this subtitle:

(1) **DIRECTOR.**—The term “Director” means the Director of the Federal Bureau of Investigation.

(2) **FBI BUILDINGS AND GROUNDS.**—

(A) **IN GENERAL.**—The term “FBI buildings and grounds” means—

(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;

(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and

(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.

(B) **INCLUSION.**—The term “FBI buildings and grounds” includes adjacent streets and sidewalks not to exceed 500 feet from such property.

(3) **FBI POLICE.**—The term “FBI police” means the permanent police force established under section 652.

SEC. 652. ESTABLISHMENT OF FBI POLICE; DUTIES.

(a) **IN GENERAL.**—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.

(b) **DUTIES.**—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

(c) **UNIFORMED REPRESENTATIVE.**—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

(d) **AUTHORITY.**—

(1) **IN GENERAL.**—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—

(A) police the FBI buildings and grounds for the purpose of protecting persons and property;

(B) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;

(C) carry firearms as may be required for the performance of duties;

(D) prevent breaches of the peace and suppress affrays and unlawful assemblies; and

(E) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

(2) **EXCEPTION.**—The authority and policing powers of FBI police under this subsection shall not include the service of civil process.

(e) **PAY AND BENEFITS.**—

(1) **IN GENERAL.**—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary sched-

ule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.

(2) **APPLICATION.**—Pay and benefits for the FBI police under paragraph (1)—

(A) shall be established by regulation;

(B) shall apply with respect to pay periods beginning after January 1, 2003; and

(C) shall not result in any decrease in the rates of pay or benefits of any individual.

SEC. 653. AUTHORITY OF METROPOLITAN POLICE FORCE.

This title does not affect the authority of the Metropolitan Police Force of the District of Columbia with respect to FBI buildings and grounds.

Subtitle F—Reports

SEC. 661. REPORT ON LEGAL AUTHORITY FOR FBI PROGRAMS AND ACTIVITIES.

(a) **IN GENERAL.**—Not later than December 31, 2002, the Attorney General shall submit to Congress a report describing the statutory and other legal authority for all programs and activities of the Federal Bureau of Investigation.

(b) **CONTENTS.**—The report submitted under subsection (a) shall describe—

(1) the titles within the United States Code and the statutes for which the Federal Bureau of Investigation exercises investigative responsibility;

(2) each program or activity of the Federal Bureau of Investigation that has express statutory authority and the statute which provides that authority; and

(3) each program or activity of the Federal Bureau of Investigation that does not have express statutory authority, and the source of the legal authority for that program or activity.

(c) **RECOMMENDATIONS.**—The report submitted under subsection (a) shall recommend whether—

(1) the Federal Bureau of Investigation should continue to have investigative responsibility for each statute for which the Federal Bureau of Investigation currently has investigative responsibility;

(2) the legal authority for any program or activity of the Federal Bureau of Investigation should be modified or repealed;

(3) the Federal Bureau of Investigation should have express statutory authority for any program or activity of the Federal Bureau of Investigation for which the Federal Bureau of Investigation does not currently have express statutory authority; and

(4) the Federal Bureau of Investigation should—

(A) have authority for any new program or activity; and

(B) express statutory authority with respect to any new programs or activities.

SEC. 662. REPORT ON FBI INFORMATION MANAGEMENT AND TECHNOLOGY.

(a) **IN GENERAL.**—Not later than December 31, 2002, the Attorney General shall submit to Congress a report on the information management and technology programs of the Federal Bureau of Investigation including recommendations for any legislation that may be necessary to enhance the effectiveness of those programs.

(b) **CONTENTS OF REPORT.**—The report submitted under subsection (a) shall provide—

(1) an analysis and evaluation of whether authority for waiver of any provision of procurement law (including any regulation implementing such a law) is necessary to expeditiously and cost-effectively acquire information technology to meet the unique need of the Federal Bureau of Investigation to improve its investigative operations in order to respond better to national law enforcement, intelligence, and counterintelligence requirements;

(2) the results of the studies and audits conducted by the Strategic Management

Council and the Inspector General of the Department of Justice to evaluate the information management and technology programs of the Federal Bureau of Investigation, including systems, policies, procedures, practices, and operations; and

(3) a plan for improving the information management and technology programs of the Federal Bureau of Investigation.

(c) **RESULTS.**—The results provided under subsection (b)(2) shall include an evaluation of—

(1) information technology procedures and practices regarding procurement, training, and systems maintenance;

(2) record keeping policies, procedures, and practices of the Federal Bureau of Investigation, focusing particularly on how information is inputted, stored, managed, utilized, and shared within the Federal Bureau of Investigation;

(3) how information in a given database is related or compared to, or integrated with, information in other technology databases within the Federal Bureau of Investigation;

(4) the effectiveness of the existing information technology infrastructure of the Federal Bureau of Investigation in supporting and accomplishing the overall mission of the Federal Bureau of Investigation;

(5) the management of information technology projects of the Federal Bureau of Investigation, focusing on how the Federal Bureau of Investigation—

(A) selects its information technology projects;

(B) ensures that projects under development deliver benefits; and

(C) ensures that completed projects deliver the expected results; and

(6) the security and access control techniques for classified and sensitive but unclassified information systems in the Federal Bureau of Investigation.

(d) **CONTENTS OF PLAN.**—The plan provided under subsection (b)(3) shall ensure that—

(1) appropriate key technology management positions in the Federal Bureau of Investigation are filled by personnel with experience in the commercial sector;

(2) access to the most sensitive information is audited in such a manner that suspicious activity is subject to near contemporaneous security review;

(3) critical information systems employ a public key infrastructure to validate both users and recipients of messages or records;

(4) security features are tested by the National Security Agency to meet national information systems security standards;

(5) all employees in the Federal Bureau of Investigation receive annual instruction in records and information management policies and procedures relevant to their positions;

(6) a reserve is established for research and development to guide strategic information management and technology investment decisions;

(7) unnecessary administrative requirements for software purchases under \$2,000,000 are eliminated;

(8) full consideration is given to contacting with an expert technology partner to provide technical support for the information technology procurement for the Federal Bureau of Investigation;

(9) procedures are instituted to procure products and services through contracts of other agencies, as necessary; and

(10) a systems integration and test center, with the participation of field personnel, tests each series of information systems upgrades or application changes before their operational deployment to confirm that they meet proper requirements.

SEC. 663. GAO REPORT ON CRIME STATISTICS REPORTING.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the issue of how statistics are reported and used by Federal law enforcement agencies.

(b) CONTENTS.—The report submitted under subsection (a) shall—

(1) identify the current regulations, procedures, internal policies, or other conditions that allow the investigation or arrest of an individual to be claimed or reported by more than 1 Federal or State agency charged with law enforcement responsibility;

(2) identify and examine the conditions that allow the investigation or arrest of an individual to be claimed or reported by the Offices of Inspectors General and any other Federal agency charged with law enforcement responsibility;

(3) examine the statistics reported by Federal law enforcement agencies, and document those instances in which more than 1 agency, bureau, or office claimed or reported the same investigation or arrest during the years 1998 through 2001;

(4) examine the issue of Federal agencies simultaneously claiming arrest credit for custody situations that have already occurred pursuant to a State or local agency arrest situation during the years 1998 through 2001;

(5) examine the issue of how such statistics are used for administrative and management purposes;

(6) set forth a comprehensive definition of the terms “investigation” and “arrest” as those terms apply to Federal agencies charged with law enforcement responsibilities; and

(7) include recommendations, that when implemented, would eliminate unwarranted and duplicative reporting of investigation and arrest statistics by all Federal agencies charged with law enforcement responsibilities.

(c) FEDERAL AGENCY COMPLIANCE.—Federal law enforcement agencies shall comply with requests made by the General Accounting Office for information that is necessary to assist in preparing the report required by this section.

Subtitle G—Ending the Double Standard**SEC. 671. ALLOWING DISCIPLINARY SUSPENSIONS OF MEMBERS OF THE SENIOR EXECUTIVE SERVICE FOR 14 DAYS OR LESS.**

Section 7542 of title 5, United States Code, is amended by striking “for more than 14 days”.

SEC. 672. SUBMITTING OFFICE OF PROFESSIONAL RESPONSIBILITY REPORTS TO CONGRESSIONAL COMMITTEES.

(a) IN GENERAL.—For each of the 5 years following the date of enactment of this Act, the Office of the Inspector General shall submit to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives an annual report to be completed by the Federal Bureau of Investigation, Office of Professional Responsibility and provided to the Inspector General, which sets forth—

(1) basic information on each investigation completed by that Office;

(2) the findings and recommendations of that Office for disciplinary action; and

(3) what, if any, action was taken by the Director of the Federal Bureau of Investigation or the designee of the Director based on any such recommendation.

(b) CONTENTS.—In addition to all matters already included in the annual report described in subsection (a), the report shall also include an analysis of—

(1) whether senior Federal Bureau of Investigation employees and lower level Federal Bureau of Investigation personnel are being disciplined and investigated similarly; and

(2) whether any double standard is being employed to more senior employees with respect to allegations of misconduct.

Subtitle H—Enhancing Security at the Department of Justice**SEC. 781. REPORT ON THE PROTECTION OF SECURITY AND INFORMATION AT THE DEPARTMENT OF JUSTICE.**

Not later than December 31, 2002, the Attorney General shall submit to Congress a report on the manner in which the Security and Emergency Planning Staff, the Office of Intelligence Policy and Review, and the Chief Information Officer of the Department of Justice plan to improve the protection of security and information at the Department of Justice, including a plan to establish secure electronic communications between the Federal Bureau of Investigation and the Office of Intelligence Policy and Review for processing information related to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 782. AUTHORIZATION FOR INCREASED RESOURCES TO PROTECT SECURITY AND INFORMATION.

There are authorized to be appropriated to the Department of Justice for the activities of the Security and Emergency Planning Staff to meet the increased demands to provide personnel, physical, information, technical, and litigation security for the Department of Justice, to prepare for terrorist threats and other emergencies, and to review security compliance by components of the Department of Justice—

(1) \$13,000,000 for fiscal year 2003;

(2) \$17,000,000 for fiscal year 2004; and

(3) \$22,000,000 for fiscal year 2005.

SEC. 783. AUTHORIZATION FOR INCREASED RESOURCES TO FULFILL NATIONAL SECURITY MISSION OF THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for the activities of the Office of Intelligence Policy and Review to help meet the increased personnel demands to combat terrorism, process applications to the Foreign Intelligence Surveillance Court, participate effectively in counterespionage investigations, provide policy analysis and oversight on national security matters, and enhance secure computer and telecommunications facilities—

(1) \$7,000,000 for fiscal year 2003;

(2) \$7,500,000 for fiscal year 2004; and

(3) \$8,000,000 for fiscal year 2005.

TITLE VII—EFFECTIVE DATE**SEC. 701. EFFECTIVE DATE.**

SA 4579. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ NATIONAL DEFENSE RAIL CONNECTION.

(a) FINDINGS.—Congress finds that—

(1) A comprehensive rail transportation network is a key element of an integrated transportation system for the North American continent, and federal leadership is required to address the needs of a reliable, safe, and secure rail network, and to connect all areas of the United States for national defense and economic development, as previously done for the interstate highway sys-

tem, the Federal aviation network, and the transcontinental railroad;

(2) The creation and use of joint use corridors for rail transportation, fiber optics, pipelines, and utilities are an efficient and appropriate approach to optimizing the nation's interconnectivity and national security;

(3) Government assistance and encouragement in the development of the transcontinental rail system successfully led to the growth of economically strong and socially stable communities throughout the western United States;

(4) Government assistance and encouragement in the development of the Alaska Railroad between Seward, Alaska and Fairbanks, Alaska successfully led to the growth of economically strong and socially stable communities along the route, which today provide homes for over 70% of Alaska's total population;

(5) While Alaska and the remainder of the continental United States has been connected by highway and air transportation, no rail connection exists despite the fact that Alaska is accessible by land routes and is a logical destination for the North American rail system;

(6) Rail transportation in otherwise isolated areas is an appropriate means of providing controlled areas, reducing overall impacts to environmentally sensitive areas over other methods of land-based access;

(7) Because Congress originally authorized 1,000 miles of rail line to be built in Alaska, and because of the system today covers only approximately half that distance, substantially limiting its beneficial effect on the economy of Alaska and the nation, it is appropriate to support the expansion of the Alaska system to ensure that the originally planned benefits are achieved;

(8) Alaska has an abundance of natural resources, both material and aesthetic, access to which would significantly increase Alaska's contribution to the national economy;

(9) Alaska contains many key national defense installations, including sites chosen for the construction of the first phase of the National Missile Defense system, the cost of which could be significantly reduced if rail transportation were available for the movement of materials necessary for construction and for the secure movement of launch vehicles, fuel and other operational supplies;

(10) The 106th Congress recognized the potential benefits of establishing a rail connection to Alaska by enacting legislation to authorize a U.S.—Canada bilaterail commission to study the feasibility of linking the rail system in Alaska to the nearest appropriate point in Canada of the North American rail network; and

(11) In support of pending bilateral activities between the United States and Canada, it is appropriate for the United States to undertake activities relating to elements within the United States.

(b) IDENTIFICATION OF NATIONAL DEFENSE RAILROAD—UTILITY CORRIDOR.—

(1) Within one year from the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Transportation, the State of Alaska and the Alaska Railroad Corporation, shall identify a proposed national defense railroad-utility corridor linking the existing corridor of the Alaska Railroad to the vicinity of the proposed National Missile Defense facilities at Fort Greely, Alaska. The corridor shall be at least 500 feet wide and shall also identify land for such terminals, stations, maintenance facilities, switching yards, and material sites as are considered necessary.

(2) The identification of the corridor under paragraph (1) shall include information providing a complete legal description for and

noting the current ownership of the proposed corridor and associated land.

(3) In identifying the corridor under paragraph (1), the secretary shall consider, at a minimum, the following factors:

(A) The proximity of national defense installations and national defense considerations;

(B) The location of and access to natural resources that could contribute to economic development of the region;

(C) Grade and alignment standards that are commensurate with rail and utility construction standards and that minimize the prospect of at-grade railroad and highway crossings;

(D) Availability of construction materials;

(E) Safety;

(F) Effects on and service to adjacent communities and potential intermodal transportation connections;

(G) Environmental concerns;

(H) Use of public land to the maximum degree possible;

(I) Minimization of probable construction costs;

(J) An estimate of probable construction costs and methods of financing such costs through a combination of private, state, and federal sources; and

(K) Appropriate utility elements for the corridor, including but not limited to petroleum product pipelines, fiber-optic telecommunication facilities, and electrical power transmission lines, and

(L) Prior and established traditional uses.

(4) The Secretary may, as part of the corridor identification, include issues related to the further extension of such corridor to a connection with the nearest appropriate terminus of the North American rail network in Canada.

(c) NEGOTIATION AND LAND TRANSFER.—

(1) The Secretary of the Interior shall—

(A) upon completion of the corridor identification in subsection (b), negotiate the acquisition of any lands in the corridor which are not federally owned through an exchange for lands of equal or greater value held by the federal government elsewhere in Alaska; and

(B) upon completion of the acquisition of lands under paragraph (A), the Secretary shall convey to the Alaska Railroad Corporation, subject to valid existing rights, title to the lands identified under subsection (b) as necessary to complete the national defense railroad-utility corridor, on condition that the Alaska Railroad Corporation construct in the corridor an extension of the railroad system to the vicinity of the proposed national missile defense installation at Fort Greely, Alaska, together with such other utilities, including but not limited to fiber-optic transmission lines and electrical transmission lines, as it considers necessary and appropriate. The Federal interest in lands conveyed to the Alaska Railroad Corporation under this Act shall be the same as in lands conveyed pursuant to the Alaska Railroad Transfer Act (45 USC 1201 et seq.).

(d) APPLICABILITY OF OTHER LAWS.—

Actions authorized in this Act shall proceed immediately and to conclusion notwithstanding the land-use planning provisions of Section 202 of the Federal Land Policy and Management Act of 1976, P.L. 94-579.

(E) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SA 4580. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland

Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 172. AIRLINE PASSENGER SCREENING.

Section 44901(b) of title 49, United States Code, is amended—

(1) by striking “All screening of passengers” and inserting:

“(1) IN GENERAL.—All screening of passengers”;

(2) by adding at the end the following:

“(2) TREATMENT OF PASSENGERS.—Screening of passengers under this section shall be carried out in a manner that—

“(A) is not abusive or unnecessarily intrusive;

“(B) ensures protection of the passenger’s personal property; and

“(C) provides adequate privacy for the passenger, if the screening involves the removal of clothing (other than shoes) or a search under the passenger’s clothing.”.

SA 4581. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . AGE AND OTHER LIMITATIONS.

(a) GENERAL.—Notwithstanding any other provision of law, beginning on the date that is 6 months after the date of enactment of this Act—

(1) section 121.383(c) of title 14, Code of Federal Regulations, shall not apply;

(2) no certificate holder may use the services of any person as a pilot on an airplane engaged in operations under part 121 of title 14, Code of Federal Regulations, if that person is 63 years of age or older; and

(3) no person may serve as a pilot on an airplane engaged in operations under part 121 of title 14, Code of Federal Regulations, if that person is 63 years of age or older.

(b) CERTIFICATE HOLDER.—For purposes of this section, the term “certificate holder” means a holder of a certificate to operate as an air carrier or commercial operator issued by the Federal Aviation Administration.

(c) RESERVATION OF SAFETY AUTHORITY.—Nothing in this section is intended to change the authority of the Federal Aviation Administration to take steps to ensure the safety of air transportation operations involving a pilot who has reached the age of 60, including its authority—

(1) to require such a pilot to undergo additional or more stringent medical, cognitive, or proficiency testing in order to retain certification; or

(2) to establish crew pairing standards for crews with such a pilot.

SA 4582. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . FOOD AND DRINKING WATER SUPPLY SECURITY PROGRAM.

(a) FINDINGS.—Congress finds that—

(1) section 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance

Act (42 U.S.C. 5180) authorizes the purchase of food commodities to provide adequate supplies of food for use in any area of the United States in the event of a major disaster or emergency in the area;

(2) the current terrorist threat was not envisioned when that Act was enacted, and the Act does not specifically require prepositioning of food supplies;

(3) the maintenance of safe food and drinking water supplies is essential;

(4) stored food supplies for major cities are minimal;

(5) if terrorist activity were to disrupt the transportation system, affect food supplies directly, or create a situation in which a quarantine would have to be declared, it would require a considerable period of time to ensure delivery of safe food supplies;

(6) terrorist activity could also disrupt drinking water supplies; and

(7) accordingly, emergency food and drinking water repositories should be established at such locations as will ensure the availability of food and drinking water to populations in area that are vulnerable to terrorist activity.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report with information necessary to the establishment of secure prepositioned emergency supplies of food and drinking water for major population centers for use in the event of a breakdown in the food supply and delivery chain.

(2) CONSIDERATIONS.—The report shall consider the likelihood of such breakdowns occurring from accidents and natural disasters as well as terrorist activity.

(3) CONTENTS.—The report shall—

(A) identify the 20 most vulnerable metropolitan areas or population concentrations in the United States; and

(B) make recommendations regarding the appropriate number of days’ supply of food to be maintained to ensure the security of the population in each such area.

(c) REPOSITORIES.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall establish secure repositories for food and drinking water in each of the 20 areas identified in the report.

(2) ACCESSIBILITY.—The repositories shall be locally accessible without special equipment in the event of a major transportation breakdown.

(d) PURCHASE OF SUPPLIES.—

(1) IN GENERAL.—The Secretary of Agriculture shall purchase and maintain food and water stock for each repository, consistent with determinations made by the Secretary of Homeland Security.

(2) PHASING IN.—Purchases and full stocking of repositories may be phased in over a period of not more than 3 years.

(2) PRODUCTS OF THE UNITED STATES.—The Secretary of Agriculture shall purchase for the repositories food and water supplies produced, processed, and packaged exclusively in the United States.

(4) SELECTION.—Food and water supplies for the repositories shall be selected and managed so as to provide—

(A) quantities and packaging suitable for immediate distribution to individuals and families;

(B) forms of food products suitable for immediate consumption in an emergency without heating and without further preparation;

(C) packaging that ensures that food products are maximally resistant to postproduction contamination or adulteration;

(D) packaging and preservation technology to ensure that the quality of stored food and

water is maintained for a minimum of 4 years at ambient temperatures;

(E) a range of food products, including meats, seafood, dairy, and vegetable (including fruit and grain) products, emphasizing, insofar as practicable—

(i) food products that meet multiple nutritional needs, such as those composed primarily of high-quality protein in combination with essential minerals; and

(ii) food products with a high ratio of nutrient value to cost;

(F) rotation of stock, in repositories on a regular basis at intervals of not longer than 3 years; and

(G) use of stocks of food being rotated out of repositories for other suitable purposes.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 4583. Mr. GRASSLEY (for himself, Mr. SESSIONS, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill (H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 115. COUNTERNARCOTICS OFFICER.

(a) **COUNTERNARCOTICS OFFICER.**—The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department, and between the Department and other agencies, with respect to—

(1) interdicting the entry of illegal drugs into the United States; and

(2) tracking and severing connections between illegal drug trafficking and terrorism.

(b) **DUTIES.**—The official appointed under subsection (a) shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction;

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy; and

(3) carry out such other duties with respect to the responsibility of the official under subsection (a) as the Secretary considers appropriate.

SA 4584. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I of division A, add the following:

SEC. 173. TRANSPORTATION SECURITY REGULATIONS.

Section 114(l)(2)(B) of title 49, United States Code, is amended—

(1) by inserting “for a period not to exceed 30 days” after “effective”; and

(2) by inserting “ratified or” after “unless”.

SA 4585. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 8 and 9, insert the following:

SEC. 172. REQUIREMENT TO BUY CERTAIN ARTICLES FROM AMERICAN SOURCES.

(a) **REQUIREMENT.**—Except as provided in subsections (c) through (g), funds appro-

priated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) **COVERED ITEMS.**—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) **AVAILABILITY EXCEPTION.**—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) **EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.**—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) **EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.**—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code.

(f) **EXCEPTION FOR CERTAIN FOODS.**—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) **EXCEPTION FOR SMALL PURCHASES.**—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(h) **APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.**—This section is applicable to contracts and subcontracts for the procurement

of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(i) **GEOGRAPHIC COVERAGE.**—In this section, the term “United States” includes the possessions of the United States.

SA 4586. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In section 132(b), add at the end the following:

(14) On behalf of the Secretary, subject to disapproval by the President, directing the agencies described under subsection (a)(1)(B) to provide intelligence information, analyses of intelligence information, and such other intelligence-related information as the Under Secretary for Intelligence determines necessary.

SA 4587. Mr. WARNER (for himself and Mr. THOMPSON) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, between lines 9 and 10, insert the following:

Subtitle C—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

SEC. 521. APPLICATION OF INDEMNIFICATION AUTHORITY.

(a) **In General.**—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85-804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) **Exercise of Authority.**—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

SEC. 522. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.

(a) **In General.**—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85-804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) **Exercise of Authority.**—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 523;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification, and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

SEC. 523. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or antiterrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities.

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 522 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedure established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

SEC. 524. CONGRESSIONAL NOTIFICATION.

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85-804, as amended by section 522, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

SEC. 525. DEFINITIONS.

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms “anti-terrorism technology” and “anti-terrorism service” mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term “act of terrorism” means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term “information technology” has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term “unit of local government” means any city,

county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

SA 4588. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the end of subtitle D of title I, add the following:

SEC. 173. CONFORMING AMENDMENTS REGARDING LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

(a) TITLE 38, UNITED STATES CODE.—

(1) SECRETARY OF HOMELAND SECURITY AS HEAD OF COAST GUARD.—Title 38, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security” in each of the following provisions:

(A) Section 101(25)(D).

(B) Section 1974(a)(5).

(C) Section 3002(5).

(D) Section 3011(a)(1)(A)(ii), both places it appears.

(E) Section 3012(b)(1)(A)(v).

(F) Section 3012(b)(1)(B)(ii)(V).

(G) Section 3018A(a)(3).

(H) Section 3018B(a)(1)(C).

(I) Section 3018B(a)(2)(C).

(J) Section 3018C(a)(5).

(K) Section 3020(m)(4).

(L) Section 3035(d).

(M) Section 6105(c).

(2) DEPARTMENT OF HOMELAND SECURITY AS EXECUTIVE DEPARTMENT OF COAST GUARD.—Title 38, United States Code, is amended by striking “Department of Transportation” and inserting “Department of Homeland Security” in each of the following provisions:

(A) Section 1560(a).

(B) Section 3035(b)(2).

(C) Section 3035(c).

(D) Section 3035(d).

(E) Section 3035(e)(1)(C).

(F) Section 3680A(g).

(b) SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.—The Soldiers' and Sailors' Civil Relief Act of 1940 is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security” in each of the following provisions:

(1) Section 105 (50 U.S.C. App. 515), both places it appears.

(2) Section 300(c) (50 U.S.C. App. 530).

(c) OTHER LAWS AND DOCUMENTS.—(1) Any reference to the Secretary of Transportation, in that Secretary's capacity as the head of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Secretary of Homeland Security.

(2) Any reference to the Department of Transportation, in its capacity as the executive department of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Department of Homeland Security.

SA 4589. Mr. BYRD submitted an amendment intended to be proposed by

him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I, add the following:

SEC. 173. CONSTRUCTION OF AUTHORITIES OF DEPARTMENT HOMELAND SECURITY AS AUTHORIZATION FOR USE OF ARMED FORCES AS POSSE COMITATUS.

(a) CONSTRUCTION OF AUTHORITIES.—No provision of this title or amendment made by this title may be construed as an express authorization of the use of any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws as prohibited by section 1385 of title 18, United States Code.

SA 4590. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 20, line 10, strike “Section 104” and insert “Section 401”.

On page 220, line 1, strike “section 1111(c)” and insert “section 111(c)”.

SA 4591. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 105, strike line 22 and all that follows through page 106, line 2, and insert the following:

(A) DESIGNATION.—The Secretary shall designate for each State and for each city with a population of more than 900,000 not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State or city; and

SA 4592. Mr. SCHUMER (for himself and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, between lines 12 and 13, insert the following:

(n) RESEARCH AND DEVELOPMENT GRANTS FOR PORT SECURITY.—

(1) AUTHORITY.—The Secretary of Homeland Security is authorized to award grants to national laboratories, private nonprofit organizations, institutions of higher education, and other entities for the support of research and development of technologies that can be used to secure the ports of the United States.

(2) USE OF FUNDS.—Grants awarded pursuant to paragraph (1) may be used to develop technologies such as—

(A) methods to increase the ability of the Customs Service to inspect merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;

(B) equipment that accurately detects explosives, or chemical and biological agents that could be used to commit terrorist acts in the United States;

(C) equipment that accurately detects nuclear materials, including scintillation-based

detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;

(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including “smart sensors” that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit such information to the appropriate authorities at a remote location;

(E) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released; and

(F) pilot projects that could be implemented within 12 months at 1 of the Nation’s 10 largest ports to demonstrate the effectiveness of a system of radiation detection monitors located throughout the port to detect nuclear or radiological material.

(3) APPLICATIONS FOR GRANTS.—Each entity desiring a grant under this subsection shall submit an application to the Secretary of Homeland Security at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$50,000,000 for each of the fiscal years 2003 through 2007 to carry out the provisions of this subsection.

SA 4593. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 72 of the bill, line 6, after “risk analysis and risk management activities” insert the following: “(including maintenance of a database of radioactive materials that may be used to produce a radiological dispersal device)”.

SA 4594. Mr. INOUE submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 9, between lines 8 and 9, insert the following:

(9) INDIAN TRIBE.—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 9, strike lines 9 through 12 and insert the following:

(10) LOCAL GOVERNMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “local government” has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(B) EXCLUSION.—The term “local government” does not include an Indian tribe or tribal government.

On page 9, line 13, strike “(10)” and insert “(11)”.

On page 9, line 16, strike “(11)” and insert “(12)”.

On page 9, line 18, strike “(12)” and insert “(13)”.

On page 9, line 23, strike “(13)” and insert “(14)”.

On page 10, line 1, strike “(14)” and insert “(15)”.

On page 10, between lines 4 and 5, insert the following:

(16) TRIBAL COLLEGE OR UNIVERSITY.—The term “tribal college or university” has the meaning given the term “tribally controlled college or university” in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(17) TRIBAL GOVERNMENT.—The term “tribal government” means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.

On page 10, line 5, strike “(15)” and insert “(18)”.

On page 12, line 25, insert “, tribal,” after “State”.

On page 13, line 18, insert “, tribal,” after “State”.

On page 13, line 22, insert “, tribal,” after “State”.

On page 14, line 3, insert “, tribal,” after “State”.

On page 14, line 9, insert “tribal,” after “regional,”.

On page 14, line 16, insert “, tribal,” after “State”.

On page 14, line 22, insert “tribal,” after “regional,”.

On page 15, line 21, insert “tribal,” after “State,”.

On page 16, line 2, insert “, tribal,” after “State”.

On page 42, line 19, insert “, tribal,” after “State”.

On page 55, line 3, insert “, tribal,” after “State”.

On page 55, line 23, insert “, tribal,” after “State”.

On page 56, lines 18 and 19, strike “State and local governments, local” and insert “State, tribal, and local governments, tribal and local”.

On page 59, lines 10 and 11, strike “State and local governments, local” and insert “State, tribal, and local governments, tribal and local”.

On page 64, line 24, insert “, tribal,” after “State”.

On page 69, line 12, insert “, tribal,” after “State”.

On page 69, line 16, insert “tribal,” after “State,”.

On page 70, line 1, insert “, tribal,” after “State”.

On page 70, line 3, insert “, tribal,” after “State”.

On page 75, line 17, insert “tribal,” after “State,”.

On page 78, line 18, strike “local,” and insert “tribal, and local government”.

On page 79, line 1, insert “tribal and” after “to assist”.

On page 85, line 18, insert “tribal,” after “State,”.

On page 85, line 22, insert “tribal colleges and universities,” after “universities,”.

On page 100, line 8, insert “tribal colleges and universities and” before “nonprofit”.

On page 101, line 19, insert “, tribal colleges and universities,” after “universities”.

On page 103, line 17, insert “tribal,” after “state”.

On page 103, line 20, insert “, Tribal,” after “State”.

On page 103, line 22, insert “, tribal,” after “State”.

On page 104, line 2, strike “State and local government” and insert “State, tribal, and local governments”.

On page 104, line 4, strike “State and local government” and insert “State, tribal, and local governments”.

On page 104, line 6, strike "State and local government" and insert "State, tribal, and local governments".

On page 104, line 10, strike "State and local government" and insert "State, tribal, and local governments".

On page 104, line 24, insert ", tribal," after "State".

On page 105, line 8, insert ", tribal," after "State".

On page 105, line 11, insert ", tribal," after "State".

On page 105, line 15, insert ", tribal," after "State".

On page 105, strike lines 19 and 20 and insert the following:

nation of Department priorities—

(I) within each State and Indian tribe;

(II) between States;

(III) between Indian tribes; and

(IV) between States and Indian tribes.

On page 105, line 23, insert "and for each regional office of the Bureau of Indian Affairs" after "State".

On page 106, line 2, insert "or for Indian tribes covered by that regional office of the Bureau of Indian Affairs, as the case may be" after "State".

On page 106, line 4, insert ", tribal," after "State".

On page 106, line 17, insert "tribal," after "State".

On page 106, line 22, insert ", tribal," after "State".

On page 107, line 3, insert ", tribal," after "State".

On page 107, line 6, insert ", tribal," after "State".

On page 107, line 9, insert ", tribal," after "State".

On page 107, line 16, insert ", tribal," after "State".

On page 107, line 20, insert ", tribal," after "State".

On page 108, line 6, insert "tribal," after "State".

On page 115, lines 23 and 24, insert "tribal governments," after "political subdivisions".

On page 118, line 3, insert ", tribal," after "State".

On page 121, line 15, insert ", tribal," after "state".

On page 121, line 17, insert "tribal," after "State".

On page 121, line 20, insert "tribal," after "State".

On page 121, line 23, insert "tribal," after "State".

On page 122, line 4, insert "tribal," after "State".

On page 122, line 12, insert ", tribal," after "State".

On page 134, line 24, insert ", tribal," after "State".

On page 171, line 21, insert ", tribal," after "State".

On page 171, line 22, insert ", tribal," after "State".

On page 172, line 8, insert ", tribal," after "State".

On page 172, line 18, insert ", tribal," after "State".

On page 176, line 19, insert ", tribal," after "State".

On page 187, line 1, insert ", tribal," after "State".

On page 187, line 17, insert ", tribal," after "State".

On page 238, lines 14 and 15, strike "local or regional" and insert "regional, tribal, or local government".

SA 4595. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to es-

tablish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 59, between lines 12 and 13, insert the following:

(14) Developing and implementing a system of Interagency Homeland Security Fusion Centers, including regional centers, which shall—

(A) be responsible for coordinating the interagency fusion of tactical homeland security intelligence;

(B) facilitate information sharing between all of the participating agencies;

(C) provide intelligence cueing to the appropriate agencies concerning threats to the homeland security of the United States;

(D) be composed of individuals designated by the Secretary, and may include representatives of—

(i) the agencies described in clauses (i) and (ii) of subsection (a)(1)(B);

(ii) agencies within the Department;

(iii) any other Federal, State, or local agency the Secretary deems necessary; and

(iv) representatives of such foreign governments as the President may direct;

(E) be established in an appropriate number to adequately accomplish their mission;

(F) operate in conjunction with or in place of other intelligence or fusion centers currently in existence; and

(G) have an implementation plan submitted to Congress no later than 1 year after the date of enactment of this Act.

SA 4596. Mrs. CLINTON (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, between lines 15 and 16, insert the following new paragraph:

(4) as part of the overall effort to secure the United States borders, increase the security of the border between the United States and Canada and the ports of entry located along that border, and improve the coordination among the agencies responsible for maintaining that security;

SA 4597. Mrs. CLINTON (for herself, Mr. INHOFE, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Section 134(b) is amended by adding at the end the following:

(16) Coordinating existing mental health services and interventions to ensure that the Department of Health and Human Services, the Department of Education, the Department of Justice, the Department of Defense, the Federal Emergency Management Agency, and the Department of Veterans Affairs, including the National Center for Post-Traumatic Stress Disorder, in conjunction with the Department, assess, prepare, and respond to the psychological consequences of terrorist attacks or major disasters.

SA 4598. Mrs. CLINTON (for herself and Mr. INHOFE) submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and

for other purposes; which was ordered to lie on the table; as follows:

Section 134(b) is amended by adding at the end the following:

(16) Coordinating existing mental health services and interventions to ensure that the Department of Health and Human Services, the Department of Education, the Department of Justice, the Department of Defense, the Federal Emergency Management Agency, and the Department of Veterans Affairs, in conjunction with the Department, assess, prepare, and respond to the psychological consequences of terrorist attacks or major disasters.

SA 4599. Mr. HARKIN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 42, lines 11 and 12, strike ", including agriculture and livestock,".

On page 43, between lines 2 and 3, insert the following:

(7) Consistent with section 173, conducting agricultural import and entry inspection functions transferred under section 173.

On page 43, line 3, strike "(7)" and insert "(8)".

On page 43, strike lines 16 through 19.

On page 43, line 20, strike "(4)" and insert "(3)".

On page 43, line 22, strike "(5)" and insert "(4)".

On page 69, lines 18 and 19, strike "providing a single staff for" and insert "coordinating".

On page 71, line 3, strike "Consulting" and insert "Collaborating".

On page 71, lines 8 and 9, strike "of the Select Agent Registration Program transferred under subsection (c)(6)" and insert "described in subsection (c)(6)(B)".

Beginning on page 73, strike line 23 and all that follows through page 74, line 6, and insert the following:

(6)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as "select agents" in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

On page 137, between lines 13 and 14, insert the following:

SEC. 173. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) **DEFINITION OF COVERED LAW.**—In this section, the term “covered law” means—

- (1) the first section of the Act of August 31, 1922 (commonly known as the “Honeybee Act”) (7 U.S.C. 281);
- (2) title III of the Federal Seed Act (7 U.S.C. 1581 et seq.);
- (3) the Plant Protection Act (7 U.S.C. 7701 et seq.);
- (4) the Animal Health Protection Act (7 U.S.C. 8301 et seq.);
- (5) section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).
- (6) the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.); and
- (7) the eighth paragraph under the heading “BUREAU OF ANIMAL INDUSTRY” in the Act of March 4, 1913 (commonly known as the “Virus-Serum-Toxin Act”) (21 U.S.C. 151 et seq.).

(b) **TRANSFER.**—

(1) **IN GENERAL.**—Subject to paragraph (2), there is transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under each covered law.

(2) **QUARANTINE ACTIVITIES.**—The functions transferred under paragraph (1) shall not include any quarantine activity carried out under a covered law.

(c) **EFFECT OF TRANSFER.**—

(1) **COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.**—The authority transferred under subsection (b) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of each covered law.

(2) **RULEMAKING COORDINATION.**—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security in any case in which the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (b) under a covered law.

(3) **EFFECTIVE ADMINISTRATION.**—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred under subsection (b).

(d) **TRANSFER AGREEMENT.**—

(1) **IN GENERAL.**—Before the completion of the transition period (as defined in section 181), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to carry out this section.

(2) **REQUIRED TERMS.**—The agreement required by this subsection shall provide for—

(A) the supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred under subsection (b);

(B) the transfer of funds to the Secretary of Homeland Security under subsection (e);

(C) authority under which the Secretary of Homeland Security may perform functions that—

(i) are delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants; but

(ii) are not transferred to the Secretary of Homeland Security under subsection (b); and

(D) authority under which the Secretary of Agriculture may use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding

the protection of domestic livestock and plants.

(3) **REVIEW AND REVISION.**—After the date of execution of the agreement described in paragraph (1), the Secretary of Agriculture and the Secretary of Homeland Security—

(A) shall periodically review the agreement; and

(B) may jointly revise the agreement, as necessary.

(e) **PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.**—

(1) **TRANSFER OF FUNDS.**—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary of Homeland Security, in accordance with the agreement under subsection (d), funds for activities carried out by the Secretary of Homeland Security for which the fees were collected.

(2) **LIMITATION.**—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary of Homeland Security under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary of Homeland Security to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(f) **TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.**—Not later than the completion of the transition period (as defined in section 181), the Secretary of Agriculture shall transfer to the Department of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(g) **PROTECTION OF INSPECTION ANIMALS.**—

(1) **DEFINITION OF SECRETARY CONCERNED.**—Title V of the Agricultural Risk Protection Act of 2000 is amended—

(A) by redesignating sections 501 and 502 (7 U.S.C. 2279e, 2279f) as sections 502 and 503, respectively; and

(B) by inserting before section 502 (as redesignated by subparagraph (A)) the following:

“SEC. 501. DEFINITION OF SECRETARY CONCERNED.

“In this title, the term ‘Secretary concerned’ means—

“(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

“(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.”.

(2) **CONFORMING AMENDMENTS.**—

(A) Section 502 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended—

(i) in subsection (a)—

(I) by inserting “or the Department of Homeland Security” after “Department of Agriculture”; and

(II) by inserting “or the Secretary of Homeland Security” after “Secretary of Agriculture”; and

(ii) by striking “Secretary” each place it appears (other than in subsections (a) and (e)) and inserting “Secretary concerned”.

(B) Section 503 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended by striking “501” each place it appears and inserting “502”.

(C) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 174. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) **DEFINITION OF AFFECTED AGENCY.**—In this section, the term “affected agency” means—

- (1) the Department of Homeland Security;
- (2) the Department of Agriculture;
- (3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary of Homeland Security.

(b) **COORDINATION.**—Consistent with section 171, the Secretary of Homeland Security, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall ensure that appropriate information (as determined by the Secretary of Homeland Security) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) **REPORT AND PLAN.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SA 4600. Mr. TORRICELLI submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title XI of division B, insert the following new section:

SEC. 1124. VISA ISSUANCE.

(a) **REPORT ON IDENTITY AUTHENTICATION.**—Not later than 120 days after the date of enactment of this Act, the President shall submit to the appropriate committees of Congress a report regarding the establishment of an identity authentication system to screen aliens applying for visas to the United States. The report shall consider the utility of commercially available domestic and global data sources and technology and scoring and modeling methods to generate risk scores based on the information supplied by the alien.

(b) **COORDINATION PLAN.**—

(1) **REQUIREMENT FOR PLAN.**—Not later than one year after the date of enactment of this Act, the President shall develop and implement a plan based on the findings of the report under subsection (a) to establish an identity authentication system to screen aliens applying for visas to the United States. Such a system shall be consistent with title III of the Enhanced Border Security and Visa Reform Act, (Public Law 107-173). The system shall also be consistent with the Aviation Transportation and Security Act's Computer Assisted Passenger Prescreening System (CAPPS) II, e-government programs, and other appropriate programs requiring authentication of identity.

(2) **CONSULTATION REQUIREMENT.**—In the preparation and implementation of the plan under this subsection, the President shall consult with the appropriate committees of Congress.

(3) **PROTECTION REGARDING INFORMATION AND USES THEREOF.**—The plan under this subsection shall be consistent with the protections and penalties established under section 201(c) (3) and (4) of the Enhanced Border Security and Visa Reform Act, (Public Law 107-173).

(c) **AUTHENTICATION.**—In this section, the term “authentication” means a knowledge-based system that employs available personal identifying information to validate personal information supplied by an alien applying for a visa. A knowledge-based system is one where persons are recognized by demonstrating they are in possession of certain information that only that person would be expected to know.

SA 4601. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I, add the following:

SEC. 173. NATIONAL GUARD TECHNOLOGY CENTER OF EXCELLENCE.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The Weapons of Mass Destruction Civil Support Teams of the National Guard have a mission that differs from the warfighting mission of other units of the National Guard.

(2) The traditional approach of equipping National Guard personnel with equipment used by personnel on full-time military duty is inadequate for civil support team personnel because of the unique mission of the civil support teams.

(3) It is in the national interest that special efforts be undertaken immediately to provide the civil support teams with the technologies needed to support their unique mission.

(4) Some of the technologies needed to support the mission of the civil support teams is available commercially, while other technologies will need to be developed.

(5) The civil support teams also need cost effective, efficient training designed for their unique mission.

(6) National Guard personnel involved in other homeland security missions also require technologies and training in support of such missions.

(b) **ESTABLISHMENT.**—Not later than one year after the date of enactment of this Act, the Secretary shall, in coordination with the Secretary of Defense, establish a National Guard Technology Center of Excellence (in this section referred to as the “Center”).

(c) **REQUIREMENTS.**—(1) The Center shall consist of a consortium of at least one national laboratory, and such universities, non-profit research institutes, and other entities, selected by the Secretary for purposes of the Center.

(2) Each laboratory or entity selected for participation in the Center shall possess significant expertise in the development of technologies for the Federal Government for homeland defense.

(3) Subject to limitations imposed by the Secretary of Defense, the Center shall have ready access to a military installation that supports the National Guard.

(d) **MISSION.**—The mission of the Center is as follows:

(1) To support the development and procurement of technologies for the Weapons of Mass Destruction Civil Support Teams of the National Guard, and other personnel and units of the National Guard engaged in

homeland defense, for the purpose of assisting such teams in carrying out their missions.

(2) To support the development and deployment of an improved training curricula to support the Weapons of Mass Destruction Civil Support Teams of the National Guard.

(e) **LEAD ENTITY.**—(1) The Secretary shall designate a national laboratory, or one of the other entities, comprising the Center as lead entity of the Center. The laboratory or entity so designated shall have expertise in chemical, biological, and nuclear regimens.

(2) The entity designated under paragraph (1) shall carry out such activities in that capacity as the Secretary shall provide, including service as liaison between the Center and the Department regarding the activities of the Center.

(f) **FUNDING.**—There are authorized to be appropriated to the Department, for transfer to the entity designated under subsection (e)—

(1) \$4,000,000 to carry out the activities described in subsection (d)(1); and

(2) \$1,000,000 to carry out the activities described in subsection (d)(2).

SA 4602. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, line 3, strike “\$200,000,000” and insert “\$500,000,000”

SA 4603. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 13 and 14, insert the following:

SEC. 173. LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT.

(a) **AUTHORIZATION.**—Government-owned, contractor-operated laboratories that receive funds available to the Department for national security programs are authorized to carry out laboratory-directed research and development, as defined in section 3132 of the National Defense Authorization Act for Fiscal Year 1991 (42 U.S.C. 7257a(d)).

(b) **REGULATIONS.**—The Secretary shall prescribe regulations for the conduct of laboratory-directed research and development at laboratories under subsection (a).

(c) **FUNDING.**—Of the funds provided by the Department to laboratories under subsection (a) for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

SA 4604. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 75, strike lines 22 and 23, and insert the following:

technical matters relevant to homeland security;

(5) coordinating and integrating all research, development, demonstration, testing,

and evaluation activities of the Department; and

(6) facilitating the transfer and deployment of

SA 4605. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . . . LAW ENFORCEMENT SUPPORT FOR JEFFERSON LABS.

(a) **IN GENERAL.**—The Secretary of Health and Human Services, on behalf of the United States—

(1) may relinquish to the State of Arkansas or to local government all or part of the jurisdiction of the United States over the lands and properties encompassing the Jefferson Labs campus in the State of Arkansas that are under the supervision or control of the Secretary; or

(2) may establish concurrent jurisdiction between the Federal Government and the State or local government over such lands and properties.

(b) **TERMS.**—Relinquishment of jurisdiction under this section may be accomplished, under terms and conditions that the Secretary deems advisable, by filing with the Governor of the State of Arkansas concerning a notice of relinquishment to take effect upon acceptance thereof.

(c) **DEFINITION.**—In this section, the term “Jefferson Labs campus” means the lands and properties of the National Center for Toxicological Research and the Arkansas Regional Laboratory.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 4606. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 114, between lines 5 and 6, insert the following:

SEC. 140. VACCINE ACQUISITION COUNCIL.

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—There is a Vaccine Acquisition Council within the Department of Homeland Security.

(2) **COMPOSITION.**—The Council shall consist of the following:

(A) Personnel of the Department of Homeland Security designated by the Secretary of Homeland Security.

(B) Representatives of the Department of Defense designated by the Secretary of Defense.

(C) Representatives of the Department of Health and Human Services designated by the Secretary of Health and Human Services.

(D) The Assistant to the President for Science and Technology.

(3) **CHAIR.**—The Secretary of Homeland Security shall designate an officer or employee of the Department of Homeland Security as the Chairperson of the Council.

(b) **DUTIES.**—The Vaccine Acquisition Council shall have the following duties:

(1) **REQUIREMENTS DEFINITION.**—To identify the public health requirements of the Department of Homeland Security and the Department of Health and Human Services and

the military requirements of the Department of Defense for vaccines to prevent or mitigate the physiological effects of exposure to biological warfare agents.

(2) **BUDGET RECOMMENDATIONS.**—To make recommendations to the Secretary of Homeland Security, the Secretary of Defense, the Secretary of Department of Health and Human Services, and the heads of other agencies of the United States regarding the funding of acquisitions of such vaccines to meet requirements.

(3) **LIAISON WITH INDUSTRY.**—To serve as a clearinghouse for the communication of information between agencies of the United States and private sector sources of such vaccines.

(4) **COORDINATION OF ACQUISITIONS.**—To coordinate the acquisition of such vaccines for meeting the requirements of the Department of Department of Homeland Security, the Department of Defense, and the Health and Human Services for the vaccines.

(5) **ACQUISITION REFORM.**—To make recommendations regarding reforms of acquisition policies and procedures for the acquisition of vaccines so as to simplify and expedite the meeting of requirements of the United States for the vaccines.

(6) **SOLUTION OF PRODUCTION OBSTACLES.**—To identify obstacles to industry support for the production of such vaccines and to propose solutions for eliminating or minimizing such obstacles.

(c) **PERIODIC REPORT.**—

(1) **REQUIREMENT FOR REPORT.**—The Vaccine Acquisition Council shall periodically submit a report on its activities to the Secretary of Homeland Security. The report shall be submitted not less frequently than once each year.

(2) **TRANSMISSION TO CONGRESS.**—Promptly after receiving a periodic report under paragraph (1), the Secretary shall transmit the report to Congress.

(d) **DETAIL OF PERSONNEL.**—The Secretary of Defense and the Secretary of Health and Human Services may each detail personnel of the Department of Defense and employees of the Department of Health and Human Services, respectively, to the Department of Homeland Security to serve with personnel of the Department of Homeland Security as the staff of the Vaccine Acquisition Council.

(e) **INITIAL OPERATION.**—The Secretary of Homeland Security shall ensure that the Vaccine Acquisition Council commences operations within 30 days after the effective date of this division.

SEC. 141. REQUIREMENT FOR GOVERNMENT-OWNED, CONTRACTOR-OPERATED FACILITY FOR THE PRODUCTION OF VACCINES.

(a) **DoD CONTRACTOR OPERATED FACILITY.**—The Secretary of Defense shall be the executive agent of the Secretary of Homeland Security to design, construct, and contract for the operation of a Government-owned facility for the production of vaccines to meet the military requirements of the Department of Defense to prevent or mitigate the physiological effects of exposure to biological warfare agents.

(b) **REQUIREMENT FOR PLAN.**—Not later than 60 days after the date of the enactment of this Act, the Vaccine Acquisition Council of the Department of Homeland Security shall submit to Congress a plan for the construction and operation of a vaccine production facility referred to in subsection (a). The plan shall include the following:

(1) **SCHEDULE.**—A schedule for the planning, design, and construction of the facility that provides for construction to begin within one year after such date.

(2) **BUDGET.**—A discussion of how the planning, design, and construction is to be funded to meet that schedule.

SA 4607. Mr. THOMAS (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 166, between lines 6 and 7, insert the following:

SEC. 195A. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.

(a) **MARKET RESEARCH BEFORE PURCHASE.**—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, United States Code, the Secretary Homeland Security shall conduct market research to determine whether the Federal Prison Industries product is comparable in price, quality, and time of delivery to products available from the private sector.

(b) **LIMITED COMPETITION REQUIREMENT.**—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.

SA 4608. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PRIORITY FOR FINANCIAL ASSISTANCE FOR CERTAIN GENERAL AVIATION OPERATIONS AND RELATED SERVICES.

(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **ECONOMIC INJURIES.**—The term “economic injuries” means expenses sustained, during a period in which a Federal agency has taken an action described in subsection (a), by a general aviation business that would otherwise be paid with income that is lost as a direct result of the Federal agency action.

(2) **FEDERAL AGENCY.**—The term “Federal agency” means an Executive agency as defined under section 105 of title 5, United States Code.

(3) **GENERAL AVIATION BUSINESS.**—The term “general aviation business” means any entity engaged in sales, service, maintenance, manufacturing, flight training, aircraft rental, or storage at an airport affected by federally imposed prohibitions on access to airspace.

(b) **IN GENERAL.**—Notwithstanding any other provision of law, if a Federal agency takes any action, unrelated to the conduct of the affected business, that prohibits general aviation operations or access to air space and results in a general aviation business from operating, the Administrator of the Small Business Administration shall give immediate priority to any general aviation business affected by such action for loan programs under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) to assist such business to recover from economic injuries sustained as a result of such action by the Federal agency.

(c) **GUIDELINES FOR APPLICATIONS.**—Not later than 14 days after the date of enact-

ment of this Act, the Administrator of the Small Business Administration shall establish and publish, in the Federal Register, guidelines for the submission of applications for economic injury disaster loans and other financial recovery services.

(d) **REQUIRED GOVERNMENT ACTION.**—In any case in which a Federal agency takes action to prohibit general aviation operations or to prohibit access to air space which results in a general aviation business not being able to operate, the Federal agency shall provide the affected businesses with—

(1) specific justification for prohibiting operations or access to air space; and

(2) weekly updates as to when operations or access can be expected to resume.

(e) **EFFECTIVE DATE.**—The provisions of this section shall apply to any action described in subsection (b) taken on or after September 11, 2001.

SA 4609. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, beginning with line 3, strike all through page 30, line 21, and insert the following:

(c) **REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.**—

(1) **ASSISTANT IG.**—The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Civil Rights and Civil Liberties who shall have experience and demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) **DUTIES.**—The Assistant Inspector General for Civil Rights and Civil Liberties shall—

(A) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(B) if appropriate, investigate such complaints in a timely manner;

(C) publicize in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the official; and

(ii) instructions on how to contact the official; and

(D) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection;

(ii) detailing any civil rights abuses under paragraph (1); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) **ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.**—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

“SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

“SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ‘Inspector General’) shall be under the authority, direction, and control of the Secretary

of Homeland Security (in this section referred to as the ‘Secretary’) with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

“(A) intelligence or counterintelligence matters;

“(B) ongoing criminal investigations or proceedings;

“(C) undercover operations;

“(D) the identity of confidential sources, including protected witnesses;

“(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

“(i) section 3056 of title 18, United States Code;

“(ii) section 202 of title 3, United States Code; or

“(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

“(F) other matters the disclosure of which would constitute a serious threat to national security.

“(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

“(A) prevent the disclosure of any information described under paragraph (1); and

“(B) preserve vital national security interests.”.

SA 4610. Mr. REID submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 74, insert between lines 19 and 20 the following:

(e) **JOINT SPONSORSHIP AGREEMENTS.**—The Secretary may enter into joint sponsorship agreements under section 135(j)(2) for sites used for emergency preparedness and response training.

On page 74, line 20, strike “(e)” and insert “(f)”.

SA 4611. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 4, strike all through page 173, line 14, and insert the following:

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) **AGENCY.**—Except for purposes of subtitle E of title I, the term “agency”—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) **ASSETS.**—The term “assets” includes contracts, facilities, property, records, unob-

ligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) **DEPARTMENT.**—The term “Department” means the Department of Homeland Security established under title I.

(4) **ENTERPRISE ARCHITECTURE.**—The term “enterprise architecture”—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) **FUNCTIONS.**—The term “functions” includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(6) **HOMELAND.**—The term “homeland” means the United States, in a geographic sense.

(7) **HOMELAND SECURITY.**—The term “homeland security” means a concerted national effort to—

(A) prevent terrorist attacks within the United States;

(B) reduce America’s vulnerability to terrorism; and

(C) minimize the damage and recover from terrorist attacks that do occur.

(8) **LOCAL GOVERNMENT.**—The term “local government” has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288).

(9) **RISK ANALYSIS AND RISK MANAGEMENT.**—The term “risk analysis and risk management” means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(10) **PERSONNEL.**—The term “personnel” means officers and employees.

(11) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(12) **UNITED STATES.**—The term “United States”, when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) **IN GENERAL.**—There is established the Department of National Homeland Security.

(b) **EXECUTIVE DEPARTMENT.**—Section 101 of title 5, United States Code, is amended by adding at the end the following:

“The Department of Homeland Security.”.

(c) **MISSION OF DEPARTMENT.**—

(1) **HOMELAND SECURITY.**—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) **OTHER MISSIONS.**—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) **SEAL.**—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate. All authorities, functions, and responsibilities transferred to the Department shall be vested in the Secretary.

(b) **RESPONSIBILITIES.**—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop a comprehensive strategy for combating terrorism and the homeland security response.

(4) To make budget recommendations relating to border and transportation security, infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities; and

(D) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to homeland security.

(B) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 182; and

(B) each biennial report required under section 192(b).

(C) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

“(5) the Secretary of Homeland Security; and

“(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.”

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—There shall be in the Department a Deputy Secretary of Homeland

Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and

(2) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services.”

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

“SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the “Inspector General”) shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the “Secretary”) with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

“(A) intelligence or counterintelligence matters;

“(B) ongoing criminal investigations or proceedings;

“(C) undercover operations;

“(D) the identity of confidential sources, including protected witnesses;

“(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

“(i) section 3056 of title 18, United States Code;

“(ii) section 202 of title 3, United States Code; or

“(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

“(F) other matters the disclosure of which would constitute a serious threat to national security.

“(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

“(A) prevent the disclosure of any information described under paragraph (1);

“(B) preserve the national security; or

“(C) prevent significant impairment to the national interests of the United States.

“(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

“(A) the President of the Senate;

“(B) the Speaker of the House of Representatives;

“(C) the Committee on Governmental Affairs of the Senate;

“(D) the Committee on Government Reform of the House of Representatives; and

“(E) other appropriate committees or subcommittees of Congress.

“(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

“(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

“(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

“(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

“(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

“(1) the President of the Senate;

“(2) the Speaker of the House of Representatives;

“(3) the Committee on Governmental Affairs of the Senate; and

“(4) the Committee on Government Reform of the House of Representatives.”

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking “8F” each place it appears and inserting “8G”; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking “or 8H” and inserting “, 8H, or 8I”.

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) The Department of Homeland Security.”

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management gov-

erning the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

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

“Secretary of Homeland Security.”

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Secretary of Homeland Security.”

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Management, Department of Homeland Security.”

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States

Code, is amended by adding at the end the following:

“Assistant Secretaries of Homeland Security (5).

“Inspector General, Department of Homeland Security.

“Chief Financial Officer, Department of Homeland Security.

“Chief Information Officer, Department of Homeland Security.

“General Counsel, Department of Homeland Security.”.

Subtitle B—Establishment of Directorates and Offices

SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Border and Transportation Protection.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) **EXERCISE OF CUSTOMS REVENUE AUTHORITY.**—

(1) **IN GENERAL.**—

(A) **AUTHORITIES NOT TRANSFERRED.**—Authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) **REPORT.**—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) **LIABILITY.**—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) **APPLICABLE LAWS.**—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) **DEFINITION OF CUSTOMS REVENUE FUNCTIONS.**—In this subsection, the term “customs revenue functions” means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for “entry” as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(d) **PRESERVING COAST GUARD MISSION PERFORMANCE.**—

(1) **DEFINITIONS.**—In this subsection:

(A) **NON-HOMELAND SECURITY MISSIONS.**—The term “non-homeland security missions” means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) **HOMELAND SECURITY MISSIONS.**—The term “homeland security missions” means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) **MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.**—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) **CERTAIN TRANSFERS PROHIBITED.**—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) **CHANGES TO NON-HOMELAND SECURITY MISSIONS.**—

(A) **PROHIBITION.**—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without

the prior approval of Congress as expressed in a subsequent Act.

(B) **WAIVER.**—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) **ANNUAL REVIEW.**—

(A) **IN GENERAL.**—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) **REPORT.**—The report under this paragraph shall be submitted not later than March 1 of each year to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) **DIRECT REPORTING TO SECRETARY.**—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) **OPERATION AS A SERVICE IN THE NAVY.**—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) **ESTABLISHMENT.**—There is established within the Department a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Critical Infrastructure Protection.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Emergency Preparedness and Response.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) **ESTABLISHMENT.**—There is established within the Department a Directorate of Science and Technology.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology.

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) **RESPONSIBILITIES.**—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(c) **HOMELAND SECURITY LIAISON OFFICERS.**—

(1) **CHIEF HOMELAND SECURITY LIAISON OFFICER.**—

(A) **APPOINTMENT.**—The Secretary shall appoint a Chief Homeland Security Liaison Officer to coordinate the activities of the Homeland Security Liaison Officers, designated under paragraph (2).

(B) **ANNUAL REPORT.**—The Chief Homeland Security Liaison Officer shall prepare an annual report, that contains—

(i) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(ii) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(iii) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(iv) proposals to increase the coordination of Department priorities within each State and between the States.

(2) **HOMELAND SECURITY LIAISON OFFICERS.**—

(A) **DESIGNATION.**—The Secretary shall designate in each State not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State; and

(ii) provide coordination between the Department and State and local first responders, including—

- (I) law enforcement agencies;
- (II) fire and rescue agencies;
- (III) medical providers;
- (IV) emergency service providers; and
- (V) relief agencies.

(B) **DUTIES.**—Each Homeland Security Liaison Officer designated under subparagraph (A) shall—

(i) ensure coordination between the Department and—

(I) State, local, and community-based law enforcement;

(II) fire and rescue agencies; and

(III) medical and emergency relief organizations;

(ii) identify State and local areas requiring additional information, training, resources, and security;

(iii) provide training, information, and education regarding homeland security for State and local entities;

(iv) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(v) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(vi) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner; and

(vii) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security.

(d) **FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.**—

(1) **IN GENERAL.**—There is established an Interagency Committee on First Responders, that shall—

(A) ensure coordination among the Federal agencies involved with—

(i) State, local, and community-based law enforcement;

(ii) fire and rescue operations; and

(iii) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) **MEMBERSHIP.**—The Interagency Committee on First Responders shall be composed of—

(A) the Chief Homeland Security Liaison Officer of the Department;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee on First Responders.

(3) **ADMINISTRATION.**—The Department shall provide administrative support to the Interagency Committee on First Responders and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) **LEADERSHIP.**—The members of the Interagency Committee on First Responders shall select annually a chairperson.

(5) **MEETINGS.**—The Interagency Committee on First Responders shall meet—

(A) at the call of the Chief Homeland Security Liaison Officer of the Department; or

(B) not less frequently than once every 3 months.

(e) **ADVISORY COUNCIL FOR THE FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.**—

(1) **ESTABLISHMENT.**—There is established an Advisory Council for the Federal Interagency Committee on First Responders (in this section referred to as the “Advisory Council”).

(2) **MEMBERSHIP.**—

(A) **IN GENERAL.**—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee on First Responders.

(B) **REPRESENTATION.**—The Interagency Committee on First Responders shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) **CHAIRPERSON.**—The Advisory Council shall select annually a chairperson from among its members.

(4) **COMPENSATION OF MEMBERS.**—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) **MEETINGS.**—The Advisory Council shall meet with the Interagency Committee on First Responders not less frequently than once every 3 months.

SEC. 138. BORDER COORDINATION WORKING GROUP.

(a) **DEFINITIONS.**—In this section:

(1) **BORDER SECURITY FUNCTIONS.**—The term “border security functions” means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) **RELEVANT AGENCIES.**—The term “relevant agencies” means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) **ESTABLISHMENT.**—The Secretary shall establish a border security working group (in this section referred to as the “Working Group”), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) **FUNCTIONS.**—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests,

allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) **RELEVANT AGENCIES.**—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 139. LEGISLATIVE PROPOSALS AND SUPPORTING AND ENABLING LEGISLATION.

(a) **DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.**—Not earlier than February 3, 2003, the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Border and Transportation Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Border and Transportation Protection, to provide for homeland security.

(b) **DIRECTORATE OF INTELLIGENCE AND DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.**—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (a), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection, to provide for homeland security.

(c) **DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE AND DIRECTORATE OF SCIENCE AND TECHNOLOGY.**—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (b), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology, to provide for homeland security.

(d) **SAVINGS AND ADMINISTRATIVE PROVISIONS OF SUPPORTING AND ENABLING LEGISLATION.**—Sections 183, 184, and 194 shall apply to any supporting and enabling legislation described under subsection (a), (b), or (c) enacted after the date of enactment of this Act.

SEC. 140. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Border and Transportation, Department of Homeland Security.

“Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

“Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

“Under Secretary for Immigration, Department of Homeland Security.

“Under Secretary for Intelligence, Department of Homeland Security.

“Under Secretary for Science and Technology, Department of Homeland Security.”.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the “National Emergency Preparedness Enhancement Act of 2002”.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) **ESTABLISHMENT OF CLEARINGHOUSE.**—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the “Clearinghouse”). The Clearinghouse shall be headed by a Director.

(b) **CONSULTATION.**—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to homeland security.

(c) **DUTIES.**—

(1) **DISSEMINATION OF INFORMATION.**—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) **CENTER.**—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) **PUBLIC AWARENESS CAMPAIGN.**—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) **BEST PRACTICES INFORMATION.**—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) **EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.**—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities’ facilities about emergency preparedness.

(b) **USE OF FUNDS.**—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) **FEDERAL SHARE.**—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of \$250,000 per grant recipient.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) **NATIONAL WEEK.**—

(1) **DESIGNATION.**—Each week that includes September 11 is “National Emergency Preparedness Week”.

(2) **PROCLAMATION.**—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) **FEDERAL AGENCY ACTIVITIES.**—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) **ESTABLISHMENT.**—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the “Center”).

(b) **MISSION.**—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) **REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.**—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) **CONTENTS.**—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) **RESPONSE OF THE SECRETARY.**—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) **FINDINGS.**—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) **EXCHANGE OF EMPLOYEES.**—

(1) **IN GENERAL.**—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) **CONDITIONS.**—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking “(d) **SCREENER PERSONNEL.**—Notwithstanding any other provision of law,” and inserting the following:

“(d) **SCREENER PERSONNEL.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law (except as provided under paragraph (2)),”;

(2) by adding at the end the following:

“(2) **WHISTLEBLOWER PROTECTION.**—

“(A) **DEFINITION.**—In this paragraph, the term “security screener” means—

“(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

“(ii) an applicant for the position of a security screener under that subsection.

“(B) **IN GENERAL.**—Notwithstanding paragraph (1)—

“(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

“(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

“(C) **COVERED POSITION.**—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.”

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) **IN GENERAL.**—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking “(a) **DISCRIMINATION AGAINST AIRLINE EMPLOYEES.**—No air carrier or contractor or subcontractor of an air carrier” and inserting the following:

“(a) **DISCRIMINATION AGAINST EMPLOYEES.**—

“(1) **IN GENERAL.**—No air carrier, contractor, subcontractor, or employer described under paragraph (2)”;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

“(2) **APPLICABLE EMPLOYERS.**—Paragraph (1) shall apply to—

“(A) an air carrier or contractor or subcontractor of an air carrier;

“(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

“(C) an employer of private screening personnel described in section 44919 or 44920 of this title.”

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”;

(2) in clause (iii), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”.

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472-4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

“(c) **BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**—

“(1) **ESTABLISHMENT.**—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the ‘Division’).

“(2) **MISSION.**—The Division shall have the following primary missions:

“(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

“(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

“(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

“(3) **RESPONSIBILITIES.**—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

“(A) The Bioterrorism Preparedness and Response Program.

“(B) The Strategic National Stockpile.

“(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

“(4) **DIRECTOR.**—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

“(5) **STAFFING.**—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

“(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

“(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.”

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) **IN GENERAL.**—The annual Federal response plan developed by the Secretary under section 102(b)(14) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) **DISCLOSURES AMONG RELEVANT AGENCIES.**—

(1) **IN GENERAL.**—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) **PUBLIC HEALTH EMERGENCY.**—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) **POTENTIAL PUBLIC HEALTH EMERGENCY.**—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) \$375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) \$778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels

built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) \$55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

“(c) PERSONNEL GRANTS.—

“(1) EXCLUSION.—Grants awarded under subsection (b) to hire ‘employees engaged in fire protection’, as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

“(2) DURATION.—Grants awarded under paragraph (1) shall be for a 3-year period.

“(3) MAXIMUM AMOUNT.—The total amount of grants awarded under paragraph (1) shall not exceed \$100,000 per firefighter, indexed for inflation, over the 3-year grant period.

“(4) FEDERAL SHARE.—

“(A) IN GENERAL.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

“(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

“(5) APPLICATION.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

“(A) an explanation for the need for Federal assistance; and

“(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

“(6) MAINTENANCE OF EFFORT.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.”; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

“(3) \$1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).”.

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities;

(2) review all available information on vulnerabilities at aviation, seaport, rail and transit facilities; and

(3) review the steps taken by agencies since September 11, 2001, to improve aviation, seaport, rail, and transit security to determine their effectiveness at protecting passengers and transportation infrastructure from terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Com-

troller General shall prepare and submit to Congress and the Secretary a comprehensive report containing—

(1) the findings and conclusions from the reviews conducted under subsection (a); and

(2) proposed steps to improve any deficiencies found in aviation, seaport, rail, and transit security including, to the extent possible, the cost of implementing the steps.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(1) the response of the Department to the recommendations of the report; and

(2) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) CONTENT.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) REPORT.—The Director of the Office of Management and Budget, in consultation

with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

SEC. 172. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection

(b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term “foreign incorporated entity” means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms “person”, “domestic”, and “foreign” have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

(e) EFFECTIVE DATE.—This section shall take effect 1 day after the date of enactment of this Act.

SEC. 173. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “September 30, 2003” and inserting “March 31, 2004”.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term “agency” includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) TRANSITION PERIOD.—The term “transition period” means the 1-year period beginning on the effective date of this division.

SEC. 182. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 183. SAVINGS PROVISIONS.

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

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

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

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or

revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

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

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

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

(f) **EMPLOYMENT AND PERSONNEL.**—

(1) **EMPLOYEE RIGHTS.**—

(A) **TRANSFERRED AGENCIES.**—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(B) **TRANSFERRED EMPLOYEES.**—An employee transferred to the Department under this Act, who was in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section unless—

(i) the primary job duty of the employee is materially changed after the transfer; and

(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) **TRANSFERRED FUNCTIONS.**—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this Act or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) **OTHER AGENCIES, EMPLOYEES, AND FUNCTIONS.**—

(i) **EXCLUSION OF SUBDIVISION.**—Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) **EXCLUSION OF EMPLOYEE.**—Subject to subparagraphs (B) and (C), an employee of

the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(E) **PRIOR EXCLUSION.**—Subparagraphs (A) through (D) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(2) **TERMS AND CONDITIONS OF EMPLOYMENT.**—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(3) **CONDITIONS AND CRITERIA FOR APPOINTMENT.**—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(4) **WHISTLEBLOWER PROTECTION.**—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) **NO EFFECT ON INTELLIGENCE AUTHORITIES.**—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 184. USE OF APPROPRIATED FUNDS.

(a) **APPLICABILITY OF THIS SECTION.**—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) **USE OF TRANSFERRED FUNDS.**—Except as may be provided in an appropriations Act in accordance with subsection (d), balances of appropriations and any other funds or assets transferred under this Act—

(1) shall be available only for the purposes for which they were originally available;

(2) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(3) shall not be used to fund any new position established under this Act.

(c) **NOTIFICATION REGARDING TRANSFERS.**—The President shall notify Congress not less than 15 days before any transfer of appro-

priations balances, other funds, or assets under this Act.

(d) **ADDITIONAL USES OF FUNDS DURING TRANSITION.**—Subject to subsection (c), amounts transferred to, or otherwise made available to, the Department may be used during the transition period for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(e) **DISPOSAL OF PROPERTY.**—

(1) **STRICT COMPLIANCE.**—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) **DEPOSIT OF PROCEEDS.**—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(f) **GIFTS.**—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(g) **BUDGET REQUEST.**—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) **REORGANIZATION AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) **LIMITATION.**—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) **DELEGATION AUTHORITY.**—

(1) **SECRETARY.**—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) **OFFICERS.**—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) **LIMITATIONS.**—

(A) **INTERUNIT DELEGATION.**—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) **FUNCTIONS.**—Any function vested by law in an entity established by law and transferred to the Department or vested by

law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) **ANNUAL EVALUATIONS.**—The Comptroller General of the United States shall monitor and evaluate the implementation of titles I and XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 182;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) **BIENNIAL REPORTS.**—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) **POINT OF ENTRY MANAGEMENT REPORT.**—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) **RESULTS-BASED MANAGEMENT.**—

(1) **STRATEGIC PLAN.**—

(A) **IN GENERAL.**—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) **PERIOD; REVISIONS.**—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) **CONTENTS.**—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) **PERFORMANCE PLAN.**—

(A) **IN GENERAL.**—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) **CONTENTS.**—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) **SCOPE.**—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) **PERFORMANCE REPORT.**—

(A) **IN GENERAL.**—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) **CONTENTS.**—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) **IN GENERAL.**—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) **SECRETARY OF LABOR.**—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SEC. 195. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) **IN GENERAL.**—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) **CONTENTS.**—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) **TIMING.**—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 196. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) **IN GENERAL.**—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Con-

gress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) **CONTENTS.**—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) **EFFECTIVE DATE.**—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 197. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) **DEFINITIONS.**—In this section:

(1) **CRITICAL INFRASTRUCTURE.**—The term “critical infrastructure” has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) **FURNISHED VOLUNTARILY.**—

(A) **DEFINITION.**—The term “furnished voluntarily” means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) **BENEFIT.**—In this paragraph, the term “benefit” does not include any warning, alert, or other risk analysis by the Department.

(b) **IN GENERAL.**—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) **RECORDS SHARED WITH OTHER AGENCIES.**—

(1) **IN GENERAL.**—

(A) **RESPONSE TO REQUEST.**—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) **SEGREGABLE PORTION OF RECORD.**—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) **DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.**—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) **WITHDRAWAL OF CONFIDENTIAL DESIGNATION.**—The provider of a record that is furnished voluntarily to the Department under

subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) **PROCEDURES.**—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) **EFFECT ON STATE AND LOCAL LAW.**—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) **REPORT.**—

(1) **REQUIREMENT.**—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) **COMMITTEES OF CONGRESS.**—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) **FORM.**—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 198. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

SA 4612. Ms. COLLINS (for herself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, strike lines 10 through 13, and insert the following:

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States; and

(E) to the extent practicable, ensure the speedy, orderly, safe, and efficient flow of lawful traffic, travel, and commerce.

On page 25, between lines 11 and 12, insert the following:

(e) **SPECIAL ASSISTANT TO THE SECRETARY.**—

(1) **RESPONSIBILITIES.**—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(A) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(B) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(C) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(D) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(E) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(F) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(2) **DUPLICATION OF FUNCTIONS.**—The Special Assistant to the Secretary shall avoid duplication of functions performed by the Directorate of Science of Technology in accordance with section 135.

SA 4613. Mr. GRASSLEY (for himself and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place add the following:

FEDERAL BUREAU OF INVESTIGATION REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the "Federal Bureau of Investigation Reform Act of 2002".

Subtitle A—Improving FBI Oversight

SEC. 611. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

"(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

"(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

"(4) may investigate allegations of criminal wrongdoing or administrative misconduct, including a failure to properly discipline employees, by a person who is the head of any agency or component of the Department of Justice; and

"(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General, who is authorized to take appropriate disciplinary action."; and

(2) by adding at the end the following:

"(d) If the Attorney General does not follow any recommendation of the Inspector General made under subsection (b)(5), the Attorney General shall submit a report to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives that sets forth the recommendation of the Inspector General and the reasons of the Attorney General for not following that recommendation.

"(e) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice shall report that information to the Inspector General."

SEC. 612. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) **APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—The Inspector General of the Department of Justice shall direct that 1 official from the office of the Inspector General be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2003.

(2) **CONTINUATION OF OVERSIGHT.**—The Inspector General may continue individual oversight in accordance with paragraph (1) after September 30, 2003, at the discretion of the Inspector General.

(b) **INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.**—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives, a plan for oversight of the Federal Bureau of Investigation, which plan may include—

(1) an audit of the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation;

(2) an audit and evaluation of programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action;

(3) a review of the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility;

(4) an investigation of allegations of serious misconduct by personnel of the Federal Bureau of Investigation;

(5) a review of matters relating to any other program or operation of the Federal Bureau of Investigation that the Inspector General determines requires review; and

(6) an identification of resources needed by the Inspector General to implement a plan for oversight of the Federal Bureau of Investigation.

(c) **REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.**—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning—

(1) whether there should be established, within the Department of Justice, a separate

office of the Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation;

(2) what changes have been or should be made to the rules, regulations, policies, or practices governing the Federal Bureau of Investigation in order to assist the Office of the Inspector General in effectively exercising its authority to investigate the conduct of employees of the Federal Bureau of Investigation;

(3) what differences exist between the methods and practices used by different Department of Justice components in the investigation and adjudication of alleged misconduct by Department of Justice personnel;

(4) what steps should be or are being taken to make the methods and practices described in paragraph (3) uniform throughout the Department of Justice; and

(5) whether a set of recommended guidelines relating to the discipline of Department of Justice personnel for misconduct should be developed, and what factors, such as the nature and seriousness of the misconduct, the prior history of the employee, and the rank and seniority of the employee at the time of the misconduct, should be taken into account in establishing such recommended disciplinary guidelines.

Subtitle B—Whistleblower Protection

SEC. 621. INCREASING PROTECTIONS FOR FBI WHISTLEBLOWERS.

Section 2303 of title 5, United States Code, is amended to read as follows:

“§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

“(a) DEFINITION.—In this section, the term ‘personnel action’ means any action described in clauses (i) through (x) of section 2302(a)(2)(A).

“(b) PROHIBITED PRACTICES.—Any employee of the Federal Bureau of Investigation who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau or because of—

“(1) any disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose), a supervisor of the employee, the Inspector General for the Department of Justice, or a Member of Congress that the employee reasonably believes evidences—

“(A) a violation of any law, rule, or regulation; or

“(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(2) any disclosure of information by the employee to the Special Counsel of information that the employee reasonably believes evidences—

“(A) a violation of any law, rule, or regulation; or

“(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

“(c) INDIVIDUAL RIGHT OF ACTION.—Chapter 12 of this title shall apply to an employee of the Federal Bureau of Investigation who claims that a personnel action has been taken under this section against the employee as a reprisal for any disclosure of information described in subsection (b)(2).

“(d) REGULATIONS.—The Attorney General shall prescribe regulations to ensure that a personnel action under this section shall not be taken against an employee of the Federal Bureau of Investigation as a reprisal for any disclosure of information described in subsection (b)(1), and shall provide for the enforcement of such regulations in a manner consistent with applicable provisions of sections 1214 and 1221, and in accordance with the procedures set forth in sections 554 through 557 and 701 through 706.”

Subtitle C—FBI Security Career Program

SEC. 631. SECURITY MANAGEMENT POLICIES.

The Attorney General shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in security positions in the Federal Bureau of Investigation.

SEC. 632. DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) IN GENERAL.—Subject to the authority, direction, and control of the Attorney General, the Director of the Federal Bureau of Investigation (referred to in this subtitle as the “Director”) shall carry out all powers, functions, and duties of the Attorney General with respect to the security workforce in the Federal Bureau of Investigation.

(b) POLICY IMPLEMENTATION.—The Director shall ensure that the policies of the Attorney General established in accordance with this title are implemented throughout the Federal Bureau of Investigation at both the headquarters and field office levels.

SEC. 633. DIRECTOR OF SECURITY.

The Director shall appoint a Director of Security, or such other title as the Director may determine, to assist the Director in the performance of the duties of the Director under this title.

SEC. 634. SECURITY CAREER PROGRAM BOARDS.

(a) ESTABLISHMENT.—The Director, acting through the Director of Security, shall establish a security career program board to advise the Director in managing the hiring, training, education, and career development of personnel in the security workforce of the Federal Bureau of Investigation.

(b) COMPOSITION OF BOARD.—The security career program board shall include—

(1) the Director of Security (or a representative of the Director of Security);

(2) the senior officials, as designated by the Director, with responsibility for personnel management;

(3) the senior officials, as designated by the Director, with responsibility for information management;

(4) the senior officials, as designated by the Director, with responsibility for training and career development in the various security disciplines; and

(5) such other senior officials for the intelligence community as the Director may designate.

(c) CHAIRPERSON.—The Director of Security (or a representative of the Director of Security) shall be the chairperson of the board.

(d) SUBORDINATE BOARDS.—The Director of Security may establish a subordinate board structure to which functions of the security career program board may be delegated.

SEC. 635. DESIGNATION OF SECURITY POSITIONS.

(a) DESIGNATION.—The Director shall designate, by regulation, those positions in the Federal Bureau of Investigation that are security positions for purposes of this title.

(b) REQUIRED POSITIONS.—In designating security positions under subsection (a), the Director shall include, at a minimum, all security-related positions in the areas of—

(1) personnel security and access control;

(2) information systems security and information assurance;

(3) physical security and technical surveillance countermeasures;

(4) operational, program, and industrial security; and

(5) information security and classification management.

SEC. 636. CAREER DEVELOPMENT.

(a) CAREER PATHS.—The Director shall ensure that appropriate career paths for personnel who wish to pursue careers in security are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior security positions and shall make available published information on those career paths.

(b) LIMITATION ON PREFERENCE FOR SPECIAL AGENTS.—

(1) IN GENERAL.—Except as provided in the policy established under paragraph (2), the Attorney General shall ensure that no requirement or preference for a Special Agent of the Federal Bureau of Investigation (referred to in this subtitle as a “Special Agent”) is used in the consideration of persons for security positions.

(2) POLICY.—The Attorney General shall establish a policy that permits a particular security position to be specified as available only to Special Agents, if a determination is made, under criteria specified in the policy, that a Special Agent—

(A) is required for that position by law;

(B) is essential for performance of the duties of the position; or

(C) is necessary for another compelling reason.

(3) REPORT.—Not later than December 15 of each year, the Director shall submit to the Attorney General a report that lists—

(A) each security position that is restricted to Special Agents under the policy established under paragraph (2); and

(B) the recommendation of the Director as to whether each restricted security position should remain restricted.

(c) OPPORTUNITIES TO QUALIFY.—The Attorney General shall ensure that all personnel, including Special Agents, are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior security positions.

(d) BEST QUALIFIED.—The Attorney General shall ensure that the policies established under this title are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

(e) ASSIGNMENTS POLICY.—The Attorney General shall establish a policy for assigning Special Agents to security positions that provides for a balance between—

(1) the need for personnel to serve in career enhancing positions; and

(2) the need for requiring service in each such position for sufficient time to provide the stability necessary to carry out effectively the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(f) LENGTH OF ASSIGNMENT.—In implementing the policy established under subsection (b)(2), the Director shall provide, as appropriate, for longer lengths of assignments to security positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Director shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in a security position by a person serving in a security position in the same security career field.

(h) BALANCED WORKFORCE POLICY.—In the development of security workforce policies under this title with respect to any employees or applicants for employment, the Attorney General shall, consistent with the merit

system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

SEC. 637. GENERAL EDUCATION, TRAINING, AND EXPERIENCE REQUIREMENTS.

(a) IN GENERAL.—The Director shall establish education, training, and experience requirements for each security position, based on the level of complexity of duties carried out in the position.

(b) QUALIFICATION REQUIREMENTS.—Before being assigned to a position as a program manager or deputy program manager of a significant security program, a person—

(1) must have completed a security program management course that is accredited by the Intelligence Community-Department of Defense Joint Security Training Consortium or is determined to be comparable by the Director; and

(2) must have not less than 6 years experience in security, of which not less than 2 years were performed in a similar program office or organization.

SEC. 638. EDUCATION AND TRAINING PROGRAMS.

(a) IN GENERAL.—The Director, in consultation with the Director of Central Intelligence and the Secretary of Defense, shall establish and implement education and training programs for persons serving in security positions in the Federal Bureau of Investigation.

(b) OTHER PROGRAMS.—The Director shall ensure that programs established under subsection (a) are established and implemented, to the maximum extent practicable, uniformly with the programs of the Intelligence Community and the Department of Defense.

SEC. 639. OFFICE OF PERSONNEL MANAGEMENT APPROVAL.

(a) IN GENERAL.—The Attorney General shall submit any requirement that is established under section 637 to the Director of the Office of Personnel Management for approval.

(b) FINAL APPROVAL.—If the Director does not disapprove the requirements established under section 637 within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director of the Office of Personnel Management.

Subtitle D—FBI Counterintelligence Polygraph Program

SEC. 641. DEFINITIONS.

In this subtitle:

(1) POLYGRAPH PROGRAM.—The term “polygraph program” means the counterintelligence screening polygraph program established under section 642.

(2) POLYGRAPH REVIEW.—The term “Polygraph Review” means the review of the scientific validity of the polygraph for counterintelligence screening purposes conducted by the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

SEC. 642. ESTABLISHMENT OF PROGRAM.

Not later than 6 months after publication of the results of the Polygraph Review, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation and the Director of Security of the Federal Bureau of Investigation, shall establish a counterintelligence screening polygraph program for the Federal Bureau of Investigation that consists of periodic polygraph examinations of employees, or contractor employees of the Federal Bureau of Investigation who are in positions specified by the Director of the Federal Bureau of Investigation as exceptionally sensitive in order to mini-

mize the potential for unauthorized release or disclosure of exceptionally sensitive information.

SEC. 643. REGULATIONS.

(a) IN GENERAL.—The Attorney General shall prescribe regulations for the polygraph program in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

(b) CONSIDERATIONS.—In prescribing regulations under subsection (a), the Attorney General shall—

(1) take into account the results of the Polygraph Review; and

(2) include procedures for—

(A) identifying and addressing false positive results of polygraph examinations;

(B) ensuring that adverse personnel actions are not taken against an individual solely by reason of the physiological reaction of the individual to a question in a polygraph examination, unless—

(i) reasonable efforts are first made independently to determine through alternative means, the veracity of the response of the individual to the question; and

(ii) the Director of the Federal Bureau of Investigation determines personally that the personnel action is justified;

(C) ensuring quality assurance and quality control in accordance with any guidance provided by the Department of Defense Polygraph Institute and the Director of Central Intelligence; and

(D) allowing any employee or contractor who is the subject of a counterintelligence screening polygraph examination under the polygraph program, upon written request, to have prompt access to any unclassified reports regarding an examination that relates to any adverse personnel action taken with respect to the individual.

SEC. 644. REPORT ON FURTHER ENHANCEMENT OF FBI PERSONNEL SECURITY PROGRAM.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to Congress a report setting forth recommendations for any legislative action that the Director considers appropriate in order to enhance the personnel security program of the Federal Bureau of Investigation.

(b) POLYGRAPH REVIEW RESULTS.—Any recommendation under subsection (a) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

Subtitle E—FBI Police

SEC. 651. DEFINITIONS.

In this subtitle:

(1) DIRECTOR.—The term “Director” means the Director of the Federal Bureau of Investigation.

(2) FBI BUILDINGS AND GROUNDS.—

(A) IN GENERAL.—The term “FBI buildings and grounds” means—

(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;

(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and

(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.

(B) INCLUSION.—The term “FBI buildings and grounds” includes adjacent streets and sidewalks not to exceed 500 feet from such property.

(3) FBI POLICE.—The term “FBI police” means the permanent police force established under section 652.

SEC. 652. ESTABLISHMENT OF FBI POLICE; DUTIES.

(a) IN GENERAL.—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.

(b) DUTIES.—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

(c) UNIFORMED REPRESENTATIVE.—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

(d) AUTHORITY.—

(1) IN GENERAL.—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—

(A) police the FBI buildings and grounds for the purpose of protecting persons and property;

(B) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;

(C) carry firearms as may be required for the performance of duties;

(D) prevent breaches of the peace and suppress affrays and unlawful assemblies; and

(E) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

(2) EXCEPTION.—The authority and policing powers of FBI police under this subsection shall not include the service of civil process.

(e) PAY AND BENEFITS.—

(1) IN GENERAL.—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.

(2) APPLICATION.—Pay and benefits for the FBI police under paragraph (1)—

(A) shall be established by regulation;

(B) shall apply with respect to pay periods beginning after January 1, 2003; and

(C) shall not result in any decrease in the rates of pay or benefits of any individual.

SEC. 653. AUTHORITY OF METROPOLITAN POLICE FORCE.

This title does not affect the authority of the Metropolitan Police Force of the District of Columbia with respect to FBI buildings and grounds.

Subtitle F—Reports

SEC. 661. REPORT ON LEGAL AUTHORITY FOR FBI PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Not later than December 31, 2002, the Attorney General shall submit to Congress a report describing the statutory and other legal authority for all programs and activities of the Federal Bureau of Investigation.

(b) CONTENTS.—The report submitted under subsection (a) shall describe—

(1) the titles within the United States Code and the statutes for which the Federal Bureau of Investigation exercises investigative responsibility;

(2) each program or activity of the Federal Bureau of Investigation that has express statutory authority and the statute which provides that authority; and

(3) each program or activity of the Federal Bureau of Investigation that does not have express statutory authority, and the source

of the legal authority for that program or activity.

(c) **RECOMMENDATIONS.**—The report submitted under subsection (a) shall recommend whether—

(1) the Federal Bureau of Investigation should continue to have investigative responsibility for each statute for which the Federal Bureau of Investigation currently has investigative responsibility;

(2) the legal authority for any program or activity of the Federal Bureau of Investigation should be modified or repealed;

(3) the Federal Bureau of Investigation should have express statutory authority for any program or activity of the Federal Bureau of Investigation for which the Federal Bureau of Investigation does not currently have express statutory authority; and

(4) the Federal Bureau of Investigation should—

(A) have authority for any new program or activity; and

(B) express statutory authority with respect to any new programs or activities.

SEC. 662. REPORT ON FBI INFORMATION MANAGEMENT AND TECHNOLOGY.

(a) **IN GENERAL.**—Not later than December 31, 2002, the Attorney General shall submit to Congress a report on the information management and technology programs of the Federal Bureau of Investigation including recommendations for any legislation that may be necessary to enhance the effectiveness of those programs.

(b) **CONTENTS OF REPORT.**—The report submitted under subsection (a) shall provide—

(1) an analysis and evaluation of whether authority for waiver of any provision of procurement law (including any regulation implementing such a law) is necessary to expeditiously and cost-effectively acquire information technology to meet the unique need of the Federal Bureau of Investigation to improve its investigative operations in order to respond better to national law enforcement, intelligence, and counterintelligence requirements;

(2) the results of the studies and audits conducted by the Strategic Management Council and the Inspector General of the Department of Justice to evaluate the information management and technology programs of the Federal Bureau of Investigation, including systems, policies, procedures, practices, and operations; and

(3) a plan for improving the information management and technology programs of the Federal Bureau of Investigation.

(c) **RESULTS.**—The results provided under subsection (b)(2) shall include an evaluation of—

(1) information technology procedures and practices regarding procurement, training, and systems maintenance;

(2) record keeping policies, procedures, and practices of the Federal Bureau of Investigation, focusing particularly on how information is inputted, stored, managed, utilized, and shared within the Federal Bureau of Investigation;

(3) how information in a given database is related or compared to, or integrated with, information in other technology databases within the Federal Bureau of Investigation;

(4) the effectiveness of the existing information technology infrastructure of the Federal Bureau of Investigation in supporting and accomplishing the overall mission of the Federal Bureau of Investigation;

(5) the management of information technology projects of the Federal Bureau of Investigation, focusing on how the Federal Bureau of Investigation—

(A) selects its information technology projects;

(B) ensures that projects under development deliver benefits; and

(C) ensures that completed projects deliver the expected results; and

(6) the security and access control techniques for classified and sensitive but unclassified information systems in the Federal Bureau of Investigation.

(d) **CONTENTS OF PLAN.**—The plan provided under subsection (b)(3) shall ensure that—

(1) appropriate key technology management positions in the Federal Bureau of Investigation are filled by personnel with experience in the commercial sector;

(2) access to the most sensitive information is audited in such a manner that suspicious activity is subject to near contemporaneous security review;

(3) critical information systems employ a public key infrastructure to validate both users and recipients of messages or records;

(4) security features are tested by the National Security Agency to meet national information systems security standards;

(5) all employees in the Federal Bureau of Investigation receive annual instruction in records and information management policies and procedures relevant to their positions;

(6) a reserve is established for research and development to guide strategic information management and technology investment decisions;

(7) unnecessary administrative requirements for software purchases under \$2,000,000 are eliminated;

(8) full consideration is given to contacting with an expert technology partner to provide technical support for the information technology procurement for the Federal Bureau of Investigation;

(9) procedures are instituted to procure products and services through contracts of other agencies, as necessary; and

(10) a systems integration and test center, with the participation of field personnel, tests each series of information systems upgrades or application changes before their operational deployment to confirm that they meet proper requirements.

SEC. 663. GAO REPORT ON CRIME STATISTICS REPORTING.

(a) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the issue of how statistics are reported and used by Federal law enforcement agencies.

(b) **CONTENTS.**—The report submitted under subsection (a) shall—

(1) identify the current regulations, procedures, internal policies, or other conditions that allow the investigation or arrest of an individual to be claimed or reported by more than 1 Federal or State agency charged with law enforcement responsibility;

(2) identify and examine the conditions that allow the investigation or arrest of an individual to be claimed or reported by the Offices of Inspectors General and any other Federal agency charged with law enforcement responsibility;

(3) examine the statistics reported by Federal law enforcement agencies, and document those instances in which more than 1 agency, bureau, or office claimed or reported the same investigation or arrest during the years 1998 through 2001;

(4) examine the issue of Federal agencies simultaneously claiming arrest credit for incustody situations that have already occurred pursuant to a State or local agency arrest situation during the years 1998 through 2001;

(5) examine the issue of how such statistics are used for administrative and management purposes;

(6) set forth a comprehensive definition of the terms “investigation” and “arrest” as those terms apply to Federal agencies charged with law enforcement responsibilities; and

(7) include recommendations, that when implemented, would eliminate unwarranted and duplicative reporting of investigation and arrest statistics by all Federal agencies charged with law enforcement responsibilities.

(c) **FEDERAL AGENCY COMPLIANCE.**—Federal law enforcement agencies shall comply with requests made by the General Accounting Office for information that is necessary to assist in preparing the report required by this section.

Subtitle G—Ending the Double Standard

SEC. 671. ALLOWING DISCIPLINARY SUSPENSIONS OF MEMBERS OF THE SENIOR EXECUTIVE SERVICE FOR 14 DAYS OR LESS.

Section 7542 of title 5, United States Code, is amended by striking “for more than 14 days”.

SEC. 672. SUBMITTING OFFICE OF PROFESSIONAL RESPONSIBILITY REPORTS TO CONGRESSIONAL COMMITTEES.

(a) **IN GENERAL.**—For each of the 5 years following the date of enactment of this Act, the Office of the Inspector General shall submit to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives an annual report to be completed by the Federal Bureau of Investigation, Office of Professional Responsibility and provided to the Inspector General, which sets forth—

(1) basic information on each investigation completed by that Office;

(2) the findings and recommendations of that Office for disciplinary action; and

(3) what, if any, action was taken by the Director of the Federal Bureau of Investigation or the designee of the Director based on any such recommendation.

(b) **CONTENTS.**—In addition to all matters already included in the annual report described in subsection (a), the report shall also include an analysis of—

(1) whether senior Federal Bureau of Investigation employees and lower level Federal Bureau of Investigation personnel are being disciplined and investigated similarly; and

(2) whether any double standard is being employed to more senior employees with respect to allegations of misconduct.

Subtitle H—Enhancing Security at the Department of Justice

SEC. 781. REPORT ON THE PROTECTION OF SECURITY AND INFORMATION AT THE DEPARTMENT OF JUSTICE.

Not later than December 31, 2002, the Attorney General shall submit to Congress a report on the manner in which the Security and Emergency Planning Staff, the Office of Intelligence Policy and Review, and the Chief Information Officer of the Department of Justice plan to improve the protection of security and information at the Department of Justice, including a plan to establish secure electronic communications between the Federal Bureau of Investigation and the Office of Intelligence Policy and Review for processing information related to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 782. AUTHORIZATION FOR INCREASED RESOURCES TO PROTECT SECURITY AND INFORMATION.

There are authorized to be appropriated to the Department of Justice for the activities of the Security and Emergency Planning Staff to meet the increased demands to provide personnel, physical, information, technical, and litigation security for the Department of Justice, to prepare for terrorist

threats and other emergencies, and to review security compliance by components of the Department of Justice—

- (1) \$13,000,000 for fiscal year 2003;
- (2) \$17,000,000 for fiscal year 2004; and
- (3) \$22,000,000 for fiscal year 2005.

SEC. 783. AUTHORIZATION FOR INCREASED RESOURCES TO FULFILL NATIONAL SECURITY MISSION OF THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for the activities of the Office of Intelligence Policy and Review to help meet the increased personnel demands to combat terrorism, process applications to the Foreign Intelligence Surveillance Court, participate effectively in counterespionage investigations, provide policy analysis and oversight on national security matters, and enhance secure computer and telecommunications facilities—

- (1) \$7,000,000 for fiscal year 2003;
- (2) \$7,500,000 for fiscal year 2004; and
- (3) \$8,000,000 for fiscal year 2005.

EFFECTIVE DATE

SEC. 701. EFFECTIVE DATE.

SA 4516. Mr. SESSIONS (for himself, Mr. LEAHY, and Mr. NICKLES) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 2302 add the following:

Sec. 173. For purposes of this section, "total payment" shall not include any amount received from a Johnny Micheal Spann Patriot Trust as defined herein:

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism launched by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a \$6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corpora-

tion, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a "Johnny Micheal Spann Patriot Trust".

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation;

(D) employees and contractors of the Department of Homeland Security; and

(E) officers, employees, contract employees, of the United States Government, whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, law enforcement operations, or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107-40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) No part of the activities of any Johnny Micheal Spann Patriot Trust shall be used for distributing propaganda or otherwise attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, the Secretary of Homeland Security, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than \$1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to bene-

ficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in subsection (c)(1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in subsection (c)(1).

(10) Each Johnny Micheal Spann Patriot Trust shall comply with the applicable provisions of the Federal Election Campaign Act of 1971 such that general solicitations of funds by federal elected officials will comply with paragraph (4)(A) of section 323(e) of the Federal Election Campaign Act of 1971 (as added by section 101(a) of the Bipartisan Campaign Reform Act of 2002, Public Law No. 107-155; 116 Stat. 81). Such Trust if such individual discloses the general purpose of the solicitation.

(d) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods, sensitive law enforcement information, and other sensitive national security information the Secretary of Defense, the Director of the Federal Bureau of Investigation, the Secretary of Homeland Security, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), (D), or (E) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(e) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, the Secretary of Homeland Security, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

SA 4615. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1105(a), add the following:

"(h) For the purposes of subsection (b)(2)(c) the 'removal function' shall include the establishment of the following pilot program:

"(a) ESTABLISHMENT OF PILOT PROGRAM.—The Commissioner of Immigration and Naturalization shall establish a pilot program of cooperation between inspectors of the Immigration and Naturalization Service and State

and local law enforcement officials that uses video conferencing—

“(1) to evaluate the legal status of aliens in the custody of State and local law enforcement; and

“(2) to initiate deportation proceedings under the Immigration and Nationality Act where warranted.

“(b) IMPLEMENTATION.—The pilot program described in subsection (a) shall include at least ten States. States selected to participate should be those with the largest number of violations of the Immigration and Nationality Act.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 to 2007 to carry out this section.”.

SA 4616. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1105(a), add the following:

“(g) For purposes of subsection (b)(2)(B) of this section, the “detention function” shall include the following:

“(1) IN GENERAL.—Whenever a State or local law enforcement official detains an individual with reasonable belief that the individual is removable from the United States under section 237 and immediately notifies the Service of such detention, the Commissioner shall, within 48 hours of that notification—

“(A) inform the State or local law enforcement official in writing that the individual is not unlawfully present in the United States and does not pose a danger to the public; or

“(B) take physical custody of the individual from the State or local law enforcement official.

“(2) TRANSPORTATION.—If the Service fails to comply with subsection (a) within 48 hours of notification, the Commissioner shall—

“(A) accept custody of the individual at the nearest regional office of the Service; and

“(B) promptly reimburse the State or local law enforcement official for the cost of transporting the individual to the regional office by public or private means.”.

“(3) AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—There is authorized to be appropriated to the Secretary \$1,000,000 for each of the fiscal years 2003 through 2007 to carry out section 236C of the Immigration and Nationality Act, as added by subsection (a).

“(B) AVAILABILITY OF APPROPRIATIONS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.”.

“Sec. 236C. Taking custody of aliens detained by State or local law enforcement officials.”.

SA 4617. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 68, strike lines 14 through page 69, line 7 and insert the following:

SEC. 134. FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) HOMELAND SECURITY DUTIES.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall be responsible for the emergency preparedness and response functions of the Department.

(2) FUNCTION.—Except as provided in paragraph (3) and subsections (b) through (e), nothing in this Act affects the administration or administrative jurisdiction of the Federal Emergency Management Agency as in existence on the day before the date of enactment of this Act.

(3) DIRECTOR.—In carrying out responsibilities of the Federal Emergency Management Agency under all applicable law, the Director of the Federal Emergency Management Agency shall report—

(A) to the President directly, with respect to all matters relating to a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) to the Secretary, with respect to all other matters.

(b) SPECIFIC RESPONSIBILITIES.—The Director of the Federal Emergency Management Agency shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities of the Department.

SA 4618. Mr. JEFFORDS (for himself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, line 8, strike “terrorism, natural disasters,” and insert “terrorism”.

On page 11, strike lines 6 through 13 and insert the following:
homeland threats within the United States; and

(C) reduce the vulnerability of the United States to terrorism and other homeland threats.

On page 12, line 23, strike “emergency preparedness and response.”.

On page 13, strike lines 3 through 5 and insert the following:
transportation security and critical infrastructure protection.

On page 15, line 14, insert “and the Director of the Federal Emergency Management Agency” after “Defense”.

On page 16, strike lines 13 through 16.

On page 16, line 17, strike “(15)” and insert “(14)”.

On page 16, line 20, strike “(16)” and insert “(15)”.

On page 16, line 24, strike “(17)” and insert “(16)”.

On page 17, line 4, strike “(18)” and insert “(17)”.

On page 17, line 8, strike “(19)” and insert “(18)”.

Beginning on page 68, strike line 14 and all that follows through page 75, line 3.

On page 75, line 3, strike “135” and insert “134”.

On page 103, line 13, strike “136” and insert “135”.

On page 103, line 17, strike “137” and insert “136”.

On page 109, line 10, strike “of the Department”.

On page 112, line 5, strike “138” and insert “137”.

On page 112, line 10, strike “139” and insert “138”.

On page 112, between lines 4 and 5, insert the following:

(f) COORDINATION WITH FEDERAL EMERGENCY MANAGEMENT AGENCY.—

(1) IN GENERAL.—In carrying out all responsibilities of the Secretary under this section, the Secretary shall coordinate with the Director of the Federal Emergency Management Agency.

(2) CONFORMING AMENDMENT.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting “incident of terrorism,” after “drought”).

On page 114, line 6, strike “140” and insert “139”.

On page 114, strike lines 13 and 14.

On page 115, line 3, strike “in the Department” and insert “within the Federal Emergency Management Agency”.

On page 116, line 21, strike “Department” and insert “Federal Emergency Management Agency”.

Beginning on page 128, strike line 22 and all that follows through page 129, line 5, and insert the following:

(a) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this section.

(b) PUBLIC HEALTH EMERGENCY.—During the

On page 129, strike lines 15 and 16 and insert the following:

(c) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving,

On page 186, line 25, and page 187, line 1, strike “emergency preparation and response.”.

On page 187, insert “emergency preparedness and response,” after “assets.”.

Beginning on page 161, strike line 19 and all that follows through page 162, line 2, and insert the following:

(b) BIENNIAL REPORT.—Not later than 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary shall submit to Congress a report assessing the resources and requirements of executive agencies relating to border security.

SA 4619. Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

Subtitle G—First Responder Terrorism Preparedness

SEC. 199A. SHORT TITLE.

This subtitle may be cited as the “First Responder Terrorism Preparedness Act of 2002”.

SEC. 199B. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government must enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(2) as a result of the events of September 11, 2001, it is necessary to clarify and consolidate the authority of the Federal Emergency Management Agency to support first responders.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to establish within the Federal Emergency Management Agency the Office of National Preparedness;

(2) to establish a program to provide assistance to enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(3) to address issues relating to urban search and rescue task forces.

SEC. 199C. DEFINITIONS.

(a) MAJOR DISASTER.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting “incident of terrorism,” after “drought.”.

(b) WEAPON OF MASS DESTRUCTION.—Section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(a)) is amended by adding at the end the following:

“(1) WEAPON OF MASS DESTRUCTION.—The term ‘weapon of mass destruction’ has the meaning given the term in section 2302 of title 50, United States Code.”.

SEC. 199D. ESTABLISHMENT OF OFFICE OF NATIONAL PREPAREDNESS.

Subtitle A of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196 et seq.) is amended by adding at the end the following:

“SEC. 616. OFFICE OF NATIONAL PREPAREDNESS.

“(a) IN GENERAL.—There is established in the Federal Emergency Management Agency an office to be known as the ‘Office of National Preparedness’ (referred to in this section as the ‘Office’).

“(b) APPOINTMENT OF ASSOCIATE DIRECTOR.—

“(1) IN GENERAL.—The Office shall be headed by an Associate Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

“(2) COMPENSATION.—The Associate Director shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(c) DUTIES.—The Office shall—

“(1) lead a coordinated and integrated overall effort to build, exercise, and ensure viable terrorism preparedness and response capability at all levels of government;

“(2) establish clearly defined standards and guidelines for Federal, State, tribal, and local government terrorism preparedness and response;

“(3) establish and coordinate an integrated capability for Federal, State, tribal, and local governments and emergency responders to plan for and address potential consequences of terrorism;

“(4) coordinate provision of Federal terrorism preparedness assistance to State, tribal, and local governments;

“(5) establish standards for a national, interoperable emergency communications and warning system;

“(6) establish standards for training of first responders (as defined in section 630(a)), and for equipment to be used by first responders, to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

“(7) carry out such other related activities as are approved by the Director.

“(d) DESIGNATION OF REGIONAL CONTACTS.—The Associate Director shall designate an officer or employee of the Federal Emergency Management Agency in each of the 10 regions of the Agency to serve as the Office contact for the States in that region.

“(e) USE OF EXISTING RESOURCES.—In carrying out this section, the Associate Director shall—

“(1) to the maximum extent practicable, use existing resources, including planning documents, equipment lists, and program inventories; and

“(2) consult with and use—

“(A) existing Federal interagency boards and committees;

“(B) existing government agencies; and

“(C) nongovernmental organizations.”.

SEC. 199E. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) IN GENERAL.—Subtitle B of title VI of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (42 U.S.C. 5197 et seq.) is amended by adding at the end the following:

“SEC. 630. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

“(a) DEFINITIONS.—In this section:

“(1) FIRST RESPONDER.—The term ‘first responder’ means—

“(A) fire, emergency medical service, and law enforcement personnel; and

“(B) such other personnel as are identified by the Director.

“(2) LOCAL ENTITY.—The term ‘local entity’ has the meaning given the term by regulation promulgated by the Director.

“(3) PROGRAM.—The term ‘program’ means the program established under subsection (b).

“(b) PROGRAM TO PROVIDE ASSISTANCE.—

“(1) IN GENERAL.—The Director shall establish a program to provide assistance to States to enhance the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.

“(2) FEDERAL SHARE.—The Federal share of the costs eligible to be paid using assistance provided under the program shall be not less than 75 percent, as determined by the Director.

“(3) FORMS OF ASSISTANCE.—Assistance provided under paragraph (1) may consist of—

“(A) grants; and

“(B) such other forms of assistance as the Director determines to be appropriate.

“(c) USES OF ASSISTANCE.—Assistance provided under subsection (b)—

“(1) shall be used—

“(A) to purchase, to the maximum extent practicable, interoperable equipment that is necessary to respond to incidents of terrorism, including incidents involving weapons of mass destruction;

“(B) to train first responders, consistent with guidelines and standards developed by the Director;

“(C) in consultation with the Director, to develop, construct, or upgrade terrorism preparedness training facilities;

“(D) to develop, construct, or upgrade emergency operating centers;

“(E) to develop preparedness and response plans consistent with Federal, State, and local strategies, as determined by the Director;

“(F) to provide systems and equipment to meet communication needs, such as emergency notification systems, interoperable equipment, and secure communication equipment;

“(G) to conduct exercises; and

“(H) to carry out such other related activities as are approved by the Director; and

“(2) shall not be used to provide compensation to first responders (including payment for overtime).

“(d) ALLOCATION OF FUNDS.—For each fiscal year, in providing assistance under subsection (b), the Director shall make available—

“(1) to each of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, \$3,000,000; and

“(2) to each State (other than a State specified in paragraph (1))—

“(A) a base amount of \$15,000,000; and

“(B) a percentage of the total remaining funds made available for the fiscal year based on criteria established by the Director, such as—

“(i) population;

“(ii) location of vital infrastructure, including—

“(I) military installations;

“(II) public buildings (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612));

“(III) nuclear power plants;

“(IV) chemical plants; and

“(V) national landmarks; and

“(iii) proximity to international borders.

“(e) PROVISION OF FUNDS TO LOCAL GOVERNMENTS AND LOCAL ENTITIES.—

“(1) IN GENERAL.—For each fiscal year, not less than 75 percent of the assistance provided to each State under this section shall be provided to local governments and local entities within the State.

“(2) ALLOCATION OF FUNDS.—Under paragraph (1), a State shall allocate assistance to local governments and local entities within the State in accordance with criteria established by the Director, such as the criteria specified in subsection (d)(2)(B).

“(3) DEADLINE FOR PROVISION OF FUNDS.—Under paragraph (1), a State shall provide all assistance to local government and local entities not later than 45 days after the date on which the State receives the assistance.

“(4) COORDINATION.—Each State shall coordinate with local governments and local entities concerning the use of assistance provided to local governments and local entities under paragraph (1).

“(f) ADMINISTRATIVE EXPENSES.—

“(1) DIRECTOR.—For each fiscal year, the Director may use to pay salaries and other administrative expenses incurred in administering the program not more than the lesser of—

“(A) 5 percent of the funds made available to carry out this section for the fiscal year; or

“(B)(i) for fiscal year 2003, \$75,000,000; and

“(ii) for each of fiscal years 2004 through 2006, \$50,000,000.

“(2) RECIPIENTS OF ASSISTANCE.—For each fiscal year, not more than 10 percent of the funds retained by a State after application of subsection (e) may be used to pay salaries and other administrative expenses incurred in administering the program.

“(g) MAINTENANCE OF EXPENDITURES.—The Director may provide assistance to a State under this section only if the State agrees to maintain, and to ensure that each local government that receives funds from the State in accordance with subsection (e) maintains, for the fiscal year for which the assistance is provided, the aggregate expenditures by the State or the local government, respectively, for the uses described in subsection (c)(1) at a level that is at or above the average annual level of those expenditures by the State or local government, respectively, for the 2 fiscal years preceding the fiscal year for which the assistance is provided.

“(h) REPORTS.—

“(1) ANNUAL REPORT TO THE DIRECTOR.—As a condition of receipt of assistance under this section for a fiscal year, a State shall submit to the Director, not later than 60 days after the end of the fiscal year, a report on the use of the assistance in the fiscal year.

“(2) EXERCISE AND REPORT TO CONGRESS.—As a condition of receipt of assistance under this section, not later than 3 years after the date of enactment of this section, a State shall—

“(A) conduct an exercise, or participate in a regional exercise, approved by the Director, to measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

“(B) submit a report on the results of the exercise to—

“(i) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate; and

“(ii) the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

“(i) COORDINATION.—

“(1) WITH FEDERAL AGENCIES.—The Director shall, as necessary, coordinate the provision of assistance under this section with activities carried out by—

“(A) the Administrator of the United States Fire Administration in connection with the implementation by the Administrator of the assistance to firefighters grant program established under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) (as added by section 1701(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360));

“(B) the Attorney General, in connection with the implementation of the Community Oriented Policing Services (COPS) Program established under section 1701(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(a)); and

“(C) other appropriate Federal agencies.

“(2) WITH INDIAN TRIBES.—In providing and using assistance under this section, the Director and the States shall, as appropriate, coordinate with—

“(A) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and other tribal organizations; and

“(B) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) and other Alaska Native organizations.”

(b) COST SHARING FOR EMERGENCY OPERATING CENTERS.—Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c) is amended—

(1) by inserting “(other than section 630)” after “carry out this title”; and

(2) by inserting “(other than section 630)” after “under this title”.

SEC. 199F. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199E(a)) is amended by adding at the end the following:

“SEC. 631. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

“(a) DEFINITIONS.—In this section:

“(1) FIRST RESPONDER.—The term ‘first responder’ has the meaning given the term in section 630(a).

“(2) HARMFUL SUBSTANCE.—The term ‘harmful substance’ means a substance that the President determines may be harmful to human health.

“(3) PROGRAM.—The term ‘program’ means a program described in subsection (b)(1).

“(b) PROGRAM.—

“(1) IN GENERAL.—If the President determines that 1 or more harmful substances are being, or have been, released in an area that the President has declared to be a major disaster area under this Act, the President shall carry out a program with respect to the area for the protection, assessment, monitoring, and study of the health and safety of first responders.

“(2) ACTIVITIES.—A program shall include—
“(A) collection and analysis of environmental and exposure data;

“(B) development and dissemination of educational materials;

“(C) provision of information on releases of a harmful substance;

“(D) identification of, performance of baseline health assessments on, taking biological samples from, and establishment of an exposure registry of first responders exposed to a harmful substance;

“(E) study of the long-term health impacts of any exposures of first responders to a

harmful substance through epidemiological studies; and

“(F) provision of assistance to participants in registries and studies under subparagraphs (D) and (E) in determining eligibility for health coverage and identifying appropriate health services.

“(3) PARTICIPATION IN REGISTRIES AND STUDIES.—

“(A) IN GENERAL.—Participation in any registry or study under subparagraph (D) or (E) of paragraph (2) shall be voluntary.

“(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

“(4) COOPERATIVE AGREEMENTS.—The President may carry out a program through a cooperative agreement with a medical or academic institution, or a consortium of such institutions, that is—

“(A) located in close proximity to the major disaster area with respect to which the program is carried out; and

“(B) experienced in the area of environmental or occupational health and safety, including experience in—

“(i) conducting long-term epidemiological studies;

“(ii) conducting long-term mental health studies; and

“(iii) establishing and maintaining environmental exposure or disease registries.

“(c) REPORTS AND RESPONSES TO STUDIES.—

“(1) REPORTS.—Not later than 1 year after the date of completion of a study under subsection (b)(2)(E), the President, or the medical or academic institution or consortium of such institutions that entered into the cooperative agreement under subsection (b)(4), shall submit to the Director, the Secretary of Health and Human Services, the Secretary of Labor, and the Administrator of the Environmental Protection Agency a report on the study.

“(2) CHANGES IN PROCEDURES.—To protect the health and safety of first responders, the President shall make such changes in procedures as the President determines to be necessary based on the findings of a report submitted under paragraph (1).”

SEC. 199G. URBAN SEARCH AND RESCUE TASK FORCES.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199F) is amended by adding at the end the following:

“SEC. 632. URBAN SEARCH AND RESCUE TASK FORCES.

“(a) DEFINITIONS.—In this section:

“(1) URBAN SEARCH AND RESCUE EQUIPMENT.—The term ‘urban search and rescue equipment’ means any equipment that the Director determines to be necessary to respond to a major disaster or emergency declared by the President under this Act.

“(2) URBAN SEARCH AND RESCUE TASK FORCE.—The term ‘urban search and rescue task force’ means any of the 28 urban search and rescue task forces designated by the Director as of the date of enactment of this section.

“(b) ASSISTANCE.—

“(1) MANDATORY GRANTS FOR COSTS OF OPERATIONS.—For each fiscal year, of the amounts made available to carry out this section, the Director shall provide to each urban search and rescue task force a grant of not less than \$1,500,000 to pay the costs of operations of the urban search and rescue task force (including costs of basic urban search and rescue equipment).

“(2) DISCRETIONARY GRANTS.—The Director may provide to any urban search and rescue task force a grant, in such amount as the Director determines to be appropriate, to pay the costs of—

“(A) operations in excess of the funds provided under paragraph (1);

“(B) urban search and rescue equipment;

“(C) equipment necessary for an urban search and rescue task force to operate in an environment contaminated or otherwise affected by a weapon of mass destruction;

“(D) training, including training for operating in an environment described in subparagraph (C);

“(E) transportation;

“(F) expansion of the urban search and rescue task force; and

“(G) incident support teams, including costs of conducting appropriate evaluations of the readiness of the urban search and rescue task force.

“(3) PRIORITY FOR FUNDING.—The Director shall distribute funding under this subsection so as to ensure that each urban search and rescue task force has the capacity to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

“(c) GRANT REQUIREMENTS.—The Director shall establish such requirements as are necessary to provide grants under this section.

“(d) ESTABLISHMENT OF ADDITIONAL URBAN SEARCH AND RESCUE TASK FORCES.—

“(1) IN GENERAL.—Subject to paragraph (2), the Director may establish urban search and rescue task forces in addition to the 28 urban search and rescue task forces in existence on the date of enactment of this section.

“(2) REQUIREMENT OF FULL FUNDING OF EXISTING URBAN SEARCH AND RESCUE TASK FORCES.—Except in the case of an urban search and rescue task force designated to replace any urban search and rescue task force that withdraws or is otherwise no longer considered to be an urban search and rescue task force designated by the Director, no additional urban search and rescue task forces may be designated or funded until the 28 urban search and rescue task forces are able to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.”

SEC. 199H. AUTHORIZATION OF APPROPRIATIONS.

Section 626 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197e) is amended by striking subsection (a) and inserting the following:

“(a) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this title (other than sections 630 and 632).

“(2) PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.—There are authorized to be appropriated to carry out section 630—

“(A) \$3,340,000,000 for fiscal year 2003; and

“(B) \$3,458,000,000 for each of fiscal years 2004 through 2006.

“(3) URBAN SEARCH AND RESCUE TASK FORCES.—

“(A) IN GENERAL.—There are authorized to be appropriated to carry out section 632—

“(i) \$160,000,000 for fiscal year 2003; and

“(ii) \$42,000,000 for each of fiscal years 2004 through 2006.

“(B) AVAILABILITY OF AMOUNTS.—Amounts made available under subparagraph (A) shall remain available until expended.”

SA 4620. Mr. LEAHY (for himself and Mr. HATCH) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, strike lines 10 and 11 and insert the following:

TITLE VI—LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2002

SEC. 601. SHORT TITLE.

This title may be cited as the “Law Enforcement Officers Safety Act of 2002”.

SEC. 602. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

“§926B. Carrying of concealed firearms by qualified law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified law enforcement officer’ means an employee of a governmental agency who—

“(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

“(2) is authorized by the agency to carry a firearm;

“(3) is not the subject of any disciplinary action by the agency; and

“(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm.

“(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

SEC. 603. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

“§926C. Carrying of concealed firearms by qualified retired law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government

property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified retired law enforcement officer’ means an individual who—

“(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

“(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

“(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 5 years or more; or

“(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

“(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

“(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training or qualification to carry firearms; and

“(6) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement officers.”.

SA 4621. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill (H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . CONGRESSIONAL APPROVAL REQUIREMENT FOR TIPS.

Any and all activities of the Federal Government to implement the proposed component program of the Citizens Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited, unless expressly authorized by statute.

SA 4622. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I, add the following:

SEC. 173. ASSESSMENT OF TRANSFER OF JURISDICTION OF NATIONAL SECURITY EDUCATION PROGRAM TO DEPARTMENT OF HOMELAND SECURITY.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and Secretary of Homeland Security shall jointly submit to Congress a report assessing the feasibility and advisability of transferring jurisdiction of the National Security Education Program under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) from the Department of Defense to the Department of Homeland Se-

curity. The report shall address whether or not the transfer will contribute significantly to meeting the purposes of the National Security Education Program under section 801(c) of that Act (50 U.S.C. 1901(c)).

SA 4623. Mr. LIEBERMAN (for himself, Mr. THOMPSON, and Mr. BURNS) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the end, insert the following:

DIVISION D—E-GOVERNMENT ACT OF 2002

SEC. 3001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “E-Government Act of 2002”.

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

Sec. 3001. Short title; table of contents.

Sec. 3002. Findings and purposes.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

Sec. 3101. Management and promotion of electronic Government services.

Sec. 3102. Conforming amendments.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

Sec. 3201. Definitions.

Sec. 3202. Federal agency responsibilities.

Sec. 3203. Compatibility of Executive agency methods for use and acceptance of electronic signatures.

Sec. 3204. Federal Internet portal.

Sec. 3205. Federal courts.

Sec. 3206. Regulatory agencies.

Sec. 3207. Accessibility, usability, and preservation of Government information.

Sec. 3208. Privacy provisions.

Sec. 3209. Federal Information Technology workforce development.

Sec. 3210. Common protocols for geographic information systems.

Sec. 3211. Share-in-savings program improvements.

Sec. 3212. Integrated reporting study and pilot projects.

Sec. 3213. Community technology centers.

Sec. 3214. Enhancing crisis management through advanced information technology.

Sec. 3215. Disparities in access to the Internet.

Sec. 3216. Notification of obsolete or counterproductive provisions.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

Sec. 3301. Information security.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

Sec. 3401. Authorization of appropriations.

Sec. 3402. Effective dates.

SEC. 3002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The use of computers and the Internet is rapidly transforming societal interactions and the relationships among citizens, private businesses, and the Government.

(2) The Federal Government has had uneven success in applying advances in information technology to enhance governmental functions and services, achieve more efficient performance, increase access to Government information, and increase citizen participation in Government.

(3) Most Internet-based services of the Federal Government are developed and presented separately, according to the jurisdictional boundaries of an individual department or agency, rather than being integrated cooperatively according to function or topic.

(4) Internet-based Government services involving interagency cooperation are especially difficult to develop and promote, in part because of a lack of sufficient funding mechanisms to support such interagency cooperation.

(5) Electronic Government has its impact through improved Government performance and outcomes within and across agencies.

(6) Electronic Government is a critical element in the management of Government, to be implemented as part of a management framework that also addresses finance, procurement, human capital, and other challenges to improve the performance of Government.

(7) To take full advantage of the improved Government performance that can be achieved through the use of Internet-based technology requires strong leadership, better organization, improved interagency collaboration, and more focused oversight of agency compliance with statutes related to information resource management.

(b) **PURPOSES.**—The purposes of this division are the following:

(1) To provide effective leadership of Federal Government efforts to develop and promote electronic Government services and processes by establishing an Administrator of a new Office of Electronic Government within the Office of Management and Budget.

(2) To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

(3) To promote interagency collaboration in providing electronic Government services, where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal electronic Government processes, where this collaboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Government to achieve agency missions and program performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services.

(6) To reduce costs and burdens for businesses and other Government entities.

(7) To promote better informed decision-making by policy makers.

(8) To promote access to high quality Government information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations.

(11) To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

SEC. 3101. MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES.

(a) **IN GENERAL.**—Title 44, United States Code, is amended by inserting after chapter 35 the following:

“CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

“Sec.

“3601. Definitions.

“3602. Office of Electronic Government.

“3603. Chief Information Officers Council.

“3604. E-Government Fund.

“3605. E-Government report.

“§ 3601. Definitions

“In this chapter, the definitions under section 3502 shall apply, and the term—

“(1) ‘Administrator’ means the Administrator of the Office of Electronic Government established under section 3602;

“(2) ‘Council’ means the Chief Information Officers Council established under section 3603;

“(3) ‘electronic Government’ means the use by the Government of web-based Internet applications and other information technologies, combined with processes that implement these technologies, to—

“(A) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or

“(B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation;

“(4) ‘enterprise architecture’—

“(A) means—

“(i) a strategic information asset base, which defines the mission;

“(ii) the information necessary to perform the mission;

“(iii) the technologies necessary to perform the mission; and

“(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

“(B) includes—

“(i) a baseline architecture;

“(ii) a target architecture; and

“(iii) a sequencing plan;

“(5) ‘Fund’ means the E-Government Fund established under section 3604;

“(6) ‘interoperability’ means the ability of different operating and software systems, applications, and services to communicate and exchange data in an accurate, effective, and consistent manner;

“(7) ‘integrated service delivery’ means the provision of Internet-based Federal Government information or services integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction; and

“(8) ‘tribal government’ means the governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“§ 3602. Office of Electronic Government

“(a) There is established in the Office of Management and Budget an Office of Electronic Government.

“(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

“(c) The Administrator shall assist the Director in carrying out—

“(1) all functions under this chapter;

“(2) all of the functions assigned to the Director under title XXXII of the E-Government Act of 2002; and

“(3) other electronic government initiatives, consistent with other statutes.

“(d) The Administrator shall assist the Director and the Deputy Director for Management and work with the Administrator of the Office of Information and Regulatory Affairs in setting strategic direction for implementing electronic Government, under relevant statutes, including—

“(1) chapter 35;

“(2) division E of the Clinger-Cohen Act of 1996 (division E of Public Law 104-106; 40 U.S.C. 1401 et seq.);

“(3) section 552a of title 5 (commonly referred to as the Privacy Act);

“(4) the Government Paperwork Elimination Act (44 U.S.C. 3504 note);

“(5) the Government Information Security Reform Act; and

“(6) the Computer Security Act of 1987 (40 U.S.C. 759 note).

“(e) The Administrator shall work with the Administrator of the Office of Information and Regulatory Affairs and with other offices within the Office of Management and Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to—

“(1) capital planning and investment control for information technology;

“(2) the development of enterprise architectures;

“(3) information security;

“(4) privacy;

“(5) access to, dissemination of, and preservation of Government information;

“(6) accessibility of information technology for persons with disabilities; and

“(7) other areas of electronic Government.

“(f) Subject to requirements of this chapter, the Administrator shall assist the Director by performing electronic Government functions as follows:

“(1) Advise the Director on the resources required to develop and effectively operate and maintain Federal Government information systems.

“(2) Recommend to the Director changes relating to Governmentwide strategies and priorities for electronic Government.

“(3) Provide overall leadership and direction to the executive branch on electronic Government by working with authorized officials to establish information resources management policies and requirements, and by reviewing performance of each agency in acquiring, using, and managing information resources.

“(4) Promote innovative uses of information technology by agencies, particularly initiatives involving multiagency collaboration, through support of pilot projects, research, experimentation, and the use of innovative technologies.

“(5) Oversee the distribution of funds from, and ensure appropriate administration and coordination of, the E-Government Fund established under section 3604.

“(6) Coordinate with the Administrator of General Services regarding programs undertaken by the General Services Administration to promote electronic government and the efficient use of information technologies by agencies.

“(7) Lead the activities of the Chief Information Officers Council established under section 3603 on behalf of the Deputy Director for Management, who shall chair the council.

“(8) Assist the Director in establishing policies which shall set the framework for information technology standards for the Federal Government under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), to be developed by the National Institute of Standards and Technology and promulgated by the Secretary of Commerce, taking into account, if appropriate, recommendations of

the Chief Information Officers Council, experts, and interested parties from the private and nonprofit sectors and State, local, and tribal governments, and maximizing the use of commercial standards as appropriate, as follows:

“(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

“(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

“(C) Standards and guidelines for Federal Government computer system efficiency and security.

“(9) Sponsor ongoing dialogue that—

“(A) shall be conducted among Federal, State, local, and tribal government leaders on electronic Government in the executive, legislative, and judicial branches, as well as leaders in the private and nonprofit sectors, to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, using, and managing information resources;

“(B) is intended to improve the performance of governments in collaborating on the use of information technology to improve the delivery of Government information and services; and

“(C) may include—

“(i) development of innovative models—

“(I) for electronic Government management and Government information technology contracts; and

“(II) that may be developed through focused discussions or using separately sponsored research;

“(ii) identification of opportunities for public-private collaboration in using Internet-based technology to increase the efficiency of Government-to-business transactions;

“(iii) identification of mechanisms for providing incentives to program managers and other Government employees to develop and implement innovative uses of information technologies; and

“(iv) identification of opportunities for public, private, and intergovernmental collaboration in addressing the disparities in access to the Internet and information technology.

“(10) Sponsor activities to engage the general public in the development and implementation of policies and programs, particularly activities aimed at fulfilling the goal of using the most effective citizen-centered strategies and those activities which engage multiple agencies providing similar or related information and services.

“(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

“(12) Coordinate with the Administrator of the Office of Federal Procurement Policy to ensure effective implementation of electronic procurement initiatives.

“(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

“(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

“(B) ensuring compliance with those standards through the budget review process and other means.

“(14) Oversee the development of enterprise architectures within and across agencies.

“(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes.

“(16) Administer the Office of Electronic Government established under section 3602.

“(17) Assist the Director in preparing the E-Government report established under section 3605.

“(g) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all functions under the E-Government Act of 2002.

“§ 3603. Chief Information Officers Council

“(a) There is established in the executive branch a Chief Information Officers Council.

“(b) The members of the Council shall be as follows:

“(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

“(2) The Administrator of the Office of Electronic Government.

“(3) The Administrator of the Office of Information and Regulatory Affairs.

“(4) The chief information officer of each agency described under section 901(b) of title 31.

“(5) The chief information officer of the Central Intelligence Agency.

“(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

“(7) Any other officer or employee of the United States designated by the chairperson.

“(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

“(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

“(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

“(3) The Administrator of General Services shall provide administrative and other support for the Council.

“(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.

“(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

“(f) The Council shall perform functions that include the following:

“(1) Develop recommendations for the Director on Government information resources management policies and requirements.

“(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

“(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

“(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title XXXII of the E-Government Act of 2002.

“(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommenda-

tions on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) and promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), as follows:

“(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

“(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

“(C) Standards and guidelines for Federal Government computer system efficiency and security.

“(6) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management.

“(7) Work with the Archivist of the United States to assess how the Federal Records Act can be addressed effectively by Federal information resources management activities.

“§ 3604. E-Government Fund

“(a)(1) There is established in the Treasury of the United States the E-Government Fund.

“(2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by the Administrator of the Office of Electronic Government, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically.

“(3) Projects under this subsection may include efforts to—

“(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments);

“(B) make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and

“(C) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.

“(b)(1) The Administrator shall—

“(A) establish procedures for accepting and reviewing proposals for funding;

“(B) consult with interagency councils, including the Chief Information Officers Council, the Chief Financial Officers Council, and other interagency management councils, in establishing procedures and reviewing proposals; and

“(C) assist the Director in coordinating resources that agencies receive from the Fund with other resources available to agencies for similar purposes.

“(2) When reviewing proposals and managing the Fund, the Administrator shall observe and incorporate the following procedures:

“(A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agency-wide authority on behalf of the head of the agency, who shall report directly to the head of the agency.

“(B) Projects shall adhere to fundamental capital planning and investment control processes.

“(C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would

be coordinated with support from the Fund, and include plans for potential continuation of projects after all funds made available from the Fund are expended.

“(D) After considering the recommendations of the interagency councils, the Director, assisted by the Administrator, shall have final authority to determine which of the candidate projects shall be funded from the Fund.

“(E) Agencies shall assess the results of funded projects.

“(c) In determining which proposals to recommend for funding, the Administrator—

“(1) shall consider criteria that include whether a proposal—

“(A) identifies the group to be served, including citizens, businesses, the Federal Government, or other governments;

“(B) indicates what service or information the project will provide that meets needs of groups identified under subparagraph (A);

“(C) ensures proper security and protects privacy;

“(D) is interagency in scope, including projects implemented by a primary or single agency that—

“(i) could confer benefits on multiple agencies; and

“(ii) have the support of other agencies; and

“(E) has performance objectives that tie to agency missions and strategic goals, and interim results that relate to the objectives; and

“(2) may also rank proposals based on criteria that include whether a proposal—

“(A) has Governmentwide application or implications;

“(B) has demonstrated support by the public to be served;

“(C) integrates Federal with State, local, or tribal approaches to service delivery;

“(D) identifies resource commitments from nongovernmental sectors;

“(E) identifies resource commitments from the agencies involved;

“(F) uses web-based technologies to achieve objectives;

“(G) identifies records management and records access strategies;

“(H) supports more effective citizen participation in and interaction with agency activities that further progress toward a more citizen-centered Government;

“(I) directly delivers Government information and services to the public or provides the infrastructure for delivery;

“(J) supports integrated service delivery;

“(K) describes how business processes across agencies will reflect appropriate transformation simultaneous to technology implementation; and

“(L) is new or innovative and does not supplant existing funding streams within agencies.

“(d) The Fund may be used to fund the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

“(e) None of the funds provided from the Fund may be transferred to any agency until 15 days after the Administrator of the General Services Administration has submitted to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the appropriate authorizing committees of the Senate and the House of Representatives, a notification and description of how the funds are to be allocated and how the expenditure will further the purposes of this chapter.

“(f)(1) The Director shall report annually to Congress on the operation of the Fund, through the report established under section 3605.

“(2) The report under paragraph (1) shall describe—

“(A) all projects which the Director has approved for funding from the Fund; and

“(B) the results that have been achieved to date for these funded projects.

“(g)(1) There are authorized to be appropriated to the Fund—

“(A) \$45,000,000 for fiscal year 2003;

“(B) \$50,000,000 for fiscal year 2004;

“(C) \$100,000,000 for fiscal year 2005;

“(D) \$150,000,000 for fiscal year 2006; and

“(E) such sums as are necessary for fiscal year 2007.

“(2) Funds appropriated under this subsection shall remain available until expended.

“§ 3605. E-Government report

“(a) Not later than March 1 of each year, the Director shall submit an E-Government status report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

“(b) The report under subsection (a) shall contain—

“(1) a summary of the information reported by agencies under section 3202(f) of the E-Government Act of 2002;

“(2) the information required to be reported by section 3604(f); and

“(3) a description of compliance by the Federal Government with other goals and provisions of the E-Government Act of 2002.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

“36. Management and Promotion of Electronic Government Services .. 3601”.

SEC. 3102. CONFORMING AMENDMENTS.

(a) ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.—

(1) IN GENERAL.—The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by inserting after section 112 the following:

“SEC. 113. ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.

“The Administrator of General Services shall consult with the Administrator of the Office of Electronic Government on programs undertaken by the General Services Administration to promote electronic Government and the efficient use of information technologies by Federal agencies.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for the Federal Property and Administrative Services Act of 1949 is amended by inserting after the item relating to section 112 the following:

“Sec. 113. Electronic Government and information technologies.”

(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS.—Section 503(b) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), and (9), as paragraphs (6), (7), (8), (9), and (10), respectively; and

(2) by inserting after paragraph (4) the following:

“(5) Chair the Chief Information Officers Council established under section 3603 of title 44.”

(c) OFFICE OF ELECTRONIC GOVERNMENT.—

(1) IN GENERAL.—Chapter 5 of title 31, United States Code, is amended by inserting after section 506 the following:

“§ 507. Office of Electronic Government

“The Office of Electronic Government, established under section 3602 of title 44, is an office in the Office of Management and Budget.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of

title 31, United States Code, is amended by inserting after the item relating to section 506 the following:

“507. Office of Electronic Government.”

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

SEC. 3201. DEFINITIONS.

Except as otherwise provided, in this title the definitions under sections 3502 and 3601 of title 44, United States Code, shall apply.

SEC. 3202. FEDERAL AGENCY RESPONSIBILITIES.

(a) IN GENERAL.—The head of each agency shall be responsible for—

(1) complying with the requirements of this division (including the amendments made by this Act), the related information resource management policies and guidance established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

(2) ensuring that the information resource management policies and guidance established under this division by the Director, and the information technology standards promulgated under this division by the Secretary of Commerce are communicated promptly and effectively to all relevant officials within their agency; and

(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an integrated Internet-based system of delivering Federal Government information and services to the public under section 3204.

(b) PERFORMANCE INTEGRATION.—

(1) Agencies shall develop performance measures that demonstrate how electronic government enables progress toward agency objectives, strategic goals, and statutory mandates.

(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

(3) Areas of performance measurement that agencies should consider include—

(A) customer service;

(B) agency productivity; and

(C) adoption of innovative information technology, including the appropriate use of commercial best practices.

(4) Agencies shall link their performance goals to key groups, including citizens, businesses, and other governments, and to internal Federal Government operations.

(5) As appropriate, agencies shall work collectively in linking their performance goals to groups identified under paragraph (4) and shall use information technology in delivering Government information and services to those groups.

(c) AVOIDING DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable—

(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and

(2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet.

(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this division shall be in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e) **SPONSORED ACTIVITIES.**—Agencies shall sponsor activities that use information technology to engage the public in the development and implementation of policies and programs.

(f) **CHIEF INFORMATION OFFICERS.**—The Chief Information Officer of each of the agencies designated under chapter 36 of title 44, United States Code (as added by this Act) shall be responsible for—

(1) participating in the functions of the Chief Information Officers Council; and

(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated under this division by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of Federal Government electronic information, and computer system efficiency and security.

(g) **E-GOVERNMENT STATUS REPORT.**—

(1) **IN GENERAL.**—Each agency shall compile and submit to the Director an annual E-Government Status Report on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) compliance by the agency with this Act; and

(C) how electronic Government initiatives of the agency improve performance in delivering programs to constituencies.

(2) **SUBMISSION.**—Each agency shall submit an annual report under this subsection—

(A) to the Director at such time and in such manner as the Director requires;

(B) consistent with related reporting requirements; and

(C) which addresses any section in this title relevant to that agency.

(h) **USE OF TECHNOLOGY.**—Nothing in this division supersedes the responsibility of an agency to use or manage information technology to deliver Government information and services that fulfill the statutory mission and programs of the agency.

(i) **NATIONAL SECURITY SYSTEMS.**—

(1) **INAPPLICABILITY.**—Except as provided under paragraph (2), this title does not apply to national security systems as defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

(2) **APPLICABILITY.**—Sections 3202, 3203, 3210, and 3214 of this title do apply to national security systems to the extent practicable and consistent with law.

SEC. 3203. COMPATIBILITY OF EXECUTIVE AGENCY METHODS FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

(a) **PURPOSE.**—The purpose of this section is to achieve interoperable implementation of electronic signatures for appropriately secure electronic transactions with Government.

(b) **ELECTRONIC SIGNATURES.**—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105-277; 112 Stat. 2681-749 through 2681-751), each Executive agency (as defined under section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with the relevant policies and procedures issued by the Director.

(c) **AUTHORITY FOR ELECTRONIC SIGNATURES.**—The Administrator of General Services shall support the Director by establishing a framework to allow efficient interoperability among Executive agencies when using electronic signatures, including processing of digital signatures.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the General Services Administration, to ensure the development and operation of a Federal bridge certification authority for digital signature compatibility, or for other activi-

ties consistent with this section, \$8,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3204. FEDERAL INTERNET PORTAL.

(a) **IN GENERAL.**—

(1) **PUBLIC ACCESS.**—The Director shall work with the Administrator of the General Services Administration and other agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

(2) **CRITERIA.**—To the extent practicable, the integrated system shall be designed and operated according to the following criteria:

(A) The provision of Internet-based Government information and services directed to key groups, including citizens, business, and other governments, and integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction.

(B) An ongoing effort to ensure that Internet-based Government services relevant to a given citizen activity are available from a single point.

(C) Access to Federal Government information and services consolidated, as appropriate, with Internet-based information and services provided by State, local, and tribal governments.

(D) Access to Federal Government information held by 1 or more agencies shall be made available in a manner that protects privacy, consistent with law.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the General Services Administration \$15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

SEC. 3205. FEDERAL COURTS.

(a) **INDIVIDUAL COURT WEBSITES.**—The Chief Justice of the United States, the chief judge of each circuit and district, and the chief bankruptcy judge of each district shall establish with respect to the Supreme Court or the respective court of appeals, district, or bankruptcy court of a district, a website that contains the following information or links to websites with the following information:

(1) Location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers.

(2) Local rules and standing or general orders of the court.

(3) Individual rules, if in existence, of each justice or judge in that court.

(4) Access to docket information for each case.

(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.

(6) Access to all documents filed with the courthouse in electronic form, described under subsection (c).

(7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) **MAINTENANCE OF DATA ONLINE.**—

(1) **UPDATE OF INFORMATION.**—The information and rules on each website shall be updated regularly and kept reasonably current.

(2) **CLOSED CASES.**—Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) **ELECTRONIC FILINGS.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.

(2) **EXCEPTIONS.**—Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.

(3) **PRIVACY AND SECURITY CONCERNS.**—The Judicial Conference of the United States may promulgate rules under this subsection to protect important privacy and security concerns.

(d) **DOCKETS WITH LINKS TO DOCUMENTS.**—The Judicial Conference of the United States shall explore the feasibility of technology to post online dockets with links allowing all filings, decisions, and rulings in each case to be obtained from the docket sheet of that case.

(e) **COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION.**—Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking "shall hereafter" and inserting "may, only to the extent necessary,".

(f) **TIME REQUIREMENTS.**—Not later than 2 years after the effective date of this title, the websites under subsection (a) shall be established, except that access to documents filed in electronic form shall be established not later than 4 years after that effective date.

(g) **DEFERRAL.**—

(1) **IN GENERAL.**—

(A) **ELECTION.**—

(i) **NOTIFICATION.**—The Chief Justice of the United States, a chief judge, or chief bankruptcy judge may submit a notification to the Administrative Office of the United States Courts to defer compliance with any requirement of this section with respect to the Supreme Court, a court of appeals, district, or the bankruptcy court of a district.

(ii) **CONTENTS.**—A notification submitted under this subparagraph shall state—

(I) the reasons for the deferral; and

(II) the online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(B) **EXCEPTION.**—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) **REPORT.**—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.

SEC. 3206. REGULATORY AGENCIES.

(a) **PURPOSES.**—The purposes of this section are to—

(1) improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency; and

(2) enhance public participation in Government by electronic means, consistent with requirements under subchapter II of chapter 5 of title 5, United States Code, (commonly

referred to as the Administrative Procedures Act).

(b) **INFORMATION PROVIDED BY AGENCIES ONLINE.**—To the extent practicable as determined by the agency in consultation with the Director, each agency (as defined under section 551 of title 5, United States Code) shall ensure that a publicly accessible Federal Government website includes all information about that agency required to be published in the Federal Register under section 552(a)(1) of title 5, United States Code.

(c) **SUBMISSIONS BY ELECTRONIC MEANS.**—To the extent practicable, agencies shall accept submissions under section 553(c) of title 5, United States Code, by electronic means.

(d) **ELECTRONIC DOCKETING.**—

(1) **IN GENERAL.**—To the extent practicable, as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under section 553 of title 5, United States Code.

(2) **INFORMATION AVAILABLE.**—Agency electronic dockets shall make publicly available online to the extent practicable, as determined by the agency in consultation with the Director—

(A) all submissions under section 553(c) of title 5, United States Code; and

(B) other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.

(e) **TIME LIMITATION.**—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3605 of title 44 (as added by this Act).

SEC. 3207. ACCESSIBILITY, USABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) **PURPOSE.**—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.

(b) **DEFINITIONS.**—In this section, the term—

(1) “Committee” means the Interagency Committee on Government Information established under subsection (c); and

(2) “directory” means a taxonomy of subjects linked to websites that—

(A) organizes Government information on the Internet according to subject matter; and

(B) may be created with the participation of human editors.

(c) **INTERAGENCY COMMITTEE.**—

(1) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this title, the Director shall establish the Interagency Committee on Government Information.

(2) **MEMBERSHIP.**—The Committee shall be chaired by the Director or the designee of the Director and—

(A) shall include representatives from—

(i) the National Archives and Records Administration;

(ii) the offices of the Chief Information Officers from Federal agencies; and

(iii) other relevant officers from the executive branch; and

(B) may include representatives from the Federal legislative and judicial branches.

(3) **FUNCTIONS.**—The Committee shall—

(A) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section, to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(4) **TERMINATION.**—The Committee may be terminated on a date determined by the Director, except the Committee may not terminate before the Committee submits all recommendations required under this section.

(d) **CATEGORIZING OF INFORMATION.**—

(1) **COMMITTEE FUNCTIONS.**—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director on—

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(iii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(2) **FUNCTIONS OF THE DIRECTOR.**—Not later than 180 days after the submission of recommendations under paragraph (1), the Director shall issue policies—

(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers;

(ii) in ways that are interoperable across agencies; and

(iii) that are, as appropriate, consistent with the standards promulgated by the Secretary of Commerce under section 3602(f)(8) of title 44, United States Code;

(B) defining categories of Government information which shall be required to be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(3) **MODIFICATION OF POLICIES.**—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) **AGENCY FUNCTIONS.**—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(e) **PUBLIC ACCESS TO ELECTRONIC INFORMATION.**—

(1) **COMMITTEE FUNCTIONS.**—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) **FUNCTIONS OF THE ARCHIVIST.**—Not later than 180 days after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on

the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(3) **MODIFICATION OF POLICIES.**—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) **AGENCY FUNCTIONS.**—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(f) **AVAILABILITY OF GOVERNMENT INFORMATION ON THE INTERNET.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, each agency shall—

(A) consult with the Committee and solicit public comment;

(B) determine which Government information the agency intends to make available and accessible to the public on the Internet and by other means;

(C) develop priorities and schedules for making that Government information available and accessible;

(D) make such final determinations, priorities, and schedules available for public comment;

(E) post such final determinations, priorities, and schedules on the Internet; and

(F) submit such final determinations, priorities, and schedules to the Director, in the report established under section 3202(g).

(2) **UPDATE.**—Each agency shall update determinations, priorities, and schedules of the agency, as needed, after consulting with the Committee and soliciting public comment, if appropriate.

(g) **ACCESS TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT.**—

(1) **DEVELOPMENT AND MAINTENANCE OF GOVERNMENTWIDE REPOSITORY AND WEBSITE.**—

(A) **REPOSITORY AND WEBSITE.**—The Director of the National Science Foundation, working with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(I) include information about research and development funded by the Federal Government and performed by—

(aa) institutions not a part of the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development center; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(II) integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that would prevent the sharing

with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(ii) 1 or more websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—

(I) the coordination of Federal research and development activities;

(II) collaboration among those conducting Federal research and development;

(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and

(IV) access by policymakers and the public to information concerning Federal research and development activities.

(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.

(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.

(3) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—

(A) policies to improve agency reporting of information for the repository established under this subsection; and

(B) policies to improve dissemination of the results of research performed by Federal agencies and federally funded research and development centers.

(4) FUNCTIONS OF THE DIRECTOR.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3605 of title 44 (as added by this Act).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—

(A) \$2,000,000 in each of the fiscal years 2003 through 2005; and

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.

(h) PUBLIC DOMAIN DIRECTORY OF PUBLIC FEDERAL GOVERNMENT WEBSITES.—

(1) ESTABLISHMENT.—Not later than 2 years after the effective date of this title, the Director and each agency shall—

(A) develop and establish a public domain directory of public Federal Government websites; and

(B) post the directory on the Internet with a link to the integrated Internet-based system established under section 3204.

(2) DEVELOPMENT.—With the assistance of each agency, the Director shall—

(A) direct the development of the directory through a collaborative effort, including input from—

- (i) agency librarians;
- (ii) information technology managers;
- (iii) program managers;
- (iv) records managers;
- (v) Federal depository librarians; and
- (vi) other interested parties; and

(B) develop a public domain taxonomy of subjects used to review and categorize public Federal Government websites.

(3) UPDATE.—With the assistance of each agency, the Administrator of the Office of Electronic Government shall—

(A) update the directory as necessary, but not less than every 6 months; and

(B) solicit interested persons for improvements to the directory.

(i) STANDARDS FOR AGENCY WEBSITES.—Not later than 18 months after the effective date of this title, the Director shall promulgate guidance for agency websites that include—

(I) requirements that websites include direct links to—

(A) descriptions of the mission and statutory authority of the agency;

(B) the electronic reading rooms of the agency relating to the disclosure of information under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(C) information about the organizational structure of the agency; and

(D) the strategic plan of the agency developed under section 306 of title 5, United States Code; and

(2) minimum agency goals to assist public users to navigate agency websites, including—

(A) speed of retrieval of search results;

(B) the relevance of the results;

(C) tools to aggregate and disaggregate data; and

(D) security protocols to protect information.

SEC. 3208. PRIVACY PROVISIONS.

(a) PURPOSE.—The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.

(b) PRIVACY IMPACT ASSESSMENTS.—

(1) RESPONSIBILITIES OF AGENCIES.—

(A) IN GENERAL.—An agency shall take actions described under subparagraph (B) before—

(i) developing or procuring information technology that collects, maintains, or disseminates information that includes any identifier permitting the physical or online contacting of a specific individual; or

(ii) initiating a new collection of information that—

(I) will be collected, maintained, or disseminated using information technology; and

(II) includes any identifier permitting the physical or online contacting of a specific individual, if the information concerns 10 or more persons.

(B) AGENCY ACTIVITIES.—To the extent required under subparagraph (A), each agency shall—

(i) conduct a privacy impact assessment;

(ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and

(iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.

(C) SENSITIVE INFORMATION.—Subparagraph (B)(iii) may be modified or waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment.

(D) COPY TO DIRECTOR.—Agencies shall provide the Director with a copy of the privacy impact assessment for each system for which funding is requested.

(2) CONTENTS OF A PRIVACY IMPACT ASSESSMENT.—

(A) IN GENERAL.—The Director shall issue guidance to agencies specifying the required contents of a privacy impact assessment.

(B) GUIDANCE.—The guidance shall—

(i) ensure that a privacy impact assessment is commensurate with the size of the information system being assessed, the sensitivity of personally identifiable information in that system, and the risk of harm from unauthorized release of that information; and

(ii) require that a privacy impact assessment address—

(I) what information is to be collected;

(II) why the information is being collected;

(III) the intended use of the agency of the information;

(IV) with whom the information will be shared;

(V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(VI) how the information will be secured; and

(VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the Privacy Act).

(3) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—

(A) develop policies and guidelines for agencies on the conduct of privacy impact assessments;

(B) oversee the implementation of the privacy impact assessment process throughout the Government; and

(C) require agencies to conduct privacy impact assessments of existing information systems or ongoing collections of personally identifiable information as the Director determines appropriate.

(c) PRIVACY PROTECTIONS ON AGENCY WEBSITES.—

(1) PRIVACY POLICIES ON WEBSITES.—

(A) GUIDELINES FOR NOTICES.—The Director shall develop guidance for privacy notices on agency websites used by the public.

(B) CONTENTS.—The guidance shall require that a privacy notice address, consistent with section 552a of title 5, United States Code—

(i) what information is to be collected;

(ii) why the information is being collected;

(iii) the intended use of the agency of the information;

(iv) with whom the information will be shared;

(v) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(vi) how the information will be secured; and

(vii) the rights of the individual under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), and other laws relevant to the protection of the privacy of an individual.

(2) PRIVACY POLICIES IN MACHINE-READABLE FORMATS.—The Director shall issue guidance requiring agencies to translate privacy policies into a standardized machine-readable format.

SEC. 3209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government information and services.

(b) IN GENERAL.—In consultation with the Director, the Chief Information Officers Council, and the Administrator of General Services, the Director of the Office of Personnel Management shall—

(1) analyze, on an ongoing basis, the personnel needs of the Federal Government related to information technology and information resource management;

(2) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel

needs of the Federal Government related to information technology and information resource management; and

(3) assess the training of Federal employees in information technology disciplines, as necessary, in order to ensure that the information resource management needs of the Federal Government are addressed.

(c) **EMPLOYEE PARTICIPATION.**—Subject to information resource management needs and the limitations imposed by resource needs in other occupational areas, and consistent with their overall workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this section, \$7,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3210. COMMON PROTOCOLS FOR GEOGRAPHIC INFORMATION SYSTEMS.

(a) **PURPOSES.**—The purposes of this section are to—

(1) reduce redundant data collection and information; and

(2) promote collaboration and use of standards for government geographic information.

(b) **DEFINITION.**—In this section, the term “geographic information” means information systems that involve locational data, such as maps or other geospatial information resources.

(c) **IN GENERAL.**—

(1) **COMMON PROTOCOLS.**—The Secretary of the Interior, working with the Director and through an interagency group, and working with private sector experts, State, local, and tribal governments, commercial and international standards groups, and other interested parties, shall facilitate the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information. If practicable, the Secretary of the Interior shall incorporate intergovernmental and public private geographic information partnerships into efforts under this subsection.

(2) **INTERAGENCY GROUP.**—The interagency group referred to under paragraph (1) shall include representatives of the National Institute of Standards and Technology and other agencies.

(d) **DIRECTOR.**—The Director shall oversee—

(1) the interagency initiative to develop common protocols;

(2) the coordination with State, local, and tribal governments, public private partnerships, and other interested persons on effective and efficient ways to align geographic information and develop common protocols; and

(3) the adoption of common standards relating to the protocols.

(e) **COMMON PROTOCOLS.**—The common protocols shall be designed to—

(1) maximize the degree to which unclassified geographic information from various sources can be made electronically compatible and accessible; and

(2) promote the development of interoperable geographic information systems technologies that shall—

(A) allow widespread, low-cost use and sharing of geographic data by Federal agencies, State, local, and tribal governments, and the public; and

(B) enable the enhancement of services using geographic data.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this section, for each of the fiscal years 2003 through 2007.

SEC. 3211. SHARE-IN-SAVINGS PROGRAM IMPROVEMENTS.

Section 5311 of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106; 110 Stat. 692; 40 U.S.C. 1491) is amended—

(1) in subsection (a)—

(A) by striking “the heads of two executive agencies to carry out” and inserting “heads of executive agencies to carry out a total of 5 projects under”; and

(B) by striking “and” at the end of paragraph (1);

(C) by striking the period at the end of paragraph (2) and inserting “; and”; and

(D) by adding at the end the following:

“(3) encouraging the use of the contracting and sharing approach described in paragraphs (1) and (2) by allowing the head of the executive agency conducting a project under the pilot program—

“(A) to retain, until expended, out of the appropriation accounts of the executive agency in which savings computed under paragraph (2) are realized as a result of the project, up to the amount equal to half of the excess of—

“(i) the total amount of the savings; over

“(ii) the total amount of the portion of the savings paid to the private sector source for such project under paragraph (2); and

“(B) to use the retained amount to acquire additional information technology.”;

(2) in subsection (b)—

(A) by inserting “a project under” after “authorized to carry out”; and

(B) by striking “carry out one project and”; and

(3) in subsection (c), by inserting before the period “and the Administrator for the Office of Electronic Government”; and

(4) by inserting after subsection (c) the following:

“(d) **REPORT.**—

“(1) **IN GENERAL.**—After 5 pilot projects have been completed, but no later than 3 years after the effective date of this subsection, the Director shall submit a report on the results of the projects to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

“(2) **CONTENTS.**—The report under paragraph (1) shall include—

“(A) a description of the reduced costs and other measurable benefits of the pilot projects;

“(B) a description of the ability of agencies to determine the baseline costs of a project against which savings would be measured; and

“(C) recommendations of the Director relating to whether Congress should provide general authority to the heads of executive agencies to use a share-in-savings contracting approach to the acquisition of information technology solutions for improving mission-related or administrative processes of the Federal Government.”.

SEC. 3212. INTEGRATED REPORTING STUDY AND PILOT PROJECTS.

(a) **PURPOSES.**—The purposes of this section are to—

(1) enhance the interoperability of Federal information systems;

(2) assist the public, including the regulated community, in electronically submitting information to agencies under Federal requirements, by reducing the burden of duplicate collection and ensuring the accuracy of submitted information; and

(3) enable any person to integrate and obtain similar information held by 1 or more agencies under 1 or more Federal requirements without violating the privacy rights of an individual.

(b) **DEFINITIONS.**—In this section, the term—

(1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code; and

(2) “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or agency or component of the Federal Government.

(c) **REPORT.**—

(1) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the Director shall oversee a study, in consultation with agencies, the regulated community, public interest organizations, and the public, and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on progress toward integrating Federal information systems across agencies.

(2) **CONTENTS.**—The report under this section shall—

(A) address the integration of data elements used in the electronic collection of information within databases established under Federal statute without reducing the quality, accessibility, scope, or utility of the information contained in each database;

(B) address the feasibility of developing, or enabling the development of, software, including Internet-based tools, for use by reporting persons in assembling, documenting, and validating the accuracy of information electronically submitted to agencies under nonvoluntary, statutory, and regulatory requirements;

(C) address the feasibility of developing a distributed information system involving, on a voluntary basis, at least 2 agencies, that—

(i) provides consistent, dependable, and timely public access to the information holdings of 1 or more agencies, or some portion of such holdings, including the underlying raw data, without requiring public users to know which agency holds the information; and

(ii) allows the integration of public information held by the participating agencies;

(D) address the feasibility of incorporating other elements related to the purposes of this section at the discretion of the Director; and

(E) make recommendations that Congress or the executive branch can implement, through the use of integrated reporting and information systems, to reduce the burden on reporting and strengthen public access to databases within and across agencies.

(d) **PILOT PROJECTS TO ENCOURAGE INTEGRATED COLLECTION AND MANAGEMENT OF DATA AND INTEROPERABILITY OF FEDERAL INFORMATION SYSTEMS.**—

(1) **IN GENERAL.**—In order to provide input to the study under subsection (c), the Director shall designate, in consultation with agencies, a series of no more than 5 pilot projects that integrate data elements. The Director shall consult with agencies, the regulated community, public interest organizations, and the public on the implementation of the pilot projects.

(2) **GOALS OF PILOT PROJECTS.**—

(A) **IN GENERAL.**—Each goal described under subparagraph (B) shall be addressed by at least 1 pilot project each.

(B) **GOALS.**—The goals under this paragraph are to—

(i) reduce information collection burdens by eliminating duplicative data elements within 2 or more reporting requirements;

(ii) create interoperability between or among public databases managed by 2 or more agencies using technologies and techniques that facilitate public access; and

(iii) develop, or enable the development of, software to reduce errors in electronically submitted information.

(3) INPUT.—Each pilot project shall seek input from users on the utility of the pilot project and areas for improvement. To the extent practicable, the Director shall consult with relevant agencies and State, tribal, and local governments in carrying out the report and pilot projects under this section.

(e) PRIVACY PROTECTIONS.—The activities authorized under this section shall afford protections for—

(1) confidential business information consistent with section 552(b)(4) of title 5, United States Code, and other relevant law;

(2) personal privacy information under sections 552(b) (6) and (7)(C) and 552a of title 5, United States Code, and other relevant law; and

(3) other information consistent with section 552(b)(3) of title 5, United States Code, and other relevant law.

SEC. 3213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of on-line government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to computer technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Secretary of Education, in consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce, the Director of the National Science Foundation, and the Director of the Institute of Museum and Library Services, shall—

(1) conduct a study to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report on the study to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Government Reform of the House of Representatives; and

(D) the Committee on Education and the Workforce of the House of Representatives.

(c) CONTENTS.—The report under subsection (b) may consider—

(1) an evaluation of the best practices being used by successful community technology centers;

(2) a strategy for—

(A) continuing the evaluation of best practices used by community technology centers; and

(B) establishing a network to share information and resources as community technology centers evolve;

(3) the identification of methods to expand the use of best practices to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;

(4) a database of all community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;

(5) an analysis of whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation; and

(6) recommendations of how to—

(A) enhance the development of community technology centers; and

(B) establish a network to share information and resources.

(d) COOPERATION.—All agencies that fund community technology centers shall provide to the Department of Education any information and assistance necessary for the completion of the study and the report under this section.

(e) ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Department of Education shall work with other relevant Federal agencies, and other interested persons in the private and nonprofit sectors to—

(A) assist in the implementation of recommendations; and

(B) identify other ways to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public.

(2) TYPES OF ASSISTANCE.—Assistance under this subsection may include—

(A) contribution of funds;

(B) donations of equipment, and training in the use and maintenance of the equipment; and

(C) the provision of basic instruction or training material in computer skills and Internet usage.

(f) ONLINE TUTORIAL.—

(1) IN GENERAL.—The Secretary of Education, in consultation with the Director of the Institute of Museum and Library Services, the Director of the National Science Foundation, other relevant agencies, and the public, shall develop an online tutorial that—

(A) explains how to access Government information and services on the Internet; and

(B) provides a guide to available online resources.

(2) DISTRIBUTION.—The Secretary of Education shall distribute information on the tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public.

(g) PROMOTION OF COMMUNITY TECHNOLOGY CENTERS.—In consultation with other agencies and organizations, the Department of Education shall promote the availability of community technology centers to raise awareness within each community where such a center is located.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Education for the study of best practices at community technology centers, for the development and dissemination of the online tutorial, and for the promotion of community technology centers under this section—

(1) \$2,000,000 in fiscal year 2003;

(2) \$2,000,000 in fiscal year 2004; and

(3) such sums as are necessary in fiscal years 2005 through 2007.

SEC. 3214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to improve how information technology is used in coordinating and facilitating information on disaster preparedness, response, and recovery, while ensuring the availability of such information across multiple access channels.

(b) IN GENERAL.—

(1) STUDY ON ENHANCEMENT OF CRISIS RESPONSE.—Not later than 90 days after the date of enactment of this Act, the Federal Emergency Management Agency shall enter into a contract to conduct a study on using information technology to enhance crisis preparedness, response, and consequence management of natural and manmade disasters.

(2) CONTENTS.—The study under this subsection shall address—

(A) a research and implementation strategy for effective use of information technology in crisis response and consequence

management, including the more effective use of technologies, management of information technology research initiatives, and incorporation of research advances into the information and communications systems of—

(i) the Federal Emergency Management Agency; and

(ii) other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management; and

(B) opportunities for research and development on enhanced technologies into areas of potential improvement as determined during the course of the study.

(3) REPORT.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Federal Emergency Management Agency shall submit a report on the study, including findings and recommendations to—

(A) the Committee on Governmental Affairs of the Senate; and

(B) the Committee on Government Reform of the House of Representatives.

(4) INTERAGENCY COOPERATION.—Other Federal departments and agencies with responsibility for disaster relief and emergency assistance shall fully cooperate with the Federal Emergency Management Agency in carrying out this section.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Emergency Management Agency for research under this subsection, such sums as are necessary for fiscal year 2003.

(c) PILOT PROJECTS.—Based on the results of the research conducted under subsection (b), the Federal Emergency Management Agency shall initiate pilot projects or report to Congress on other activities that further the goal of maximizing the utility of information technology in disaster management. The Federal Emergency Management Agency shall cooperate with other relevant agencies, and, if appropriate, State, local, and tribal governments, in initiating such pilot projects.

SEC. 3215. DISPARITIES IN ACCESS TO THE INTERNET.

(a) STUDY AND REPORT.—

(1) STUDY.—Not later than 90 days after the date of enactment of this Act, the Director of the National Science Foundation shall request that the National Academy of Sciences, acting through the National Research Council, enter into a contract to conduct a study on disparities in Internet access for online Government services.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Science Foundation shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a final report of the study under this section, which shall set forth the findings, conclusions, and recommendations of the National Research Council.

(b) CONTENTS.—The report under subsection (a) shall include a study of—

(1) how disparities in Internet access influence the effectiveness of online Government services, including a review of—

(A) the nature of disparities in Internet access;

(B) the affordability of Internet service;

(C) the incidence of disparities among different groups within the population; and

(D) changes in the nature of personal and public Internet access that may alleviate or aggravate effective access to online Government services;

(2) how the increase in online Government services is influencing the disparities in Internet access and how technology development or diffusion trends may offset such adverse influences; and

(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.

(c) **RECOMMENDATIONS.**—The report shall include recommendations on actions to ensure that online Government initiatives shall not have the unintended result of increasing any deficiency in public access to Government services.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the National Science Foundation \$950,000 in fiscal year 2003 to carry out this section.

SEC. 3216. NOTIFICATION OF OBSOLETE OR COUNTERPRODUCTIVE PROVISIONS.

If the Director of the Office of Management and Budget makes a determination that any provision of this division (including any amendment made by this division) is obsolete or counterproductive to the purposes of this Act, as a result of changes in technology or any other reason, the Director shall submit notification of that determination to—

(1) the Committee on Governmental Affairs of the Senate; and

(2) the Committee on Government Reform of the House of Representatives.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

SEC. 3301. INFORMATION SECURITY.

(a) **ADDITION OF SHORT TITLE.**—Subtitle G of title X of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-266) is amended by inserting after the heading for the subtitle the following new section:

“SEC. 1060. SHORT TITLE.

“This subtitle may be cited as the ‘Government Information Security Reform Act’.”

(b) **CONTINUATION OF AUTHORITY.**—

(1) **IN GENERAL.**—Section 3536 of title 44, United States Code, is repealed.

(2) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3536.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

Except for those purposes for which an authorization of appropriations is specifically provided in title XXXI or XXXII, including the amendments made by such titles, there are authorized to be appropriated such sums as are necessary to carry out titles XXXI and XXXII for each of fiscal years 2003 through 2007.

SEC. 3402. EFFECTIVE DATES.

(a) **TITLES XXXI AND XXXII.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), titles XXXI and XXXII and the amendments made by such titles shall take effect 120 days after the date of enactment of this Act.

(2) **IMMEDIATE ENACTMENT.**—Sections 3207, 3214, 3215, and 3216 shall take effect on the date of enactment of this Act.

(b) **TITLES XXXIII AND XXXIV.**—Title XXXIII and this title shall take effect on the date of enactment of this Act.

SA 4624. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 114, between lines 5 and 6, insert the following new section:

“SEC. 140. UNITED STATES COAST GUARD.

(a) **TRANSFER.**—There are transferred to the Department the authorities, functions, personnel, and assets of the United States Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(b) **PRESERVING COAST GUARD MISSION PERFORMANCE.**—

(1) **DEFINITIONS.**—In this section:

(A) **NON-HOMELAND SECURITY MISSIONS.**—The term “non-homeland security missions” means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (e.g. fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) **HOMELAND SECURITY MISSIONS.**—The term “homeland security missions” means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) **MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.**—Notwithstanding any other provision of this Act, the authorities, functions, assets (including ships, aircraft, helicopters, vehicles, the National Distress Response System, and other command/control/communications/computers/intelligence/surveillance/reconnaissance capabilities), organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts: *Provided*, That, nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(3) **CERTAIN TRANSFERS PROHIBITED.**—

(A) None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, vehicles, the National Distress Response System, and other command/control/communications/computers/intelligence/surveillance/reconnaissance capabilities) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(B) The restrictions in the previous paragraph shall not apply—

(1) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(ii) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization: *Provided*, That the total number of individuals detailed or assigned in this capacity may not exceed 50 during any fiscal year.

(4) **CHANGES TO NON-HOMELAND SECURITY MISSIONS.**—

(A) **PROHIBITION.**—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in subsequent Act: *Provided*, That, with respect to a change to the capabilities of the

Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(B) **WAIVER.**—The President may waive the restrictions under paragraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the National and the Coast Guard cannot respond effectively to the national emergency if the restrictions under paragraph (A) are not waived.

(5) **ANNUAL REVIEW.**—

(A) **IN GENERAL.**—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) **REPORT.**—The Inspector General shall submit the detailed results of the annual review and assessment required by the preceding not later than March 1 of each year directly to:

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) **DIRECTOR REPORTING TO SECRETARY.**—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) **COORDINATION WITH DEPARTMENT OF TRANSPORTATION.**—The Coast Guard shall continue to coordinate with the Department of Transportation concerning regulatory matters that will remain under the authority of the Department of Transportation, but for which the Coast Guard has enforcement or other authority.

(8) **CONSULTATION WITH COMMISSION ON OCEAN POLICY.**—The Secretary shall consult with the Commission on Ocean Policy not later than February 1, 2003 regarding plans for integration and maintenance of living marine resources, marine environmental protection, and aids to navigation missions within the Department, and with respect to coordination with other federal agencies having authority in such areas.

(9) **RESOURCE EVALUATION.**—

(A) **IN GENERAL.**—No later than 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit a report to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives, that—

(i) compares Coast Guard expenditures by mission area on an annualized basis before and after the terrorist attacks of September 11, 2001;

(ii) estimates—

(A) annual funding amounts and personnel levels that would restore all Coast Guard

mission areas to the readiness levels that existed before September 11, 2001;

(B) annual funding amounts and personnel levels required to fulfill the Coast Guard's additional responsibilities for homeland security missions after September 11, 2001; and

(iii) generally describes the services provided by the Coast Guard to the Department of Defense after September 11, 2001, states the cost of such services and identifies the Federal agency or agencies providing funds of those services.

(B) ANNUAL REPORT.—Within 30 days after the end of each fiscal year, the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House a report identifying resource allocations on an hourly and monetary basis for each non-homeland security and homeland security Coast Guard mission for the fiscal year just ended.

(10) STRATEGIC PLAN.—(A) Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit a strategic plan to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House identifying mission targets for each Coast Guard mission for fiscal years 2003, 2004 and 2005 and the specific steps necessary to achieve those targets. Such plan shall also provide an analysis and recommendations for maximizing the efficient use of Federal resources and technologies to achieve all mission requirements.

(B) The Commandant shall consult with the Secretary of Commerce and other relevant agencies to ensure the plan provides for, e.g. coordinated development and application of communications and other technologies for use in meeting non-homeland security mission targets, such as conservation and management of living marine resources, and for setting priorities for fisheries enforcement.

(C) The Inspector General shall review the final plan, and provide an independent report with its views to the Committees within 90 days after the plan has been submitted by the Commandant.

(11) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(12) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—No later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SA 4625. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOL-

LINGS) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, strike lines 13 through 15.

SA 4626. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLINGS) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 48, strike lines 1 on page 52.

SA 4627. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLINGS) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 1, insert after the comma the Commandant of the Coast Guard,".

SA 4628. Mr. SCHUMER (for himself and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 132, add the following:

(h) FEDERAL-LOCAL LAW ENFORCEMENT INFORMATION SHARING.—

(1) AUTHORITY TO SHARE GRAND JURY INFORMATION.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended—

(A) in clause (i)(V), by inserting after "national security official" the following: "or to law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)"; and

(B) in clause (iii)—

(i) by striking "Federal"; and

(ii) by adding at the end the following: "Information referred to in this clause that is shared with local authorities shall be shared only for the purpose of investigating or preventing international or domestic terrorism (as those terms are defined in section 2331 of title 18, United States Code) or a Federal crime of terrorism (as that term is defined in section 2332b of title 18, United States Code). Any chief executive officer or law enforcement personnel of a State or political subdivision of a State who receives information pursuant to clause (i)(V), shall only use that information consistent with such regulations as the Attorney General shall promulgate to protect confidentiality.".

(2) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—Section 2517 of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting "or such derivative evidence" after "such contents";

(B) in paragraph (2), by inserting "or such derivative evidence" after "such contents"; and

(C) in paragraph (6)—

(i) in the first sentence, by inserting after "national security official" the following:

"or to law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)";

(ii) in the second sentence, by striking "Federal"; and

(iii) by adding at the end the following: "Information referred to in this paragraph that is shared with local authorities shall be shared only for the purpose of investigating or preventing international or domestic terrorism (as those terms are defined in section 2331) or a Federal crime of terrorism (as that term is defined in section 2332b). Any chief executive officer or law enforcement personnel of a State or political subdivision of a State who receives information pursuant to this paragraph shall only use that information consistent with such regulations as the Attorney General shall promulgate to protect confidentiality.".

(3) FOREIGN INTELLIGENCE INFORMATION.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Public Law 107-56) is amended—

(A) in the first sentence, by inserting after "national security official" the following: "or to law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)";

(B) in the second sentence, by striking "Federal"; and

(C) by adding at the end the following: "Information referred to in this paragraph that is shared with local authorities shall be shared only for the purpose of investigating or preventing international or domestic terrorism (as those terms are defined in section 2331 of title 18, United States Code) or a Federal crime of terrorism (as that term is defined in section 2332b of title 18, United States Code). Any chief executive officer or law enforcement personnel of a State or political subdivision of a State who receives information pursuant to this paragraph shall only use that information consistent with such regulations as the Attorney General shall promulgate to protect confidentiality.".

(4) INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.—Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)";

(5) INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.—Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)";

SA 4629. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland

Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, before line 1, insert the following:

(STATE) The term "state" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

SA 4630. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 164, between lines 19 and 20, insert the following:

(f) Report on Office consolidation: Not later than one year after the date of enactment of this Act, the Secretary shall issue a report to Congress on the feasibility of consolidating and co-locating (1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such offices are located in the same municipality; and (2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

SA 4631. Mr. LIEBERMAN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, insert between lines 9 and 10 the following:

TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 601. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the "Commission").

SEC. 602. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 603. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 604. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments

and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 605. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 606. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 607. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to

exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 608. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 609. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title \$3,000,000, to remain available until expended.

SA 4632. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 13 and 14, insert the following:

(10) Net Guard: The Under Secretary for Critical Infrastructure Protection may establish a national technology guard, to be known as "Net Guard" comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

On page 67, line 14, delete (10) and insert (11).

SA 4633. Mr. LIEBERMAN submitted an amendment intended to be proposed

to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, between lines 14 and 15, insert the following:

Sec. 199. Requirement to Comply with Laws Protecting Equal Employment Opportunity and Providing Whistleblower Protections.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee, Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107-174); or (2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) of such title and Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.

SA 4634. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On Page 14, after line 25, insert the following:

(F) Ensuring that Federal, State, and local entities share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SA 4635. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SENSE OF THE CONGRESS.—It is the Sense of the Congress that the Department of Homeland Security shall comply with all laws protecting the civil rights and civil liberties of U.S. persons.

SA 4636. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

It is the Sense of the Congress that the Department of Homeland Security shall comply with all laws protecting the privacy of U.S. persons.

SA 4637. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new title:

TITLE —HOMELAND SECURITY INFORMATION SHARING ACT

SEC. 01. SHORT TITLE.

This title may be cited as the “Homeland Security Information Sharing Act”.

SEC. 02. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 03. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PRESIDENTIAL PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—(1) The President shall prescribe procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what

extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the dissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the

Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into non-disclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this title with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—In this section:

(1) The term “homeland security information” means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

SEC. 04. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of

this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section ____03. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section ____03, to increase the effectiveness of sharing of information among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. ____05. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section ____03.

SA 4638. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 210, between lines 9 and 10, insert the following:

SEC. 512. AIRPORT SECURITY SCREENER STANDARDS AND TRAINING.

(a) IN GENERAL.—Section 44935(e)(2) of title 49, United States Code, is amended—

(1) by striking “States;” in subparagraph (A)(i) and inserting “States or described in subparagraph (C);”;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

“(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

“(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

“(ii) was born in a territory of the United States;

“(iii) was honorably discharged from service in the Armed Forces of the United States; or

“(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107-71).”

(b) CORRECTION OF SUBSECTION DESIGNATION.—Subsection (i) of section 44935 of title 49, United States Code, relating to accessibility of computer-based training facilities, is redesignated as subsection (k).

SA 4639. Mrs. FEINSTEIN (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 13 and 14, insert the following:

SEC. 173. SEAPORT AND CONTAINER SECURITY.

(a) PERSONAL RADIATION DETECTION PAGERS.—Not later than 180 days after the

date of enactment of this Act, the Secretary shall require that Customs Service officers and other appropriate law enforcement officers at United States seaports be provided with and use personal radiation detection pagers to increase the ability of such officers to accurately detect radioactive materials that could be used to commit terrorist acts in the United States.

(b) RESEARCH AND DEVELOPMENT GRANTS FOR PORT SECURITY.—

(1) AUTHORITY.—The Secretary is authorized to award grants to eligible entities for research and development of technologies that can be used to secure the ports of the United States.

(2) USE OF FUNDS.—Grants awarded pursuant to paragraph (1) shall be used to develop technologies to improve seals and sensors for cargo containers so that it is possible to—

(A) immediately detect tampering with the seal or sensor;

(B) immediately detect tampering with the walls, ceiling, or floor of the container that indicates a person is attempting to improperly access the container; and

(C) transmit information regarding tampering with the seal, walls, ceiling, or floor of the container in real time to the appropriate authorities at a remote location.

(3) APPLICATION FOR GRANTS.—Each entity desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(4) DEFINITIONS.—In this subsection:

(A) CONTAINER.—The term “container” means a container that is used or designed for use for the international transportation of merchandise by vessel, vehicle, or aircraft.

(B) ELIGIBLE ENTITY.—The term “eligible entity” means any national laboratory, non-profit private organization, institution of higher education, or other entity that the Secretary determines is eligible to receive a grant authorized by paragraph (1).

(C) VESSEL.—The term “vessel” has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$5,000,000 for each of the fiscal years 2003 through 2007 to carry out the provisions of this subsection.

SA 4640. Mrs. FEINSTEIN (for herself, Mr. BOND, and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In division A, redesignate title VI as title VII, and section 601 as section 701, and insert after title V the following new title VI:

TITLE VI—NATIONAL GUARD

SEC. 601. SHORT TITLE.

This title may be cited as the “Guaranteeing a United and Resolute Defense Act of 2002” or the “GUARD Act of 2002”.

SEC. 602. FUNDING ASSISTANCE FOR HOMELAND SECURITY ACTIVITIES OF THE NATIONAL GUARD.

(a) IN GENERAL.—Chapter 1 of title 32, United States Code, is amended by inserting after section 112 the following new section:

“§ 112a. Homeland security activities

“(a) FUNDING ASSISTANCE.—(1) The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a homeland security activities plan satisfying the requirements of subsection (b).

“(2) To be eligible for assistance under this subsection, a State shall have a homeland security activities plan in effect.

“(3) Any funds provided to a State under this subsection shall be used for the following:

“(A) Pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of the State for service performed for the purpose of homeland security while not in Federal service.

“(B) Operation and maintenance of the equipment and facilities of the National Guard of the State that are used for the purpose of homeland security.

“(C) Procurement of services and the purchase or leasing of equipment for the National Guard of the State for use for the purpose of homeland security.

“(b) HOMELAND SECURITY ACTIVITIES PLAN REQUIREMENTS.—The homeland security activities plan of a State—

“(1) shall specify how personnel and equipment of the National Guard of the State are to be used in homeland security activities and include a detailed explanation of the reasons why the National Guard should be used for the specified activities;

“(2) shall describe in detail how any available National Guard training facilities, including any distance learning programs and projects, are to be used;

“(3) shall include the Governor’s certification that the activities under the plan are to be conducted at a time when the personnel involved are not in Federal service;

“(4) shall include the Governor’s certification that participation by National Guard personnel in the activities under the plan is service in addition to training required under section 502 of this title;

“(5) shall include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law;

“(6) shall include the Governor’s certification that the Governor or a civilian law enforcement official of the State designated by the Governor has determined that any activities to be carried out in conjunction with Federal law enforcement agencies under the plan serve a State law enforcement purpose; and

“(7) may provide for the use of personnel and equipment of the National Guard of that State to assist the Directorate of Immigration Affairs of the Department of Homeland Security in the transportation of aliens who have violated a Federal or State law prohibiting terrorist acts.

“(c) EXAMINATION AND APPROVAL OF PLAN.—The Secretary of Defense shall examine the adequacy of each homeland security activities plan of a State and, if the plan is determined adequate, approve the plan.

“(d) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to Congress each year a report on the assistance provided under this section during the preceding fiscal year, including the activities carried out with such assistance.

“(2) The annual report under this subsection shall include the following:

“(A) A description of the homeland security activities conducted under the homeland security activities plans with funds provided under this section.

“(B) An accounting of the funds provided to each State under this section.

“(C) An analysis of the effects on military training and readiness of using units and personnel of the National Guard to perform

activities under the homeland security activities plans.

“(e) **STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed as limiting the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

“(f) **DEFINITIONS.**—In this section:

“(1) The term ‘Governor’, in the case of the District of Columbia, means the commanding general of the National Guard of the District of Columbia.

“(2) The term ‘homeland security activities’, with respect to the National Guard of a State, means the use of National Guard personnel, when authorized by the law of the State and requested by the Governor of the State, to prevent, deter, defend against, and respond to an attack or threat of attack on the people and territory of the United States.

“(3) The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 1 of such title is amended by inserting after the item relating to section 112 the following new item:

“112a. Homeland security activities.”

SA 4641. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill (H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 265, strike line 6 and all that follows through line 9 on page 305 and insert the following:

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the “Unaccompanied Alien Child Protection Act of 2002”.

SEC. 1202. DEFINITIONS.

(a) **IN GENERAL.**—In this title:

(1) **DIRECTOR.**—The term “Director” means the Director of the Office.

(2) **OFFICE.**—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) **SERVICE.**—The term “Service” means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security (or, prior to the effective date of title XI, the Attorney General).

(5) **UNACCOMPANIED ALIEN CHILD.**—The term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(6) **VOLUNTARY AGENCY.**—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) **AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.**—Section 101(a) (8 U.S.C.

1101(a)) is amended by adding at the end the following new paragraphs:

“(53) The term ‘unaccompanied alien child’ means a child who—

“(A) has no lawful immigration status in the United States;

“(B) has not attained the age of 18; and

“(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

“(54) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—

“(A) have not attained the age of 18; and

“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) **IN GENERAL.**—

(1) **RESPONSIBILITIES OF THE OFFICE.**—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) **DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.**—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office’s custody and care, which shall include—

(i) biographical information such as the child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) **DUTIES WITH RESPECT TO FOSTER CARE.**—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) **POWERS.**—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(5) **AUTHORITY TO HIRE PERSONNEL.**—The Director is authorized to hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. In hiring such personnel, the Director may seek the transfer of personnel employed by the Department of Justice in connection with the functions transferred by section 1213.

(b) **NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.**—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) **ESTABLISHMENT.**—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) **COMPOSITION.**—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Commissioner of Immigration and Naturalization (or, upon the effective date of title XI, the Under Secretary of Homeland Security for Immigration Affairs).

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) **CHAIRMAN.**—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) **ACTIVITIES OF THE TASK FORCE.**—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) **TRANSFER OF FUNCTIONS.**—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by

statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) **TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) **LEGAL DOCUMENTS.**—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) **PROCEEDINGS.**—

(1) **PENDING.**—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) **ORDERS.**—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) **DISCONTINUANCE OR MODIFICATION.**—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) **SUITS.**—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) **NONABATEMENT OF ACTIONS.**—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official ca-

capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) **CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.**—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) **ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.**—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect on the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) **UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.**—

(1) **IN GENERAL.**—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) **SPECIAL RULE FOR CONTIGUOUS COUNTRIES.**—

(A) **IN GENERAL.**—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) **RIGHT OF CONSULTATION.**—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) **RULE FOR APPREHENSIONS AT THE BORDER.**—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry

shall be treated in accordance with the provisions of subsection (b).

(b) **CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.**—

(1) **ESTABLISHMENT OF JURISDICTION.**—

(A) **IN GENERAL.**—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) **EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.**—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) **EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.**—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence that such child endangers the national security of the United States.

(D) **TRAFFICKING VICTIMS.**—For the purposes of this Act, an unaccompanied alien child who is receiving services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386), shall be considered to be in the custody of the Office.

(2) **NOTIFICATION.**—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) **TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.**—

(A) **TRANSFER TO THE OFFICE.**—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) **TRANSFER TO THE SERVICE.**—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) **AGE DETERMINATIONS.**—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) **PLACEMENT AUTHORITY.**—

(1) **ORDER OF PREFERENCE.**—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES.—The Director shall establish policies to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member or other appropriate disciplinary authorities for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under *Flores v. Reno*.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence

and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) **TERMINATION OF APPOINTMENT.**—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) **POWERS.**—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) **TRAINING.**—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) **ACCESS TO COUNSEL.**—

(1) **IN GENERAL.**—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) **PRO BONO REPRESENTATION.**—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) **GOVERNMENT FUNDED REPRESENTATION.**—

(A) **APPOINTMENT OF COMPETENT COUNSEL.**—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) **LIMITATION ON ATTORNEY FEES.**—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) **ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.**—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) **DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.**—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) **CONTRACTING AND GRANT MAKING AUTHORITY.**—

(A) **IN GENERAL.**—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) **INELIGIBILITY FOR GRANTS AND CONTRACTS.**—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency receiving funds under this subsection is a grantee or contractee for more than one of the following services:

(i) Services provided under section 1222.

(ii) Services provided under section 1231.

(iii) Services provided under paragraph (2).

(iv) Services provided under paragraph (3).

(b) **REQUIREMENT OF LEGAL REPRESENTATION.**—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) **DUTIES.**—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) **ACCESS TO CHILD.**—

(1) **IN GENERAL.**—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) **RESTRICTION ON TRANSFERS.**—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) **TERMINATION OF APPOINTMENT.**—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) **NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.**—

(1) **IN GENERAL.**—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall

be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) **OPPORTUNITY TO CONSULT WITH COUNSEL.**—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) **ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.**—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) **EFFECTIVE DATE.**—This subtitle shall take effect 180 days after the effective date of division A of this Act.

(b) **APPLICABILITY.**—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) **J VISA.**—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

“(J) an immigrant under the age of 18 on the date of application who is present in the United States—

“(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

“(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

“(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.”.

(b) **ADJUSTMENT OF STATUS.**—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

“(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply.”;

(2) in subparagraph (B), by striking the period and inserting “, and”; and

(3) by adding at the end the following new subparagraph:

“(C) the Secretary of Homeland Security (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.”.

(c) **ELIGIBILITY FOR ASSISTANCE.**—A child who has been granted relief under section

101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of such Act until such time as the child attains the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its "Guidelines for Children's Asylum Claims", dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the "Guidelines for Children's Asylum Claims" in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the "Guidelines for Children's Asylum Claims" to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

"(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

"(A) the number of unaccompanied refugee children, by region;

"(B) the capacity of the Department of State to identify such refugees;

"(C) the capacity of the international community to care for and protect such refugees;

"(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

"(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

"(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible."

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking "and" after "countries,"; and

(2) inserting before the period at the end the following: ", and instruction on the needs of unaccompanied refugee children".

(c) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(1) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review (or its successor entity), in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(2) PURPOSE OF GUIDELINES.—Such guidelines shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(3) IMPLEMENTATION.—The Executive Office for Immigration Review (or its successor entity) shall adopt such guidelines and submit them for adoption by national, State, and local bar associations.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

SA 4642. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Transportation Security Administration shall submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result

(particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology;

(3) assesses if and how soon this technology can be employed and whether a phase-in period is necessary; and

(4) if a phase-in period is determined to be necessary, recommends a phase-in schedule that is feasible.

SA 4643. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, strike line 20 and insert the following:

locomotives;

(4) \$20,000,000 for grants to finance the cost of facility security hardening and relocation; and

(5) \$2,000,000 for technological improvements for enhanced border crossings.

SA 4644. Mr. BYRD proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 7, line 4, strike all through page 173, line 14, and insert the following:

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term "agency"—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DEPARTMENT.—The term "Department" means the Department of Homeland Security established under title I.

(4) ENTERPRISE ARCHITECTURE.—The term "enterprise architecture"—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) FUNCTIONS.—The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(6) HOMELAND.—The term "homeland" means the United States, in a geographic sense.

(7) HOMELAND SECURITY.—The term "homeland security" means a concerted national effort to—

(A) prevent terrorist attacks within the United States;

(B) reduce America's vulnerability to terrorism; and

(C) minimize the damage and recover from terrorist attacks that do occur.

(8) **LOCAL GOVERNMENT.**—The term “local government” has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288).

(9) **RISK ANALYSIS AND RISK MANAGEMENT.**—The term “risk analysis and risk management” means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(10) **PERSONNEL.**—The term “personnel” means officers and employees.

(11) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(12) **UNITED STATES.**—The term “United States”, when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) **IN GENERAL.**—There is established the Department of National Homeland Security.

(b) **EXECUTIVE DEPARTMENT.**—Section 101 of title 5, United States Code, is amended by adding at the end the following:

“The Department of Homeland Security.”.

(c) **MISSION OF DEPARTMENT.**—

(1) **HOMELAND SECURITY.**—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) **OTHER MISSIONS.**—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) **SEAL.**—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate. All authorities, functions, and responsibilities transferred to the Department shall be vested in the Secretary.

(b) **RESPONSIBILITIES.**—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop a comprehensive strategy for combating terrorism and the homeland security response.

(4) To make budget recommendations relating to the border and transportation secu-

ity, infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities; and

(D) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to homeland security.

(B) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, includ-

ing contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 182; and

(B) each biennial report required under section 192(b).

(c) **MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.**—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

“(5) the Secretary of Homeland Security; and

“(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.”.

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) **IN GENERAL.**—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) **IN GENERAL.**—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and

(2) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services,”.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE
DEPARTMENT OF HOMELAND SECURITY

“SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the “Inspector General”) shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the “Secretary”) with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

“(A) intelligence or counterintelligence matters;

“(B) ongoing criminal investigations or proceedings;

“(C) undercover operations;

“(D) the identity of confidential sources, including protected witnesses;

“(E) other matters the disclosure of which would constitute a serious threat to the pro-

tection of any person or property authorized protection by—

“(i) section 3056 of title 18, United States Code;

“(ii) section 202 of title 3, United States Code; or

“(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

“(F) other matters the disclosure of which would constitute a serious threat to national security.

“(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

“(A) prevent the disclosure of any information described under paragraph (1);

“(B) preserve the national security; or

“(C) prevent significant impairment to the national interests of the United States.

“(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

“(A) the President of the Senate;

“(B) the Speaker of the House of Representatives;

“(C) the Committee on Governmental Affairs of the Senate;

“(D) the Committee on Government Reform of the House of Representatives; and

“(E) other appropriate committees or subcommittees of Congress.

“(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

“(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

“(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

“(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

“(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

“(1) the President of the Senate;

“(2) the Speaker of the House of Representatives;

“(3) the Committee on Governmental Affairs of the Senate; and

“(4) the Committee on Government Reform of the House of Representatives.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking “8F” each place it appears and inserting “8G”; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking “or 8H” and inserting “, 8H, or 8I”.

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) The Department of Homeland Security.”.

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

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

“Secretary of Homeland Security.”.

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Secretary of Homeland Security.”.

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Management, Department of Homeland Security.”.

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretaries of Homeland Security (5).”

“Inspector General, Department of Homeland Security.”

“Chief Financial Officer, Department of Homeland Security.”

“Chief Information Officer, Department of Homeland Security.”

“General Counsel, Department of Homeland Security.”.

Subtitle B—Establishment of Directorates and Offices**SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.**

(a) ESTABLISHMENT.—There is established within the Department the Directorate of Border and Transportation Protection.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) EXERCISE OF CUSTOMS REVENUE AUTHORITY.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The

Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITION OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term “customs revenue functions” means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for “entry” as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(d) PRESERVING COAST GUARD MISSION PERFORMANCE.—

(1) DEFINITIONS.—In this subsection:

(A) NON-HOMELAND SECURITY MISSIONS.—The term “non-homeland security missions” means the following missions of the Coast Guard:

- (i) Marine safety.
- (ii) Search and rescue.
- (iii) Aids to navigation.
- (iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) HOMELAND SECURITY MISSIONS.—The term “homeland security missions” means the following missions of the Coast Guard:

- (i) Ports, waterways and coastal security.
- (ii) Drug interdiction.
- (iii) Migrant interdiction.
- (iv) Defense readiness.
- (v) Other law enforcement.

(2) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) CERTAIN TRANSFERS PROHIBITED.—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(A) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act.

(B) WAIVER.—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) ANNUAL REVIEW.—

(A) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) REPORT.—The report under this paragraph shall be submitted not later than March 1 of each year to—

- (i) the Committee on Governmental Affairs of the Senate;
- (ii) the Committee on Government Reform of the House of Representatives;
- (iii) the Committees on Appropriations of the Senate and the House of Representatives;
- (iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) ESTABLISHMENT.—There is established within the Department a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) ESTABLISHMENT.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) ESTABLISHMENT.—There is established within the Department a Directorate of Science and Technology.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology.

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

- (1) coordinate the activities of the Department relating to State and local government;
- (2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;
- (3) provide State and local government with regular information, research, and tech-

nical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) CHIEF HOMELAND SECURITY LIAISON OFFICER.—

(A) APPOINTMENT.—The Secretary shall appoint a Chief Homeland Security Liaison Officer to coordinate the activities of the Homeland Security Liaison Officers, designated under paragraph (2).

(B) ANNUAL REPORT.—The Chief Homeland Security Liaison Officer shall prepare an annual report, that contains—

- (i) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(ii) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(iii) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(iv) proposals to increase the coordination of Department priorities within each State and between the States.

(2) HOMELAND SECURITY LIAISON OFFICERS.—

(A) DESIGNATION.—The Secretary shall designate in each State not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State; and

(ii) provide coordination between the Department and State and local first responders, including—

- (I) law enforcement agencies;
- (II) fire and rescue agencies;
- (III) medical providers;
- (IV) emergency service providers; and
- (V) relief agencies.

(B) DUTIES.—Each Homeland Security Liaison Officer designated under subparagraph (A) shall—

(i) ensure coordination between the Department and—

- (I) State, local, and community-based law enforcement;
- (II) fire and rescue agencies; and
- (III) medical and emergency relief organizations;

(ii) identify State and local areas requiring additional information, training, resources, and security;

(iii) provide training, information, and education regarding homeland security for State and local entities;

(iv) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(v) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(vi) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner; and

(vii) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security.

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders, that shall—

(A) ensure coordination among the Federal agencies involved with—

(i) State, local, and community-based law enforcement;

(ii) fire and rescue operations; and

(iii) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee on First Responders shall be composed of—

(A) the Chief Homeland Security Liaison Officer of the Department;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee on First Responders.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee on First Responders and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee on First Responders shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee on First Responders shall meet—

(A) at the call of the Chief Homeland Security Liaison Officer of the Department; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Federal Interagency Committee on First Responders (in this section referred to as the “Advisory Council”).

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 mem-

bers, selected by the Interagency Committee on First Responders.

(B) REPRESENTATION.—The Interagency Committee on First Responders shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee on First Responders not less frequently than once every 3 months.

SEC. 138. BORDER COORDINATION WORKING GROUP.

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term “border security functions” means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term “relevant agencies” means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in this section referred to as the “Working Group”), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 139. LEGISLATIVE PROPOSALS AND SUPPORTING AND ENABLING LEGISLATION.

(a) DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.—Not earlier than February 3, 2003, the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Border and Transportation Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Border and Transportation Protection, to provide for homeland security.

(b) DIRECTORATE OF INTELLIGENCE AND DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (a), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection, to provide for homeland security.

(c) DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE AND DIRECTORATE OF SCIENCE AND TECHNOLOGY.—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (b), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology, to provide for homeland security.

(d) SAVINGS AND ADMINISTRATIVE PROVISIONS OF SUPPORTING AND ENABLING LEGISLATION.—Sections 183, 184, and 194 shall apply to any supporting and enabling legislation described under subsection (a), (b), or (c) enacted after the date of enactment of this Act.

(e) DEADLINE FOR CONGRESSIONAL ACTION.—Not later than 13 months after the date of enactment of this Act, the Congress shall complete action on all supporting and enabling legislation described under subsection (a), (b), or (c).

SEC. 140. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Border and Transportation, Department of Homeland Security.

“Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

“Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

“Under Secretary for Immigration, Department of Homeland Security.

“Under Secretary for Intelligence, Department of Homeland Security.

“Under Secretary for Science and Technology, Department of Homeland Security.”.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the “National Emergency Preparedness Enhancement Act of 2002”.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the “Clearinghouse”). The Clearinghouse shall be headed by a Director.

(b) **CONSULTATION.**—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to homeland security.

(c) **DUTIES.**—

(1) **DISSEMINATION OF INFORMATION.**—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) **CENTER.**—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) **PUBLIC AWARENESS CAMPAIGN.**—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) **BEST PRACTICES INFORMATION.**—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) **EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.**—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) **USE OF FUNDS.**—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) **FEDERAL SHARE.**—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of \$250,000 per grant recipient.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$5,000,000 for each of fiscal years 2003 through 2010 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) **NATIONAL WEEK.**—

(1) **DESIGNATION.**—Each week that includes September 11 is "National Emergency Preparedness Week".

(2) **PROCLAMATION.**—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) **FEDERAL AGENCY ACTIVITIES.**—In conjunction with National Emergency Preparedness Week, the head of each agency, as ap-

propriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) **ESTABLISHMENT.**—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the "Center").

(b) **MISSION.**—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) **REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.**—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) **CONTENTS.**—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) **RESPONSE OF THE SECRETARY.**—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) **FINDINGS.**—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) **EXCHANGE OF EMPLOYEES.**—

(1) **IN GENERAL.**—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) **CONDITIONS.**—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking "(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law," and inserting the following:

"(d) SCREENER PERSONNEL.—

"(1) **IN GENERAL.**—Notwithstanding any other provision of law (except as provided under paragraph (2)),"; and

(2) by adding at the end the following:

"(2) **WHISTLEBLOWER PROTECTION.**—

"(A) **DEFINITION.**—In this paragraph, the term "security screener" means—

"(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

"(ii) an applicant for the position of a security screener under that subsection.

"(B) **IN GENERAL.**—Notwithstanding paragraph (1)—

"(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

"(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

"(C) **COVERED POSITION.**—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph."

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) **IN GENERAL.**—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking "(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier" and inserting the following:

"(a) **DISCRIMINATION AGAINST EMPLOYEES.**—

"(1) **IN GENERAL.**—No air carrier, contractor, subcontractor, or employer described under paragraph (2)";

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

“(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

“(A) an air carrier or contractor or subcontractor of an air carrier;

“(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

“(C) an employer of private screening personnel described in section 44919 or 44920 of this title.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”;

(2) in clause (iii), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”.

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472-4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

“(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

“(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the ‘Division’).

“(2) MISSION.—The Division shall have the following primary missions:

“(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

“(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

“(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

“(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

“(A) The Bioterrorism Preparedness and Response Program.

“(B) The Strategic National Stockpile.

“(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

“(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

“(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

“(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

“(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.”

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under section 102(b)(14) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) \$375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) \$778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) \$55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

“(c) PERSONNEL GRANTS.—

“(1) EXCLUSION.—Grants awarded under subsection (b) to hire ‘employees engaged in fire protection’, as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

“(2) DURATION.—Grants awarded under paragraph (1) shall be for a 3-year period.

“(3) MAXIMUM AMOUNT.—The total amount of grants awarded under paragraph (1) shall not exceed \$100,000 per firefighter, indexed for inflation, over the 3-year grant period.

“(4) FEDERAL SHARE.—

“(A) IN GENERAL.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

“(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

“(5) APPLICATION.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

“(A) an explanation for the need for Federal assistance; and

“(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

“(6) MAINTENANCE OF EFFORT.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.”; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

“(3) \$1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).”

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities;

(2) review all available information on vulnerabilities at aviation, seaport, rail and transit facilities; and

(3) review the steps taken by agencies since September 11, 2001, to improve aviation, seaport, rail, and transit security to determine their effectiveness at protecting passengers and transportation infrastructure from terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress and the Secretary a comprehensive report containing—

(1) the findings and conclusions from the reviews conducted under subsection (a); and

(2) proposed steps to improve any deficiencies found in aviation, seaport, rail, and transit security including, to the extent possible, the cost of implementing the steps.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(1) the response of the Department to the recommendations of the report; and

(2) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) **TIMETABLES.**—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) **IMPLEMENTATION.**—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) **AGENCY COOPERATION.**—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) **CONTENT.**—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

- (1) rapid deployment;
- (2) a highly secure environment, providing data access only to authorized users; and
- (3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) **UPDATED VERSIONS.**—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) **REPORT.**—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) **CONSULTATION.**—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) **PRINCIPAL OFFICER.**—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

SEC. 172. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) **IN GENERAL.**—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) **INVERTED DOMESTIC CORPORATION.**—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) **DEFINITIONS AND SPECIAL RULES.**—For purposes of this section—

(1) **RULES FOR APPLICATION OF SUBSECTION (b).**—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) **CERTAIN STOCK DISREGARDED.**—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) **PLAN DEEMED IN CERTAIN CASES.**—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) **CERTAIN TRANSFERS DISREGARDED.**—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) **SPECIAL RULE FOR RELATED PARTNERSHIPS.**—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) **TREATMENT OF CERTAIN RIGHTS.**—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) **EXPANDED AFFILIATED GROUP.**—The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) **FOREIGN INCORPORATED ENTITY.**—The term “foreign incorporated entity” means

any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) **OTHER DEFINITIONS.**—The terms “person”, “domestic”, and “foreign” have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) **WAIVER.**—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

(e) **EFFECTIVE DATE.**—This section shall take effect 1 day after the date of enactment of this Act.

SEC. 173. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “September 30, 2003” and inserting “March 31, 2004”.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) **AGENCY.**—The term “agency” includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) **TRANSITION PERIOD.**—The term “transition period” means the 1-year period beginning on the effective date of this division.

SEC. 182. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) **IN GENERAL.**—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) **REPORT FREQUENCY.**—

(1) **INITIAL REPORT.**—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) **SEMIANNUAL REPORTS.**—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) **FINAL REPORT.**—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) **CONTENTS.**—

(1) **IN GENERAL.**—Each implementation progress report shall report on the progress made in implementing titles I, II, III, and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) **SPECIFICATIONS.**—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 183. SAVINGS PROVISIONS.

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

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

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

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

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

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

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

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any ad-

ministrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) EMPLOYEE RIGHTS.—

(A) TRANSFERRED AGENCIES.—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(B) TRANSFERRED EMPLOYEES.—An employee transferred to the Department under this Act, who was in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section unless—

(i) the primary job duty of the employee is materially changed after the transfer; and

(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) TRANSFERRED FUNCTIONS.—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this Act or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) OTHER AGENCIES, EMPLOYEES, AND FUNCTIONS.—

(i) EXCLUSION OF SUBDIVISION.—Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) EXCLUSION OF EMPLOYEE.—Subject to subparagraphs (B) and (C), an employee of the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(E) PRIOR EXCLUSION.—Subparagraphs (A) through (D) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(2) TERMS AND CONDITIONS OF EMPLOYMENT.—The transfer of an employee to the Department under this Act shall not alter

the terms and conditions of employment, including compensation, of any employee so transferred.

(3) **CONDITIONS AND CRITERIA FOR APPOINTMENT.**—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(4) **WHISTLEBLOWER PROTECTION.**—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) **NO EFFECT ON INTELLIGENCE AUTHORITIES.**—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 184. USE OF APPROPRIATED FUNDS.

(a) **APPLICABILITY OF THIS SECTION.**—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) **USE OF TRANSFERRED FUNDS.**—Except as may be provided in an appropriations Act in accordance with subsection (d), balances of appropriations and any other funds or assets transferred under this Act—

(1) shall be available only for the purposes for which they were originally available;

(2) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(3) shall not be used to fund any new position established under this Act.

(c) **NOTIFICATION REGARDING TRANSFERS.**—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(d) **ADDITIONAL USES OF FUNDS DURING TRANSITION.**—Subject to subsection (c), amounts transferred to, or otherwise made available to, the Department may be used during the transition period for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(e) **DISPOSAL OF PROPERTY.**—

(1) **STRICT COMPLIANCE.**—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) **DEPOSIT OF PROCEEDS.**—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(f) **GIFTS.**—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(g) **BUDGET REQUEST.**—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) **REORGANIZATION AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) **LIMITATION.**—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) **DELEGATION AUTHORITY.**—

(1) **SECRETARY.**—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) **OFFICERS.**—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) **LIMITATIONS.**—

(A) **INTERUNIT DELEGATION.**—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) **FUNCTIONS.**—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) **ANNUAL EVALUATIONS.**—The Comptroller General of the United States shall monitor and evaluate the implementation of titles I and XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 182;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) **BIENNIAL REPORTS.**—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) **POINT OF ENTRY MANAGEMENT REPORT.**—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) **RESULTS-BASED MANAGEMENT.**—

(1) **STRATEGIC PLAN.**—

(A) **IN GENERAL.**—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) **PERIOD; REVISIONS.**—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) **CONTENTS.**—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) **PERFORMANCE PLAN.**—

(A) **IN GENERAL.**—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) **CONTENTS.**—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) **SCOPE.**—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) **PERFORMANCE REPORT.**—

(A) **IN GENERAL.**—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) **CONTENTS.**—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) **IN GENERAL.**—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance

received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SEC. 195. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 196. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 197. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term “critical infrastructure” has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term “furnished voluntarily” means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term “benefit” does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 198. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

SA 4645. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In section 135(e)(2)(A), strike “agency with the advice and consent of the Under Secretary.” and insert “agency, in consultation with the Under Secretary.”.

SA 4646. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 135(c)(3), add the following:

(F) The Secretary may provide financial support, to a nonprofit, nongovernmental enterprise established by the Secretary for the purpose of identifying and investing in new technologies that show promise for homeland security applications.

SA 4647. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 135(g) and insert the following:

(g) OFFICE OF SYSTEMS ANALYSIS AND ASSESSMENT.—

(1) ESTABLISHMENT.—There is established an Office of System Analysis and Assessment within the Directorate of Science and Technology.

(2) FUNCTIONS.—The Office of Systems Analysis and Assessment shall—

(A) assist the Under Secretary in conducting or commissioning studies related to threat assessment and risk analysis, including—

(i) analysis of responses to terrorist incidents;

(ii) scenario-based threat assessment exercises and simulations;

(iii) red teaming to predict and discern the potential methods, means, and targets of terrorists; and

(iv) economic and policy analyses of alternative counterterrorism policies;

(B) identify vulnerabilities in complex systems and weaknesses due to interconnections between infrastructure systems;

(C) identify the potential impacts of multiple attacks occurring simultaneously;

(D) assist the Under Secretary in developing a human factors engineering program to ensure that the role of people in providing security is the result of systematic evaluations of human strengths and weaknesses that technology can both complement and supplement;

(E) support the development of standards and techniques to allow for the integrated management of data regardless of its source;

(F) develop a plan to ensure technologies are deployed and licensed effectively;

(G) develop life cycle cost estimates for deployed technologies;

(H) coordinate with other entities engaged in threat assessment and risk analysis, including those within the Department, such as the Directorate of Intelligence;

(I) monitor and evaluate novel scientific findings in order to assist the Under Secretary in developing and reassessing the research and development priorities of the Department;

(J) design metrics to evaluate the effectiveness of homeland security programs;

(K) support the Directorate of Emergency Preparedness and Response in designing field tests and exercises; and

(L) perform other appropriate activities as directed by the Under Secretary

SA 4648. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Insert at the appropriate place:

Ensuring that Federal, State, and local entities share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SA 4649. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Report on Office consolidation: Not later than one year after the date of enactment of this Act, the Secretary shall issue a report to Congress on the feasibility of consolidating and co-locating (1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such offices are located in the same municipality; and (2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions

that are transferred to the Secretary under this Act.

SA 4650. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

(STATE) The term “state” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

SA 4651. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Net Guard: The Undersecretary for Critical Infrastructure Protection may establish a national technology guard, to be known as “Net Guard” comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

On page 67, line 14, delete (10) and insert (11).

SA 4652. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Requirement to Comply with Laws Protecting Equal Employment Opportunity and Providing Whistleblower Protections.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Anti Discrimination and Retaliation Act of 2002 (Pub. L. 107-174) or (2) to provide whistleblower; protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) of such title and the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002.

SA 4653. Mr. DURBIN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 90, strike line 4, and all that follows through page 91, line 8, and insert the following:

(2) FUNCTIONS.—The Office of Risk Analysis and Assessment shall establish a comprehensive, risk-based program for assisting the Secretary to identify, prioritize, and manage the activities and resources necessary to combat terrorism and to assure homeland security. The Office shall assist the Secretary, the Under Secretary, and other Directorates with respect to their risk analysis and risk management activities by providing scientific or technical support for such activities. Such support shall include, as appropriate—

(A) identification and characterization of homeland security threats;

(B) evaluation and delineation of the risk of these threats;

(C) pinpointing of vulnerabilities or linked vulnerabilities to these threats;

(D) determination of criticality of possible threats;

(E) analysis of possible technologies, research, and protocols to mitigate or eliminate threats, vulnerabilities, and criticalities;

(F) evaluation of the effectiveness of various forms of risk communication; and

(G) other appropriate activities as directed by the Secretary.

(3) METHODS.—In performing the activities described under paragraph (2), the Office of Risk Analysis and Assessment may support or conduct, or commission from federally funded research and development centers or other entities, work involving modeling, statistical analyses, field tests and exercises (including red teaming), tested development, development of standards and metrics.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Risk Analysis and Assessment such sums as are necessary to carry out the purpose of this subsection, including \$15,000,000 in fiscal year 2003 to develop a comprehensive, risk-based process for identifying, prioritizing, and managing the activities and resources necessary to combat terrorism and to assure homeland security.

SA 4654. Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, and Mr. ALLEN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 114, between lines 20 and 21, insert the following:

SEC. 141. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Homeland Security Liaison Officers for Maryland, Virginia, and the District of Columbia within the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SA 4655. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill (H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE DISASTER RELIEF AND EMERGENCY ASSISTANCE

SEC. 01. SHORT TITLE.

This title may be cited as the “Homeland Security Block Grant Act of 2002”.

SEC. 02. FINDINGS.

Congress makes the following findings:

(1) In the wake of the September 11, 2001, terrorist attacks on our country, communities all across American now find themselves on the front lines in the war against terrorism on United States soil.

(2) We recognize that these communities will be forced to shoulder a significant portion of the burden that goes along with that responsibility. We believe that local governments should not have to bear that responsibility alone.

(3) Our homeland defense will only be as strong as the weakest link at the State and

local level. By providing our communities with the resources and tools they need to bolster emergency response efforts and provide for other emergency response initiatives, we will have a better-prepared home front and a stronger America.

SEC. 03. DEFINITIONS.

(a) DEFINITIONS.—In this title:

(1) DIRECTOR.—The term “Director” means the Director of the Federal Emergency Management Agency (FEMA).

(2) CITY.—The term “city” means—

(A) any unit of general local government that is classified as a municipality by the United States Bureau of the Census; or

(B) any other unit of general local government that is a town or township and which, in the determination of the Director—

(i) possesses powers and performs functions comparable to those associated with municipalities;

(ii) is closely settled; and

(iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with such town or township to undertake or to assist in the performance of homeland security objectives.

(3) FEDERAL GRANT-IN-AID PROGRAM.—The term “Federal grant-in-aid program” means a program of Federal financial assistance other than loans and other than the assistance provided by this title.

(4) INDIAN TRIBE.—The term “Indian tribe” means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

(5) METROPOLITAN AREA.—The term “metropolitan area” means a standard metropolitan statistical area as established by the Office of Management and Budget.

(6) METROPOLITAN CITY.—

(A) IN GENERAL.—The term “metropolitan city” means—

(i) a city within a metropolitan area that is the central city of such area, as defined and used by the Office of Management and Budget; or

(ii) any other city, within a metropolitan area, which has a population of fifty thousand or more.

(B) PERIOD OF CLASSIFICATION.—Any city that was classified as a metropolitan city for at least 2 years pursuant to subparagraph (A) shall remain classified as a metropolitan city. Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Director, defer its classification as a metropolitan city for all purposes under this title, if it elects to have its population included in an urban county under subsection (d).

(C) ELECTION BY A CITY.—Notwithstanding subparagraph (B), a city may elect not to retain its classification as a metropolitan city. Any unit of general local government that was classified as a metropolitan city in any year, may, upon submission of written notification to the Director, relinquish such classification for all purposes under this title if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 05(e) as an urban county.

(7) NONQUALIFYING COMMUNITY.—The term “nonqualifying community” means an area

that is not a metropolitan city or part of an urban county and does not include Indian tribes.

(8) POPULATION.—The term “population” means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period of time.

(9) STATE.—The term “State” means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(10) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; a combination of such political subdivisions is recognized by the Director; and the District of Columbia.

(11) URBAN COUNTY.—The term “urban county” means any county within a metropolitan area.

(b) BASIS AND MODIFICATION OF DEFINITIONS.—Where appropriate, the definitions in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Director may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) DESIGNATION OF PUBLIC AGENCIES.—One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake activities assisted under this title.

(d) LOCAL GOVERNMENTS, INCLUSION IN URBAN COUNTY POPULATION.—With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 2002 under section 04, the population of any unit of general local government which is included in that of an urban county as provided in subsection (a)(11) shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant as a separate entity, unless the urban county does not receive a grant for any year during such three-year period.

(e) URBAN COUNTY.—Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify, as provided in this subsection, each unit of general local government, which is included therein and is eligible to elect to have its population excluded from that of an urban county, of its opportunity to make such an election. Such notification shall, at a time and in a manner prescribed by the Director, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought. The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Director, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided in subsection (d).

SEC. 04. GRANTS TO STATES, UNITS OF GENERAL LOCAL GOVERNMENT AND INDIAN TRIBES; AUTHORIZATIONS.

The Director, working in consultation with the Attorney General is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this title. For purposes of assistance under section 07, there is authorized to be appropriated \$3,000,000,000 for each of fiscal years 2003 through 2006, and such additional sums as are authorized thereafter. For purposes of assistance under section 08, there is authorized to be appropriated \$500,000,000 in fiscal year 2003, and such sums as are authorized thereafter.

SEC. 05. STATEMENT OF ACTIVITIES AND REVIEW.

(a) APPLICATION.—Prior to the receipt in any fiscal year of a grant under section 07(b) by any metropolitan city or urban county, under section 07(d) by any State, or under section 07(d)(2) by any unit of general local government, the grantee shall have indicated its interest in receiving funds by preparing a statement of homeland security objectives and projected use of funds and shall have provided the Director with the certifications required in subsection (b) and, where appropriate, subsection (c). In the case of metropolitan cities and urban counties receiving grants pursuant to section 07(b) and in the case of units of general local government receiving grants pursuant to section 07(d)(2), the statement of projected use of funds shall consist of proposed homeland security activities. In the case of States receiving grants pursuant to section 07(d), the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government. In preparing the statement, the grantee shall consider any view of appropriate law enforcement, and emergency response authorities and may, if deemed appropriate by the grantee, modify the proposed statement. A copy of the final statement shall be furnished to the Director, the Attorney General, and the Office of Homeland Security together with the certifications required under subsection (b) and, where appropriate, subsection (c). Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(b) CERTIFICATION OF ENUMERATED CRITERIA BY GRANTEE TO SECRETARY.—Any grant under section 07 shall be made only if the grantee certifies to the satisfaction of the Director that—

(1) it has developed a homeland security plan pursuant to section 05 that identifies both short- and long-term homeland security needs that have been developed in accordance with the primary objective and requirements of this title; and

(2) the grantee will comply with the other provisions of this title and with other applicable laws.

(c) SUBMISSION OF ANNUAL PERFORMANCE REPORTS, AUDITS AND ADJUSTMENTS.—

(1) IN GENERAL.—Each grantee shall submit to the Director, at a time determined by the Director, a performance and evaluation report concerning the use of funds made available under section 07, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a). The Director shall encourage and assist national associations of grantees eligible under section 07, national associations of States, and national associations of units of general local government in nonqualifying areas to develop and recommend to the Di-

rector, within 1 year after the effective date of this sentence, uniform recordkeeping, performance reporting, evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively. Based on the Director's approval of these recommendations, the Director shall establish such requirements for use by such grantees, States, and units of general local government.

(2) REVIEWS AND AUDITS.—The Director shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(A) in the case of grants made under section 07(b), whether the grantee has carried out its activities and, where applicable, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner; and

(B) in the case of grants to States made under section 07(d), whether the State has distributed funds to units of general local government in a timely manner and in conformance to the method of distribution described in its statement, whether the State has carried out its certifications in compliance with the requirements of this title and other applicable laws, and whether the State has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in subparagraph (A).

(3) ADJUSTMENTS.—The Director may make appropriate adjustments in the amount of the annual grants in accordance with the Director's findings under this subsection. With respect to assistance made available to units of general local government under section 07(d), the Director may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Director's reviews and audits under this subsection, except that funds already expended on eligible activities under this title shall not be recaptured or deducted from future assistance to such units of general local government.

(d) AUDITS.—Insofar as they relate to funds provided under this title, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(e) METROPOLITAN CITY AS PART OF URBAN COUNTY.—In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Director may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under section 05 and carrying out activities under this title.

SEC. 06. ACTIVITIES ELIGIBLE FOR ASSISTANCE.

(a) IN GENERAL.—Activities assisted under this title may include only—

(1) funding additional law enforcement, fire, and emergency resources, including covering overtime expenses;

(2) purchasing and refurbishing personal protective equipment for fire, police, and emergency personnel and acquire state-of-the-art technology to improve communication and streamline efforts;

(3) improving cyber and infrastructure security by improving—

(A) security for water treatment plants, distribution systems, and other water infrastructure; nuclear power plants and other power infrastructure;

(B) security for tunnels and bridges;

(C) security for oil and gas pipelines and storage facilities; and

(D) security for chemical plants and transportation of hazardous substances;

(4) assisting Local Emergency Planning Committees so that local public agencies can design, review, and improve disaster response systems;

(5) assisting communities in coordinating their efforts and sharing information with all relevant agencies involved in responding to terrorist attacks;

(6) establishing timely notification systems that enable communities to communicate with each other when a threat emerges;

(7) improving communication systems to provide information to the public in a timely manner about the facts of any threat and the precautions the public should take; and

(8) devising a homeland security plan, including determining long-term goals and short-term objectives, evaluating the progress of the plan, and carrying out the management, coordination, and monitoring of activities necessary for effective planning implementation.

SEC. 07. ALLOCATION AND DISTRIBUTION OF FUNDS.

(a) ALLOCATION AND DISTRIBUTION OF FUNDS; SET-ASIDE FOR INDIAN TRIBES.—

(1) ALLOCATION.—For each fiscal year, of the amount approved in an appropriation Act under section 04 for grants in a year (excluding the amounts provided for use in accordance with section 06), the Director shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Director shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Director after notice and public comment.

(2) REMAINING ALLOCATION.—Of the amount remaining after allocations pursuant to paragraph (1), 70 percent shall be allocated by the Director to metropolitan cities and urban counties. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant, to the extent authorized beyond fiscal year 2002, from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b).

(b) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES AND URBAN COUNTIES.—

(1) IN GENERAL.—The Director shall determine the amount to be allocated to each metropolitan city based on the population of that metropolitan city.

(2) URBAN COUNTIES.—The Director shall determine the amount to be allocated to each urban county based on the population of that urban county.

(3) EXCLUSIONS.—In computing amounts or exclusions under this section with respect to any urban county, there shall be excluded units of general local government located in the county the populations that are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—

(A) is not part of any county;

(B) is not eligible for a grant pursuant to subsection (b)(1);

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

Any independent city that is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (d) with respect to such fiscal year.

(4) INCLUSIONS.—In computing amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(5) POPULATION.—(A) Where data are available, the amount determined under paragraph (1) for a metropolitan city that has been formed by the consolidation of one or more metropolitan cities with an urban county shall be equal to the sum of the amounts that would have been determined under paragraph (1) for the metropolitan city or cities and the balance of the consolidated government, if such consolidation had not occurred. This paragraph shall apply only to any consolidation that—

(i) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ii) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(iii) took place on or after January 1, 2002.

(B) The population growth rate of all metropolitan cities referred to in section 03 shall be based on the population of—

(i) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and

(ii) cities that were metropolitan cities before their incorporation into consolidated governments. For purposes of calculating the entitlement share for the balance of the consolidated government under this paragraph, the entire balance shall be considered to have been an urban county.

(C) REALLOCATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section that are not received by the city or county for a fiscal year because of failure to meet the requirements of subsections (a) and (b) of section 05, or that otherwise became available, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area that certify to the satisfaction of the Director that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated

under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year.

(2) TRANSFER.—Notwithstanding the provisions of paragraph (1), the Director may upon request transfer responsibility to any metropolitan city for the administration of any amounts received, but not obligated, by the urban county in which such city is located if—

(A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city;

(B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and

(C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(d) ALLOCATION TO STATES ON BEHALF OF NON-QUALIFYING COMMUNITIES.—

(1) IN GENERAL.—Of the amount approved in an appropriation Act under section 04 that remains after allocations pursuant to paragraphs (1) and (2) of subsection (a), 30 percent shall be allocated among the States for use in nonqualifying areas. The allocation for each State shall be based on the population of that State, relative to the populations of all States, excluding the population of qualifying communities. The Director shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the nonqualifying communities in each State under such paragraph so that the nonqualifying communities in each State will receive an amount that represents the same percentage of the total amount available under such paragraph as the percentage which the nonqualifying areas of the same State would have received under such paragraph if the total amount available under such paragraph had equaled the total amount which was allocated under such paragraph.

(2) DISTRIBUTION.—(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonqualifying areas of the State to carry out activities in accordance with the provisions of this title—

(i) by a State that has elected, in such manner and at such time as the Director shall prescribe, to distribute such amounts consistent with the statement submitted under section 05(a); or

(ii) by the Director, in any case described in subparagraph (B), for use by units of general local government in accordance with paragraph (3)(B).

(B) The Director shall distribute amounts allocated under paragraph (1) if the State has not elected to distribute such amounts.

(C) To receive and distribute amounts allocated under paragraph (1), the State must certify that it, with respect to units of general local government in nonqualifying areas—

(i) provides or will provide technical assistance to units of general local government in connection with homeland security initiatives;

(ii) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general

local government to meet its homeland security objectives, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

(iii) has consulted with local elected officials from among units of general local government located in nonqualifying areas of that State in determining the method of distribution of funds required by subparagraph (A).

(D) To receive and distribute amounts allocated under paragraph (1), the State shall certify that each unit of general local government to be distributed funds will be required to identify its homeland security objectives, and the activities to be undertaken to meet such objectives.

(3) MINIMUM AMOUNT.—

(A) IN GENERAL.—Each State (other than the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) shall receive for each fiscal year a base amount of \$18,000,000 of the total amount appropriated for each fiscal year for grants made available to States under this section.

(B) DISTRICT OF COLUMBIA AND TERRITORIES.—The District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall each receive for each fiscal year \$3,000,000 of the total amount appropriated for each fiscal year for grants made available to States under this section.

(4) ADMINISTRATION.—(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this title, except that from the amounts received for distribution in nonqualifying areas, the State may deduct an amount to cover such expenses and its administrative expenses not to exceed the sum of \$150,000 plus 50 percent of any such expenses under this title in excess of \$150,000. Amounts deducted in excess of \$150,000 shall not exceed 2 percent of the amount so received.

(B) If the Director distributes such amounts, the distribution shall be made in accordance with determinations of the Director pursuant to statements submitted and the other requirements of section 05 (other than subsection (c)) and in accordance with regulations and procedures prescribed by the Director.

(C) Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 05 shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(D) Any amounts allocated for use in a State under paragraph (1) that become available as a result of the closeout of a grant made by the Director under this section in nonqualifying areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which the amounts become so available.

(5) SINGLE UNIT.—Any combination of units of general local governments may not be required to obtain recognition by the Director pursuant to section 03(2) to be treated as a single unit of general local government for purposes of this subsection.

(6) DEDUCTION.—From the amounts received under paragraph (1) for distribution in nonqualifying areas, the State may deduct an amount, not to exceed 1 percent of the

amount so received, to provide technical assistance to local governments.

(7) **APPLICABILITY.**—Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this title and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a).

(e) **QUALIFICATIONS AND DETERMINATIONS.**—The Director may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(f) **PRO RATA REDUCTION AND INCREASE.**—If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the amounts to which metropolitan cities and urban counties would be entitled under subsection (b), and funds are not otherwise appropriated to meet the deficiency, the Director shall meet the deficiency through a pro rata reduction of all amounts determined under subsection (b). If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under subsection (b), the Director shall distribute the excess through a pro rata increase of all amounts determined under subsection (b).

SEC. 08. STATE AND REGIONAL PLANNING; COMMUNICATIONS SYSTEMS.

(a) **IN GENERAL.**—Pursuant to section 04, \$500,000,000 shall be used for homeland defense planning within the States by the States, for interstate, multistate or regional authorities, and within regions through regional cooperations; the development and maintenance of Statewide training facilities and homeland best-practices clearinghouses; and the development and maintenance of communications systems that can be used between and among first responders, including law enforcement, fire, and emergency medical personnel as follows:

(1) \$325,000,000 to the States, and interstate, multistate or regional authorities for homeland defense planning, coordination, and implementation;

(2) \$50,000,000 to regional cooperations for homeland defense planning and coordination;

(3) \$50,000,000 to the States for the development and maintenance of Statewide training facilities and best-practices clearinghouses; and

(4) \$75,000,000 to the States for the States and for local communities for the development and maintenance of communications systems that can be used between and among first responders at the State and local level, including law enforcement, fire, and emergency personnel.

(b) **ALLOCATIONS.**—Funds under this section to be awarded to States shall be allocated among the States based upon the population for each State relative to the populations of all States. The "minimum amount" provision set forth in section 07(d)(3) shall apply to funds awarded under this section to States. With respect to subsection (a)(4), at least 30 percent of the funds awarded must be used for the development and maintenance of local communications systems.

(c) **REGIONAL COOPERATIONS.**—Funds under this section to be awarded to regional cooperations shall be allocated among the regional cooperations based upon the population of the areas covered by the cooperations.

SEC. 09. NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES.

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any such program or activity.

SEC. 10. REMEDIES FOR NONCOMPLIANCE WITH REQUIREMENTS.

If the Director finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Director, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title;

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title; or

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

SEC. 11. REPORTING REQUIREMENTS.

(a) **IN GENERAL.**—Not later than 180 days after the close of each fiscal year in which assistance under this title is furnished, the Director shall submit to Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this title;

(2) a summary of the use of such funds during the preceding fiscal year; and

(3) a description of the activities carried out under section 07.

(b) **REPORTS TO THE DIRECTOR.**—The Director is authorized to require recipients of assistance under this title to submit to him such reports and other information as may be necessary in order for the Director to make the report required by subsection (a).

SEC. 12. CONSULTATION BY ATTORNEY GENERAL.

In carrying out the provisions of this title including the issuance of regulations, the Director shall consult with the Attorney General (especially as to any issues of concern to the law enforcement community at the State and local level), the Office of Homeland Security, and other Federal departments and agencies administering Federal grant-in-aid programs.

SEC. 13. INTERSTATE AGREEMENTS OR COMPACTS; PURPOSES.

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of homeland security planning and programs carried out under this title as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

SEC. 14. MATCHING REQUIREMENTS; SUSPENSION OF REQUIREMENTS FOR ECONOMICALLY DISTRESSED AREAS.

(a) **REQUIREMENT.**—Grant recipients shall contribute from funds, other than those received under this title, 10 percent of the total funds received under this title. Such funds shall be used in accordance with the grantee's statement of homeland security objectives.

(b) **ECONOMIC DISTRESS.**—Grant recipients that are deemed economically distressed shall be waived from the matching requirement set forth in this section.

SA 4656. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 129, beginning with line 8, strike through line 7 on page 130.

SA 4657. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 7 and 8, insert the following:

(d) **REDUCTION OF AUTHORIZATIONS.**—Each amount authorized by subsection (a)(1) shall be reduced by any appropriated amount used by Amtrak for the activity for which the amount is authorized.

SA 4658. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 129, strike lines 23 through 25.

SA 4659. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 129, line 25, strike "locomotives." and insert "locomotives, upon a determination by the Secretary of Transportation that such emergency repairs are necessary for safety and security purposes."

SA 4660. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 129, beginning with line 8, strike through line 7 on page 130, and insert the following:

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) **EMERGENCY AMTRAK ASSISTANCE.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak—

(A) \$375,000,000 for systemwide security upgrades, including the reimbursement of extraordinary security-related costs determined by the Secretary of Transportation to have been incurred by Amtrak since September 11, 2001, and including the hiring and training additional police officers, canine-assisted security units, and surveillance equipment;

(B) \$778,000,000 to be used to complete New York tunnel life safety projects and rehabilitate tunnels in Washington, D.C., and Baltimore, Maryland; and

(C) \$55,000,000 for the emergency repair, and returning to service, of Amtrak passenger cars and locomotives, upon a determination by the Secretary of Transportation that such emergency repairs are necessary for safety and security purposes.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) PLAN REQUIRED.—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under paragraph (1)—

(A) for implementing systemwide security upgrades, including the emergency repair of passenger cars and locomotives, until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, after consultation with the Secretary of Homeland Security, a plan for such upgrades;

(B) for completing the tunnel life safety and rehabilitation projects until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, an engineering and financial plan for such projects; and

(C) Amtrak has submitted to the Secretary of Transportation such additional information as the Secretary may require in order to ensure full accountability for the obligation or expenditure of amounts made available to Amtrak for the purpose for which the funds are provided.

(4) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary of Transportation shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in paragraph (3)(B)—

(A) consider the extent to which rail carriers other than Amtrak use the tunnels;

(B) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(C) obtain financial contributions or commitments from such other rail carriers if feasible.

(5) REVIEW OF PLAN.—The Secretary of Transportation shall complete the review of the plan required by paragraph (3) and approve or disapprove the plan within 45 days after the date on which the plan is submitted by Amtrak. If the Secretary determines that the plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving a modified plan from Amtrak, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall approve the portions of the plan that are complete and sufficient, release associated funds, and Amtrak shall execute an agreement with the Secretary within 15 days thereafter on a process for completing the remaining portions of the plan.

(6) 50-PERCENT TO BE SPENT OUTSIDE THE NORTHEAST CORRIDOR.—The Secretary of Transportation shall ensure that up to 50 percent of the amounts appropriated pursuant to paragraph (1)(A) is obligated or expended for projects outside the Northeast Corridor.

(7) ASSESSMENTS BY DOT INSPECTOR GENERAL.—

(A) INITIAL ASSESSMENT.—Within 60 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall transmit to the Senate

Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report—

(i) identifying any overlap between capital projects for which funds are provided under such funding documents, procedures, or arrangements and capital projects included in Amtrak's 20-year capital plan; and

(ii) indicating any adjustments that need to be made in that plan to exclude projects for which funds are appropriated pursuant to paragraph (1).

(B) OVERLAP REVIEW.—The Inspector General shall, as part of the Department's annual assessment of Amtrak's financial status and capital funding requirements review the obligation and expenditure of funds under each such funding document, procedure, or arrangement to ensure that the expenditure and obligation of those funds are consistent with the purposes for which they are provided under this Act.

(8) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this sub-section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

(9) REDUCTION OF AUTHORIZATIONS.—Each amount authorized by paragraph (1) shall be reduced by any appropriated amount used by Amtrak for the activity for which the amount is authorized.

SA 4661. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I of division A, add the following:

SEC. 173. FIRST RESPONDER PERSONNEL COSTS.

Local governments receiving Federal homeland security funding under this Act, whether directly or as a pass-through from the States, may use up to 20 percent of Federal funds received for first time responder personnel costs, including overtime costs.

SA 4662. Mr. SMITH of Oregon submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 1. FINDINGS.

The Congress finds the following:

(1) Even before the terrorist attacks of September 11, 2002, American citizens were a target of choice for terrorist organizations.

(2) The United States has a strong interest in ensuring that those who commit terrorist acts against Americans and American interests are apprehended and prosecuted to the full extent of the law.

(3) Under United States law, individuals who commit acts of international terrorism outside of the United States may be prosecuted for such acts in the United States.

(4) Despite vigorous, sustained diplomatic efforts and financial assistance, little has been done to apprehend, indict, prosecute, and convict individuals who have committed terrorist attacks against nationals of the United States, including in areas such as those controlled by the Palestine Authority.

SEC. 2. ESTABLISHMENT OF OFFICE IN THE DEPARTMENT OF HOMELAND SECURITY TO MONITOR TERRORIST ACTS AGAINST AMERICANS ABROAD, TO PROVIDE INFORMATION AND SUPPORT SERVICES TO FAMILY MEMBERS OF THE VICTIMS OF TERRORISM, AND CARRY OUT RELATED ACTIVITIES.

(a) IN GENERAL.—The President shall establish within the Department of Homeland Security an office to carry out the following activities:

(1) Monitor acts of international terrorism against United States citizens.

(2) Collect information against individuals alleged to have committed acts of international terrorism described in paragraph (1).

(3) Offer rewards for information on individuals alleged to have committed acts of international terrorism described in paragraph (1), including the dissemination of information relating to such rewards in appropriate foreign media.

(4) Negotiate with the foreign governments, government authorities, or entities governing the nation or territory on which the terrorist act described in paragraph (1) occurred to obtain financial compensation for nationals of the United States, or their families, injured or killed by such acts of terrorism.

(5) In conjunction with other appropriate Federal agencies, seek justice for individuals who commit acts of terrorism described in paragraph (1), whether through indictment, effective prosecution abroad, or extradition to the United States.

(6) Contact the families of victims of acts of terrorism described in paragraph (1) and provide regular updates on the progress to apprehend, indict, prosecute, and convict the individuals who commit such acts.

(7) In any country or territory in which a terrorist act against an American occurs, providing training for an appropriate number of United States officials abroad to carry out the effective execution of paragraphs (1) through (6).

(8) In consultation with the Secretary of State, provide information and a full report on the status of apprehension, indictment, and prosecution of individuals who commit acts of terrorism against Americans abroad as part of the Department's annual "Patterns of Global Terrorism" report established in section 2656f(a) of Title 22 of the U.S. Code.

(b) DEFINITION.—In this section, the term 'international terrorism' has the meaning given such term in section 2331(1) of title 18, United States Code.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal year 2003 and each subsequent fiscal year such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

SA 4663. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SENSE OF THE CONGRESS.—It is the Sense of the Congress that the Department of Homeland Security shall comply with all laws protecting the civil rights and civil liberties of U.S. persons.

SA 4664. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

It is the Sense of the Congress that the Department of Homeland Security shall comply with all laws protecting the privacy of U.S. persons.

SA 4665. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

TITLE _____ TRANSFER OF FUNCTIONS OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TO THE DEPARTMENT OF JUSTICE

Sec. 101. TRANSFER OF FUNCTIONS.

Notwithstanding any other provision of law, there are transferred to the Attorney General the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the functions of the Secretary of the Treasury relating thereto.

SEC. 201. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.

(a) There is established in the Department of Justice an agency that shall be known as the Bureau of Alcohol, Tobacco and Firearms, hereinafter known as the "Bureau." Subject to the direction of the Attorney General, the Bureau shall be the primary agency within the Department of Justice for enforcement of the Federal firearms, explosives, arson, alcohol and tobacco laws, as well as all regulatory enforcement and revenue collection functions of the firearms, explosives, alcohol and tobacco laws, to include the functions transferred by section 301 of this Act, as well as any other functions related to the investigation of violent crime as the Attorney General may delegate to the bureau.

(b) There shall be at the head of the Bureau the Director, Bureau of Alcohol, Tobacco and Firearms, hereinafter known as the "Director." The Director shall perform such functions as the Attorney General shall from time to time direct. The office of Director shall be a career-reserved position within the Senior Executive Service. The Bureau shall have as its chief legal officer a Chief Counsel, who shall be a career-reserved officer within the Senior Executive Service.

SEC. 301. FUNCTIONS TRANSFERRED TO THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF JUSTICE.

(a) Chapter 40 of title 18, United States Code, is amended—

(1) In section 841(k) by striking "Secretary" means the Secretary of the Treasury or his delegate" and inserting "Attorney General" means the Attorney General of the United States."

(2) by striking "Secretary" each place it appears and inserting "Attorney General".

(b) Section 103 of Pub. L. 90-618 is amended by striking "Secretary of the Treasury" and inserting "Attorney General";

(c) Chapter 44 of title 18, United States Code, is amended—

(1) In section 921(a)(4)(B), by striking "Secretary" and inserting "Attorney General";

(2) In the undesignated clause following section 921(a)(4)(C), and in section 923(1), by striking "Secretary of the Treasury" and inserting "Attorney General";

(3) In section 921(a)(18), by striking "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate" and inserting "Attorney General means the Attorney General of the United States"; and

(4) Except in sections 921(a)(4) and 922(p)(5), by striking the term "Secretary" each place it appears, and inserting the term "Attorney General".

(d) Chapter 203 of title 18, United States Code, is amended by adding a new section 3051 to read as follows:

"§ 3051. Powers of Agents of Bureau of Alcohol, Tobacco and Firearms.

(a) Special agents of the Bureau of Alcohol, tobacco and Firearms whom the Attorney General charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(b) Any special agent of the Bureau of Alcohol, Tobacco and Firearms may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States."

(c)(1) Except as provided in paragraph (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of Title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

(A) the Seizure, summary and judicial forfeiture, and condemnation of property;

(B) the disposition of such property;

(C) the remission or mitigation of such forfeiture; and

(D) the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco and Firearms.

(2) For purposes of paragraph (1), duties that are imposed upon a Customs officer or any other person with respect to the seizure and forfeiture of property under the Customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General."

(3) Notwithstanding any other provisions of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.

(e) Chapter 114 of title 18, United States Code, is amended—

(1) in section 2341(5) by striking "Secretary" means the Secretary of the Treasury" and inserting "Attorney General" means the Attorney General of the United States."; and

(2) by striking "Secretary" each place it appears and inserting "Attorney General".

(f) Section 1261 of title 18, United States Code, is amended by striking subsection (a) and inserting the new subsection (a) to read as follows:

"(a) The Attorney General shall enforce the provisions of this chapter, and has the

authority to issue regulations to carry out its provisions."

(g) Section 1952(c) of title 18, United States Code, is amended by striking "Secretary of the Treasury" and inserting "Attorney General."

(h) Section 7801(a) is amended—

(1) by inserting "(1)" before "Except"; and

(2) by inserting a new paragraph (2) to read as follows:

"(2) The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the terms "Secretary" or "Secretary of the Treasury" shall, when applied to those provisions, mean the Attorney General; and the term "internal revenue officer" shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco and Firearms so designated by the Attorney General; provided that, the Attorney General shall adopt all rulings and interpretations of the Bureau of Alcohol, Tobacco and Firearms in existence on the effective date of this Act which concern the following provisions of this title and shall consult with the Secretary of the Treasury to achieve uniformity and consistency in administering such laws:

(A) sections 4181 and 4182 of chapter 32 of this title;

(B) subchapters F and G of chapter 32 of this title, insofar as they relate to the provisions of sections 4181 and 4182 of chapter 32;

(C) chapters 51, 52, and 53 of this title; and

(D) chapters 61 and 80, inclusive, of this title, insofar as they relate to the enforcement and administration of the provisions named in subparagraphs (A), (B), and (C) of this paragraph.

(i) Chapter 1 of Title 27, United States Code, is amended by adding a new section 1 to read as follows:

"§ 1. The administration and enforcement of this title shall be performed by or under the supervision of the Attorney General; and the term "Secretary" or "Secretary of the Treasury" shall, when applied to those provisions, mean the Attorney General."

SEC. 4091. CONFORMING CHANGES.

(a) Section 2006 of title 28, United States Code, is amended by inserting", the Attorney General," after "the Secretary of the Treasury".

(b) Section 9703 of title 31, United States Code, is amended—

(1) by striking subsection (a)(2)(B)(v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated, by striking ", the Bureau of Alcohol, Tobacco and Firearms".

(c) Section 13921(a) of title 42, United States Code, is amended by striking "Secretary of the Treasury" each place it appears and inserting in lieu thereof "Attorney General".

(d) Section 80303 of title 49, United States Code, is amended—

(1) by adding "or, when the violation of this chapter involves contraband described in section 80302(a)(2) or (a)(5) of this title, the Attorney General" after "section 80304 of this title"; and

(2) by inserting "or the Attorney General" after "or appropriate Governor".

(e) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(b) and (c)" and inserting "(b), (c), and (d)";

(2) by redesignating current subsection (d) as subsection (e); and

(3) by adding a new subsection (d) to read as follows:

"(d) Attorney General.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco and Firearms, Department of Justice designated by

the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302(a)(2) or (a)(5)."

SEC. 501. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) IN GENERAL.—The Director, Bureau of Alcohol, Tobacco and Firearms, Department of Justice, shall use the funds made available pursuant to subsection (b) to establish an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia. Such facility shall be utilized to train Federal, State, and local law enforcement officers on investigating bombings and arsons, proper handling, utilization, and disposal of explosive materials and devices, training of explosive detection canines, and conducting research on explosives and arson.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Bureau of Alcohol, Tobacco and Firearms such sums as shall be necessary to establish and maintain the facility referenced in subsection (a). Funds made available pursuant to this subsection in any fiscal year shall remain available until expended.

SEC. 601. PERSONAL PAY MANAGEMENT SYSTEM.

Notwithstanding any other provision of law, the Personal Pay Management System Program established under Section 102 of Title I, Div., of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Pub. L. No. 105-277, 122 Stat. 2681 (5 U.S.C. 3104) shall be transferred to the Attorney General of the United States for the Bureau of Alcohol, Tobacco and Firearms.

SEC. 701. SENIOR EXECUTIVE SERVICE.

Notwithstanding any other provision of law, all Senior Executive Service positions allocated by the Department of the Treasury to the Bureau of Alcohol, Tobacco and Firearms, including the Office of Chief Counsel, shall be transferred to the Attorney General of the United States for the Bureau of Alcohol, Tobacco and Firearms.

SEC. 801. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited user permit under the provisions of this chapter."; and

(2) by adding at the end the following:

"(r) 'Alien' means any person who is not a citizen or national of the United States.

"(s) 'Intimate partner' means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabits or has cohabited with the person.

"(t)(1) Except as provided in paragraph (2), 'misdemeanor crime of domestic violence' means an offense that—

"(A) is a misdemeanor under Federal or State law; and

"(B) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

"(2) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

"(A) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

"(B) in the case of a prosecution for an offense described in this subsection for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either—

"(i) the case was tried by a jury; or

"(ii) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

"(u) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials."

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking "and" at the end;

(2) by striking subsection (a)(3) and inserting the following:

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive any explosive materials; or

"(B) to distribute explosive materials to any person other than a licensee or permittee; or

"(4) who is a holder of a limited user permit—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

"(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited user permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited user permit holder."; and

(3) by striking subsection (b) and inserting the following:

"(b) It shall be unlawful for any licensee or permittee knowingly to distribute any explosive materials to any person other than—

"(1) a licensee;

"(2) a holder of a user permit; or

"(3) a holder of a limited user permit who is a resident of the State where distribution is made and in which the premises of the transferor are located."

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) by inserting "or limited user permit" after "user permit" in the first sentence;

(2) by inserting before the period at the end of the first sentence the following: ", including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person"; and

(3) by striking the third sentence and inserting "Each license or user permit shall be valid for no longer than 3 years from the date of issuance and each limited user permit shall be valid for no longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee."

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person who is prohibited from receiving, distributing, transporting, or possessing explosive materials under subsection (d) or (i) of section 842;";

(2) by striking paragraph (4) and inserting the following:

"(4) the applicant has a place of storage for explosive materials that the Secretary may verify by inspection or such other means as the Secretary determines to be appropriate, meets such standards of public safety and security against theft as the Secretary shall prescribe by regulations;";

(3) in paragraph (5), by striking the period at the end; and

(4) by adding at the end the following:

"(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is a person whose possession of explosives would be unlawful under section 842(i); and

"(7) in the case of a limited user permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited user permit is valid."

(e) Application Approval.—Section 843(c) of title 18, United States Code, is amended by striking "forty-five days" and inserting "45 days for limited user permits and 90 days for licenses and user permits."

(f) Inspection Authority.—Section 843(f) of title 18, United States Code, is amended in the second sentence, by striking "permittee" the first time it appears and inserting "holder of a user permit".

(g) Posting of Permits.—Section 843(g) of title 18, United States Code, is amended by inserting "user" before "permits".

(h) Background Checks; Clearances.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

"(h)(1) If the Secretary receives from an employer the name and other identifying information with respect to a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether possession of explosives by the responsible person or the employee, as the case may be, would be unlawful under section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

"(2)(A) If the Secretary determines that possession of explosives by the responsible person or the employee would not be lawful under section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a letter of clearance which confirms the determination.

"(B) If the Secretary determines that possession of explosives by the responsible person or the employee would be unlawful under section 942(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

"(i) confirms the determination;

"(ii) explains the grounds for the determination;

"(iii) provides information on how the disability may be relieved; and

"(iv) explains how the determination may be appealed."

(i) Effective Date.—

(1) In general.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) Exception.—Notwithstanding any provision of this title, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 901. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) Distribution of Explosives.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking “or” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “or who has been committed to a mental institution;”; and

(3) by adding at the end the following:

“(7) is an alien, other than an alien who—

“(A) is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act); or

(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

“(i) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement;

“(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

“(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or 21

“(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence;

“(8) has been discharged from the armed forces under dishonorable conditions;

“(9) having been a citizen of the United States, has renounced the citizenship of that person;

“(10) is subject to a court order that—

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

“(11) has been convicted in any court of a misdemeanor crime of domestic violence.”.

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking “or” at the end; and

(2) by inserting after paragraph (4) the following:

“(5) who is an alien, other than an alien who—

“(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

“(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

“(i) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement;

“(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

“(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

“(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence;

“(6) who has been discharged from the armed forces under dishonorable conditions;

“(7) who, having been a citizen of the United States, has renounced the citizenship of that person;

“(8) who is subject to a court order that—

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

“(9) who has been convicted in any court of a misdemeanor crime of domestic violence.”.

SEC. 1001. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(1) FURNISHING OF SAMPLES.—

“(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

“(A) samples of such explosive materials or ammonium nitrate;

“(B) information on chemical composition of those products; and

“(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

“(2) REIMBURSEMENT.—The Secretary may, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.”.

SEC. 1101. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the

word “shall” the following: “or any institution or organization receiving Federal financial assistance.”.

SEC. 1201. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

“(b) RELIEF FROM DISABILITIES.—

“(1) PROHIBITED PERSONS.—

“(A) IN GENERAL.—Except as provided in paragraph (2), a person who is prohibited from engaging in activity under section 842 may make application to the Secretary for relief from the disabilities imposed by Federal law with respect to a violation of that section, and the Secretary may grant that relief, if the Secretary determines that—

“(i) the circumstances regarding the disability, and the record and reputation of the applicant are such that the applicant will not be likely to act in a manner dangerous to public safety; and

“(ii) that the granting of the relief will not be contrary to the public interest.

“(B) PETITION FOR JUDICIAL REVIEW.—Any person whose application for relief from disabilities under this section is denied by the Secretary may file a petition with the United States district court for the district in which that person resides for a judicial review of the denial.

“(C) ADDITIONAL EVIDENCE.—The court may, in its discretion, admit additional evidence where failure to do so would result in a miscarriage of justice.

“(D) FURTHER OPERATIONS.—A licensee or permittee who conducts operations under this chapter and makes application for relief from the disabilities under this chapter, shall not be barred by that disability from further operations under the license or permit of that person pending final action on an application for relief filed pursuant to this section.

“(E) NOTICE.—Whenever the Secretary grants relief to any person pursuant to this section, the Secretary shall promptly publish in the Federal Register, notice of that action, together with reasons for that action.

“(2) WAIVER FOR LAWFUL NONIMMIGRANTS.—

“(A) CONDITIONS FOR WAIVER.—Any individual who has been admitted to the United States in a lawful nonimmigrant status may receive a waiver from the requirements of subsection (d)(7) or (i)(5) of section 842, if—

“(i) the individual submits to the Secretary a petition that meets the requirements of subparagraph (C); and

“(ii) the Secretary approves the petition.

“(B) PETITION.—Each petition submitted in accordance with this subsection shall—

“(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

“(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire explosives and certifying that the alien would not, absent the application of subsection (d)(7) or (i)(5) of section 842, otherwise be prohibited from such an acquisition under that subsection (d) or (i).

“(C) APPROVAL OF PETITION.—The Secretary may approve a petition submitted in accordance with this paragraph if the Secretary determines that waiving the requirements of subsection (d)(7) or (i)(5) of section 842 with respect to the petitioner—

“(i) would not jeopardize the public safety; and

“(ii) will not be contrary to the public interest.”.

SEC. 1301. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

“(p) THEFT REPORTING REQUIREMENT.—

“(1) IN GENERAL.—A holder of a license, user permit, or limited user permit who knows that explosive materials have been stolen from that licensee, user permittee, or limited user permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

“(2) PENALTY.—A holder of a license, user permit, or limited user permit who does not report a theft in accordance with paragraph (1), shall be fined not more than \$10,000, imprisoned not more than 5 years, or both.”.

SEC. 1401. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this title and the amendments made by this title.

SA 4666. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 7 and 8, insert the following:

(d) RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(1) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(A) by striking “Secretary of Transportation” in the first sentence of subsection (a) and inserting “Secretary concerned”;

(B) by striking “Secretary” each place it appears (except the first sentence of subsection (a)) and inserting “Secretary concerned”;

(C) by striking “Secretary’s duties under chapters 203–213 of this title” in subsection (d) and inserting “duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)”;

(D) by striking “chapter.” in subsection (f) and inserting “chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).”;

(E) by adding at the end the following new subsection:

“(g) DEFINITIONS.—In this section—

“(1) the term ‘safety’ includes security; and

“(2) the term ‘Secretary concerned’ means—

“(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

“(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.”.

(2) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after “1970.” the following: “When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.”.

(3) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(A) by inserting “and laws, regulations, and orders related to railroad security” after “safety” in the first sentence;

(B) by inserting “or security” after “safety” each place it appears after the first sentence; and

(C) by striking “Transportation” in the second sentence and inserting “Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters).”.

(e) HAZARDOUS MATERIAL TRANSPORTATION.—

(1) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(A) by striking “transportation” the first place it appears in subsection (b)(1) and inserting “transportation, including security.”;

(B) by striking “aspects” in subsection (b)(1)(B) and inserting “aspects, including security.”; and

(C) by adding at the end the following:

“(c) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.”.

(2) PREEMPTION.—Section 5125 of that title is amended—

(A) by striking “chapter or a regulation prescribed under this chapter” in subsection (a)(1) and inserting “chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.”;

(B) by striking “chapter or a regulation prescribed under this chapter.” in subsection (a)(2) and inserting “chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.”; and

(C) by striking “chapter or a regulation prescribed under this chapter.” in subsection (b)(1) and inserting “chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.”.

SA 4667. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, beginning with line 4, strike through line 2 on page 131, and insert the following:

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) EMERGENCY AMTRAK ASSISTANCE.

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak—

(A) \$375,000,000 for systemwide security upgrades, including the reimbursement of extraordinary security-related costs determined by the Secretary of Transportation to have been incurred by Amtrak since September 11, 2001, and including the hiring and training additional police officers, canine-assisted security units, and surveillance equipment;

(B) \$778,000,000 to be used to complete New York tunnel life safety projects and rehabilitate tunnels in Washington, D.C., and Baltimore, Maryland; and

(C) \$55,000,000 for the emergency repair, and returning to service, of Amtrak passenger cars and locomotives, upon a determination by the Secretary of Transportation that such emergency repairs are necessary for safety and security purposes.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) PLAN REQUIRED.—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under paragraph (1)—

(A) for implementing systemwide security upgrades, including the emergency repair of passenger cars and locomotives, until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, after consultation with the Secretary of Homeland Security, a plan for such upgrades;

(B) for completing the tunnel life safety and rehabilitation projects until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, an engineering and financial plan for such projects; and

(C) Amtrak has submitted to the Secretary of Transportation such additional information as the Secretary may require in order to ensure full accountability for the obligation or expenditure of amounts made available to Amtrak for the purpose for which the funds are provided.

(4) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary of Transportation shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in paragraph (3)(B)—

(A) consider the extent to which rail carriers other than Amtrak use the tunnels;

(B) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(C) obtain financial contributions or commitments from such other rail carriers if feasible.

(5) REVIEW OF PLAN.—The Secretary of Transportation shall complete the review of the plan required by paragraph (3) and approve or disapprove the plan within 45 days after the date on which the plan is submitted by Amtrak. If the Secretary determines that the plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary’s notification, submit a modified plan for the Secretary’s review. Within 15 days after receiving a modified plan from Amtrak, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall approve the portions of the plan that are complete and sufficient, release associated funds, and Amtrak shall execute an agreement with the Secretary within 15 days thereafter on a process for completing the remaining portions of the plan.

(6) 50-PERCENT TO BE SPENT OUTSIDE THE NORTHEAST CORRIDOR.—The Secretary of Transportation shall ensure that up to 50 percent of the amounts appropriated pursuant to paragraph (1)(A) is obligated or expended for projects outside the Northeast Corridor.

(7) ASSESSMENTS BY DOT INSPECTOR GENERAL.

(A) INITIAL ASSESSMENT.—Within 60 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and the House of Representatives Committee on Transportation and Infrastructure a report—

(i) identifying any overlap between capital projects for which funds are provided under such funding documents, procedures, or arrangements and capital projects included in Amtrak’s 20-year capital plan; and

(ii) indicating any adjustments that need to be made in that plan to exclude projects for which funds are appropriated pursuant to paragraph (1).

(B) OVERLAP REVIEW.—The Inspector General shall, as part of the Department’s annual assessment of Amtrak’s financial status and capital funding requirements review the

obligation and expenditure of funds under each such funding document, procedure, or arrangement to ensure that the expenditure and obligation of those funds are consistent with the purposes for which they are provided under this Act.

(8) **COORDINATION WITH EXISTING LAW.**—Amounts made available to Amtrak under this subsection shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

(9) **REDUCTION OF AUTHORIZATION.**—Each amount authorized by paragraph (1) shall be reduced by any appropriated amount used by Amtrak for the activity for which the amount is authorized.

SA 4668. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, beginning with line 4, strike through line 2 on page 131, and insert the following:

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) **EMERGENCY AMTRAK ASSISTANCE.**

(1) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak—

(A) \$375,000,000 for systemwide security upgrades, including the reimbursement of extraordinary security-related costs determined by the Secretary of Transportation to have been incurred by Amtrak since September 11, 2001, and including the hiring and training additional police officers, canine-assisted security units, and surveillance equipment;

(B) \$778,000,000 to be used to complete New York tunnel life safety projects and rehabilitate tunnels in Washington, D.C., and Baltimore, Maryland; and

(C) \$55,000,000 for the emergency repair, and returning to service, of Amtrak passenger cars and locomotives, upon a determination by the Secretary of Transportation that such emergency repairs are necessary for safety and security purposes.

(2) **AVAILABILITY OF APPROPRIATED FUNDS.**—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) **PLAN REQUIRED.**—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under paragraph (1)—

(A) for implementing systemwide security upgrades, including the emergency repair of passenger cars and locomotives, until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, after consultation with the Secretary of Homeland Security, a plan for such upgrades;

(B) for completing the tunnel life safety and rehabilitation projects until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, an engineering and financial plan for such projects; and

(C) Amtrak has submitted to the Secretary of Transportation such additional information as the Secretary may require in order to ensure full accountability for the obligation or expenditure of amounts made available to Amtrak for the purpose for which the funds are provided.

(4) **FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.**—The Secretary of Transportation shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in paragraph (3)(B)—

(A) consider the extent to which rail carriers other than Amtrak use the tunnels;

(B) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(C) obtain financial contributions or commitments from such other rail carriers if feasible.

(5) **50-PERCENT TO BE SPENT OUTSIDE THE NORTHEAST CORRIDOR.**—The Secretary of Transportation shall ensure that up to 50 percent of the amounts appropriated pursuant to paragraph (1)(A) is obligated or expended for projects outside the Northeast Corridor.

(6) **ASSESSMENTS BY DOT INSPECTOR GENERAL.**

(A) **INITIAL ASSESSMENT.**—Within 60 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report—

(i) identifying any overlap between capital projects for which funds are provided under such funding documents, procedures, or arrangements and capital projects included in Amtrak's 20-year capital plan; and

(ii) indicating any adjustments that need to be made in that plan to exclude projects for which funds are appropriated pursuant to paragraph (1).

(B) **OVERLAP REVIEW.**—The Inspector General shall, as part of the Department's annual assessment of Amtrak's financial status and capital funding requirements review the obligation and expenditure of funds under each such funding document, procedure, or arrangement to ensure that the expenditure and obligation of those funds are consistent with the purposes for which they are provided under this Act.

(7) **COORDINATION WITH EXISTING LAW.**—Amounts made available to Amtrak under this subsection shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

(8) **REDUCTION OF AUTHORIZATIONS.**—Each amount authorized by paragraph (1) shall be reduced by any appropriated amount used by Amtrak for the activity for which the amount is authorized.

SA 4669. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . . . SHORT TITLE.

This Act may be cited as the "Emergency Communications and Competition Act of 2002".

SEC. . . . PURPOSES.

The purposes of this Act are as follows:

(1) To facilitate the deployment of new wireless telecommunications networks in order to extend the reach of the Emergency Alert System (EAS) to viewers of multichannel video programming who may not receive Emergency Alert System warnings from other communications technologies.

(2) To ensure that emergency personnel have priority access to communications facilities in times of emergency.

(3) To promote the rapid deployment of low cost multi-channel video programming and broadband Internet services to the public, without causing harmful interference to existing telecommunications services.

(4) To ensure the universal carriage of local television stations, including any

Emergency Alert System warnings, by multichannel video programming distributors in all markets, regardless of population.

(5) To advance the public interest by making available new high speed data and video services to unserved and underserved populations, including schools, libraries, tribal lands, community centers, senior centers, and low-income housing.

(6) To ensure that new technologies capable of fulfilling the purposes set forth in paragraphs (1) through (5) are licensed and deployed promptly after such technologies have been determined to be technologically feasible.

SEC. . . . LICENSING.

(a) **GRANT OF CERTAIN LICENSES.**—

(1) **IN GENERAL.**—The Federal Communications Commission shall assign licenses in the 12.2–12.7 GHz band for the provision of fixed terrestrial services using the rules, policies, and procedures used by the Commission to assign licenses in the 12.2–12.7 GHz band for the provision of international or global satellite communications services in accordance with section 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act (47 U.S.C. 765f).

(2) **DEADLINE.**—The Commission shall accept for filing and grant licenses under paragraph (1) to any applicant that is qualified pursuant to subsection (b) not later than six months after the date of the enactment of this Act. The preceding sentence shall not be construed to preclude the Commission from granting licenses under paragraph (1) after the deadline specified in that sentence to applicants that qualify after that deadline.

(b) **QUALIFICATIONS.**—

(1) **NON-INTERFERENCE WITH DIRECT BROADCAST SATELLITE SERVICE.**—A license may be granted under this section only if operations under the license will not cause harmful interference to direct broadcast satellite service.

(2) **ACCEPTANCE OF APPLICATIONS.**—The Commission shall accept an application for a license to operate a fixed terrestrial service in the 12.2–12.7 GHz band if the applicant—

(A) successfully demonstrates the terrestrial technology it will employ under the license with operational equipment that it furnishes, or has furnished, for independent testing pursuant to section 1012 of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1110); and

(B) certifies in its application that it has authority to use such terrestrial service technology under the license.

(3) **CLARIFICATION.**—Section 1012(a) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1110(a); 114 Stat. 2762A–141) is amended by inserting ", or files," after "has filed".

(4) **PCS OR CELLULAR SERVICES.**—A license granted under this section may not be used for the provision of Personal Communications Service or terrestrial cellular telephony service.

(c) **PROMPT COMMENCEMENT OF SERVICE.**—In order to facilitate and ensure the prompt deployment of service to unserved and underserved areas and to prevent stockpiling or warehousing of spectrum by licenses, the Commission shall require that any licensee under this section commence service to consumers within five years of the grant of the license under this section.

(d) **EXPANSION OF EMERGENCY ALERT SYSTEM.**—Each licensee under this section shall disseminate Federal, State, and local Emergency Alert System warnings to all subscribers of the licensee under the license under this section.

(e) **ACCESS FOR EMERGENCY PERSONNEL.**—

(1) REQUIREMENT.—Each licensee under this section shall provide immediate access for national security and emergency preparedness personnel to the terrestrial services covered by the license under this section as follows:

(A) Whenever the Emergency Alert System is activated.

(B) Otherwise at the request of the Secretary of Homeland Security.

(2) NATURE OF ACCESS.—Access under paragraph (1) shall ensure that emergency data is transmitted to the public, or between emergency personnel, at a higher priority than any other data transmitted by the service concerned.

(f) ADDITIONAL PUBLIC INTEREST OBLIGATIONS.—

(1) ADDITIONAL OBLIGATIONS.—Each licensee under this section shall—

(A) adhere to rules governing carriage of local television station signals and rules concerning obscenity and indecency consistent with section 614, 615, 616, 624(d)(2), 639, 640, and 641 of the Communications Act of 1934 (47 U.S.C. 534, 535, 536, 544(d)(2), 559, 560, and 561);

(B) make its facilities available for candidates for public office consistent with sections 312(a)(7) and 315 of the Communications Act of 1934 (47 U.S.C. 312(a)(7) and 315); and

(C) allocate 4 percent of its capacity for services that promote the public interest, in addition to the capacity utilized to fulfill the obligations required of subparagraphs (A) and (B), such as—

(i) telemedicine;

(ii) educational programming, including distance learning;

(iii) high speed Internet access to unserved and underserved populations; and

(iv) specialized local data and video services intended to facilitate public participation in local government and community life.

(2) LICENSE BOUNDARIES.—In order to ensure compliance with paragraph (1), the Commission shall establish boundaries for licenses under this section that conform to existing television markets, as determined by the Commission for purposes of section 652(h)(1)(C)(i) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)(i)).

(g) REDESIGNATION OF MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE.—The Commission shall redesignate the Multichannel Video Distribution and Data Service (MVDDS) as the Terrestrial Direct Broadcast Service (TDBS).

SA 4670. Mr. CONRAD (for himself, Mrs. HUTCHISON, Mr. HELMS, Mr. JOHNSON, Mr. GRASSLEY, Mr. BREAUX, and Mrs. CARNAHAN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Insert after section 154, the following:

SEC. 155. NATIONAL EMERGENCY TELEMEDICAL COMMUNICATIONS.

(a) TELEHEALTH TASK FORCE.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Health and Human Services, shall establish a task force to be known as the “National Emergency Telehealth Network Task Force” (referred to in this subsection as the “Task Force”) to advise the Secretary on the use of telehealth technologies to prepare for, monitor, respond to, and manage the events of a biological, chemical, or nuclear terrorist attack or other public health emergencies.

(2) FUNCTIONS.—The Task Force shall—

(A) conduct an inventory of existing telehealth initiatives, including—

(i) the specific location of network components;

(ii) the medical, technological, and communications capabilities of such components; and

(iii) the functionality of such components;

(B) make recommendations for use by the Secretary in establishing standards for regional interoperating and overlapping information and operational capability response grids in order to achieve coordinated capabilities based on responses among Federal, State, and local responders;

(C) recommend any changes necessary to integrate technology and clinical practices;

(D) recommend to the Secretary acceptable standard clinical information that could be uniformly applied and available throughout a national telemedical network and tested in the regional networks;

(E) research, develop, test, and evaluate administrative, physical, and technical guidelines for protecting the confidentiality, integrity, and availability of regional networks and all associated information and advise the Secretary on issues of patient data security, and compliance with all applicable regulations;

(F) in consultation and coordination with the regional telehealth networks established under subsection (b), test such networks for their ability to provide support for the existing and planned efforts of State and local law enforcement, fire departments, health care facilities, and Federal and State public health agencies to prepare for, monitor, respond rapidly to, or manage the events of a biological, chemical, or nuclear terrorist attack or other public health emergencies with respect to each of the functions listed in subparagraphs (A) through (H) of subsection (b)(3); and

(G) facilitate the development of training programs for responders and a mechanism for training via enhanced advanced distributive learning.

(3) MEMBERSHIP.—The Task Force shall include representation from—

(A) relevant Federal agencies including the Centers for Disease Control and Prevention and the Telemedicine and Advanced Research Center of the Department of Army, Medical Research and Materiel Command;

(B) relevant State and local government agencies including public health officials;

(C) professional associations specializing in health care, veterinary medicine, and agrimedical; and

(D) other relevant private sector organizations, including public health and national telehealth organizations and representatives of academic and corporate information management and information technology organizations.

(4) MEETINGS AND REPORTS.—

(A) MEETINGS.—The Task Force shall meet as the Secretary may direct.

(B) REPORT.—

(i) IN GENERAL.—Not later than 3 years after the date of enactment of this Act the Task Force shall prepare and submit a report to Congress regarding the activities of the Task Force.

(ii) CONTENTS.—The report described in clause (i) shall recommend, based on the information obtained from the regional telehealth networks established under subsection (b), whether and how to build on existing telehealth networks to develop a National Emergency Telehealth Network.

(5) IMPLEMENTATION.—The Task Force may carry out activities under this subsection in cooperation with other entities, including national telehealth organizations.

(6) TERMINATION.—The Task Force shall terminate upon submission of the final report required under paragraph (4)(B).

(b) ESTABLISHMENT OF STATE AND REGIONAL TELEHEALTH NETWORKS.—

(1) PROGRAM AUTHORIZED.—

(A) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to award grants to 3 regional consortia of States to carry out pilot programs for the development of statewide and regional telehealth network testbeds that build on, enhance, and securely link existing State and local telehealth programs.

(B) DURATION.—The Secretary shall award grants under this subsection for a period not to exceed 3 years. Such grants may be renewed.

(C) STATE CONSORTIUM PLANS.—Each regional consortium of States desiring to receive a grant under subparagraph (A) shall submit to the Secretary a plan that describes how such consortium shall—

(i) interconnect existing telehealth systems in a functional and seamless fashion to enhance the ability of the States in the region to prepare for, monitor, respond to, and manage the events of a biological, chemical, or nuclear terrorist attack or other public health emergencies; and

(ii) link to other participating States in the region via a standard interoperable connection using standard information.

(D) PRIORITY.—In making grants under this subsection, the Secretary shall give priority to regional consortia of States that demonstrate—

(i) the interest and participation of a broad cross section of relevant entities, including public health offices, emergency preparedness offices, and health care providers;

(ii) the ability to connect major population centers as well as isolated border, rural, and frontier communities within the region to provide medical, public health, and emergency services in response to a biological, chemical, or nuclear terrorist attack or other public health emergencies;

(iii) an existing telehealth and telecommunications infrastructure that connects relevant State agencies, health care providers, universities, and relevant Federal agencies; and

(iv) the ability to quickly complete development of a region-wide interoperable emergency telemedical network to expand communications and service capabilities and facilitate coordination among multiple medical, public health, and emergency response agencies, and the ability to test recommendations of the task force established under subsection (a) within 3 years.

(2) REGIONAL NETWORKS.—A consortium of States awarded a grant under paragraph (1) shall develop a regional telehealth network that links established telehealth initiatives within the region to provide medical services in cooperation with and in support of, where relevant, the following:

(A) State and local public health departments.

(B) Private, public, community, and rural health clinics and Indian Health Service clinics.

(C) Hospitals, academic health centers, and medical centers of the Department of Defense and the Department of Veterans' Affairs.

(D) Veterinary clinics and hospitals.

(E) Agrimedical centers.

(F) Offices of rural health.

(G) Federal agencies.

(H) Other relevant entities as determined appropriate by such consortium.

(3) FUNCTIONS OF THE NETWORKS.—Once established, a regional telehealth network

under this subsection shall test the feasibility of recommendations (including recommendations relating to standard clinical information, operational capability, and associated technology and information standards) described in subparagraphs (B) through (E) of subsection (a)(2), and provide reports to the task force established under subsection (a), on such network's ability, in preparation of and in response to a biological, chemical, or nuclear terrorist attack or other public health emergencies, to support each of the following functions:

(A) Rapid emergency response and coordination.

(B) Real-time data collection for information dissemination.

(C) Environmental monitoring.

(D) Early identification and monitoring of biological, chemical, or nuclear exposures.

(E) Situationally relevant expert consultative services for patient care and front-line responders.

(F) Training of responders.

(G) Development of an advanced distributed learning network.

(H) Distance learning for the purposes of medical and clinical education, and simulation scenarios for ongoing training.

(4) REQUIREMENTS.—In awarding a grant under paragraph (1), the Secretary shall—

(A) require that each regional network adopt common administrative, physical, and technical approaches for seamless interoperability and to protect the network's confidentiality, integrity, and availability, taking into consideration guidelines developed by the task force established under subsection (a); and

(B) require that each regional network inventory and report to the task force established under subsection (a), the technology and technical infrastructure available to such network.

(c) FUNDING.—

(1) IN GENERAL.—Of the amount appropriated under section 199, the Secretary shall make available not to exceed \$150,000,000 for the 3-fiscal year period beginning with fiscal year 2003 to carry out this section. Amounts made available under this paragraph shall remain available until expended.

(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 5 percent of the amount made available for each fiscal year under paragraph (1) shall be used for Task Force administrative costs.

SA 4671. Mr. GREGG (for himself, Mr. HOLLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 4, after "Carrying out all" insert "nonterrorism".

On page 69, line 5, strike "and response".

On page 69, strike lines 8 through 22 and insert the following:

(2) Carrying out all terrorism and other hazard response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

On page 69, line 23, strike "(5)" and insert "(3)".

On page 70, line 6, strike "(6)" and insert "(4)".

On page 70, line 11, strike "(7)" and insert "(5)".

On page 70, line 16, strike "(8)" and insert "(6)".

On page 70, line 19, strike "(9)" and insert "(7)".

On page 70, line 22, strike "(10)" and insert "(8)".

On page 71, line 2, strike "(5)" and insert "(6)".

On page 71, line 3, strike "(11)" and insert "(9)".

On page 71, line 9, strike "(6)" and insert "(7)".

On page 71, line 10, strike "(12)" and insert "(10)".

On page 71, line 23, strike "(13)" and insert "(11)".

On page 72, strike lines 3 through 8.

On page 72, line 9, strike "(15)" and insert "(12)".

On page 72, line 19, after "Department" insert ", except that those elements of the Office of National Preparedness of the Federal Emergency Management Agency that relate to terrorism shall be transferred to the Office of Domestic Preparedness established under this section".

On page 73, insert before line 1 the following:

(4) Those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

On page 73, line 1, strike "(4)" and insert "(5)".

On page 73, line 17, strike "(5)" and insert "(6)".

On page 73, line 23, strike "(6)" and insert "(7)".

On page 74 strike lines 7 through 19 and insert the following:

(d) OFFICE FOR DOMESTIC PREPAREDNESS.—

(1) ESTABLISHMENT.—There is established within the Directorate of Emergency Preparedness and Response the Office for Domestic Preparedness.

(2) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Emergency Preparedness and Response.

(3) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(A) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(B) in keeping with intelligence estimates, working to ensure adequate strategic and operational planning, equipment, training, and exercise activities at all levels of government;

(C) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(D) directing and supervising terrorism preparedness grant programs of the Federal Government for all emergency response providers;

(E) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(F) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(G) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States; and

(H) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(4) FISCAL YEARS 2003 AND 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

(5) REPORT.—Not later than the submission of the fiscal year 2005 budget request, the Secretary shall submit to Congress a detailed report containing a comprehensive, independent analysis, and recommendations addressing whether there should be a single office within the Department responsible for the domestic preparedness of the United States for all hazards, including terrorism and natural disasters. The analysis shall include an examination of the advantages, disadvantages, costs, and benefits of creating a single office for all hazards preparedness within the Department.

SA 4672. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On Page 76, insert in section 135(d) "Definitions" the following:

(8) MAJOR SYSTEM.—The term "major system" means a system for which the total expenditures are estimated to exceed the dollar threshold for a "major systems" established by Secretary pursuant to the Office of Management and Budget Circular A-109, entitled "Major Systems Acquisition".

(9) OPERATIONAL TEST AND EVALUATION.—The term "operational test and evaluation" means—

(A) the test, under realistic conditions, of any item of (or key component of) a technology, device, or equipment for the purpose of determining the effectiveness and suitability of the technology, device, or equipment by typical users to meet homeland security needs and objectives; and

(B) the evaluation of the results of such test.

On page 85, in section 135, after the subsection entitled "(3) RESEARCH AND DEVELOPMENT RELATED AUTHORITIES" add a subsection (4) as follows—

"(4) OPERATIONAL TEST AND EVALUATION AUTHORITIES.—The Under Secretary, by authority of the Secretary, shall exercise the following authorities relating to the testing and evaluation activities within the Department—

(A) serve as principal independent advisor to the Secretary on operational test and evaluation activities in the Department and the principal test and evaluation official of the Department;

(B) prescribe, by authority of the Secretary, policies and procedures for the conduct of operation test and evaluation;

(C) monitor and review all operational test and evaluation in the Department;

(D) coordinate operational test and evaluation conducted jointly by more than one Under Secretary;

(E) review and make recommendations to the Secretary on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities, test ranges and test beds in the Department;

(F) require prompt reporting of all operational test and evaluation activities conducted by officials of the Department;

(G) have access to all records and data in the Department necessary to carry out the duties of this subsection;

(H) provide the Congress no later than February 15 of each calendar year, a report on all operational test and evaluation activities conducted within the Department for prior fiscal year, describing—

i. the mission of the each major system, ii. background technical and programmatic information on the major system,

iii. test and evaluation activity conducted during the prior fiscal year on the major system,

iv. the assessment of major system test results relative to its operational requirements,

v. such other matters that relate to the overall health of the testing and evaluation infrastructure of the Department.

(I) Two years after the date of enactment of this Act, the Comptroller General shall report to Congress on the efforts by the Department in implementing the authorities for operational test and evaluation and give suggestions for improvement."

Technical Corrections as follows:

1. On page 91, line 9, replace "(h) OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION" with "(h) OFFICE FOR TESTING, EVALUATION AND TRANSITION";

2. On Page 91, lines 14-15, replace "OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION" with "OFFICE FOR TESTING, EVALUATION AND TRANSITION";

3. On Page 91, line 17 add "(A) carry out authorities of the Under Secretary with respect to operational test and evaluation," and redesignate the following subparagraphs as (B) through (G),

4. On Page 92, line 11, strike "The functions" and replace with "Except for the function paragraph (2)(A), the functions".

SA 4673. Mr. REID (for Mr. BYRD) proposed an amendment to amendment SA 4644 proposed by Mr. BYRD to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term "agency"—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and (B) does not include the General Accounting Office.

(2) ASSETS.—The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriate

tions, and other funds or resources (other than personnel).

(3) DEPARTMENT.—The term "Department" means the Department of Homeland Security established under title I.

(4) ENTERPRISE ARCHITECTURE.—The term "enterprise architecture"—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) FUNCTIONS.—The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(6) HOMELAND.—The term "homeland" means the United States, in a geographic sense.

(7) HOMELAND SECURITY.—The term "homeland security" means a concerted national effort to—

(A) prevent terrorist attacks within the United States;

(B) reduce America's vulnerability to terrorism; and

(C) minimize the damage and recover from terrorist attacks that do occur.

(8) LOCAL GOVERNMENT.—The term "local government" has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288).

(9) RISK ANALYSIS AND RISK MANAGEMENT.—The term "risk analysis and risk management" means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(10) PERSONNEL.—The term "personnel" means officers and employees.

(11) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(12) UNITED STATES.—The term "United States", when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

"The Department of Homeland Security."

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other

functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate. All authorities, functions, and responsibilities transferred to the Department shall be vested in the Secretary.

(b) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop a comprehensive strategy for combating terrorism and the homeland security response.

(4) To make budget recommendations relating to the border and transportation security, infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities; and

(D) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities,

the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to homeland security.

(B) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 182; and

(B) each biennial report required under section 192(b).

(c) **MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.**—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

“(5) the Secretary of Homeland Security; and

“(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.”.

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) **IN GENERAL.**—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) **IN GENERAL.**—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) **IN GENERAL.**—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—

(1) **IN GENERAL.**—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) **ASSIGNMENT.**—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) **IN GENERAL.**—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) **ESTABLISHMENT.**—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and

(2) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services,”.

(c) **REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.**—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) **ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.**—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

“SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the “Inspector General”) shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the “Secretary”) with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

“(A) intelligence or counterintelligence matters;

“(B) ongoing criminal investigations or proceedings;

“(C) undercover operations;

“(D) the identity of confidential sources, including protected witnesses;

“(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

“(i) section 3056 of title 18, United States Code;

“(ii) section 202 of title 3, United States Code; or

“(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

“(F) other matters the disclosure of which would constitute a serious threat to national security.

“(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

“(A) prevent the disclosure of any information described under paragraph (1);

“(B) preserve the national security; or

“(C) prevent significant impairment to the national interests of the United States.

“(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

“(A) the President of the Senate;

“(B) the Speaker of the House of Representatives;

“(C) the Committee on Governmental Affairs of the Senate;

“(D) the Committee on Government Reform of the House of Representatives; and

“(E) other appropriate committees or subcommittees of Congress.

“(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in

any subdivision of the Department of Homeland Security.

“(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

“(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

“(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

“(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

“(1) the President of the Senate;

“(2) the Speaker of the House of Representatives;

“(3) the Committee on Governmental Affairs of the Senate; and

“(4) the Committee on Government Reform of the House of Representatives.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking “8F” each place it appears and inserting “8G”; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking “or 8H” and inserting “, 8H, or 8I”.

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) The Department of Homeland Security.”.

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (includ-

ing the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

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

“Secretary of Homeland Security.”.

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Secretary of Homeland Security.”.

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Management, Department of Homeland Security.”.

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretaries of Homeland Security (5).

"Inspector General, Department of Homeland Security.

"Chief Financial Officer, Department of Homeland Security.

"Chief Information Officer, Department of Homeland Security.

"General Counsel, Department of Homeland Security."

Subtitle B—Establishment of Directorates and Offices

SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Border and Transportation Protection.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) **EXERCISE OF CUSTOMS REVENUE AUTHORITY.**—

(1) **IN GENERAL.**—

(A) **AUTHORITIES NOT TRANSFERRED.**—Authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) **REPORT.**—Not later than 45 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) **LIABILITY.**—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) **APPLICABLE LAWS.**—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) **DEFINITION OF CUSTOMS REVENUE FUNCTIONS.**—In this subsection, the term "customs revenue functions" means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for "entry" as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(d) **PRESERVING COAST GUARD MISSION PERFORMANCE.**—

(1) **DEFINITIONS.**—In this subsection:

(A) **NON-HOMELAND SECURITY MISSIONS.**—The term "non-homeland security missions" means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) **HOMELAND SECURITY MISSIONS.**—The term "homeland security missions" means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) **MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.**—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) **CERTAIN TRANSFERS PROHIBITED.**—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) **CHANGES TO NON-HOMELAND SECURITY MISSIONS.**—

(A) **PROHIBITION.**—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act.

(B) **WAIVER.**—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declara-

tion and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) **ANNUAL REVIEW.**—

(A) **IN GENERAL.**—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) **REPORT.**—The report under this paragraph shall be submitted not later than March 1 of each year to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) **DIRECT REPORTING TO SECRETARY.**—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) **OPERATION AS A SERVICE IN THE NAVY.**—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) **ESTABLISHMENT.**—There is established within the Department a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Critical Infrastructure Protection.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) **ESTABLISHMENT.**—There is established within the Department the Directorate of Emergency Preparedness and Response.

(b) **UNDER SECRETARY.**—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) **ESTABLISHMENT.**—There is established within the Department a Directorate of Science and Technology.

(b) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology.

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) CHIEF HOMELAND SECURITY LIAISON OFFICER.—

(A) APPOINTMENT.—The Secretary shall appoint a Chief Homeland Security Liaison Officer to coordinate the activities of the Homeland Security Liaison Officers, designated under paragraph (2).

(B) ANNUAL REPORT.—The Chief Homeland Security Liaison Officer shall prepare an annual report, that contains—

(i) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(ii) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(iii) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(iv) proposals to increase the coordination of Department priorities within each State and between the States.

(2) HOMELAND SECURITY LIAISON OFFICERS.—

(A) DESIGNATION.—The Secretary shall designate in each State not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State; and

(ii) provide coordination between the Department and State and local first responders, including—

(I) law enforcement agencies;

(II) fire and rescue agencies;

(III) medical providers;

(IV) emergency service providers; and

(V) relief agencies.

(B) DUTIES.—Each Homeland Security Liaison Officer designated under subparagraph (A) shall—

(i) ensure coordination between the Department and—

(I) State, local, and community-based law enforcement;

(II) fire and rescue agencies; and

(III) medical and emergency relief organizations;

(ii) identify State and local areas requiring additional information, training, resources, and security;

(iii) provide training, information, and education regarding homeland security for State and local entities;

(iv) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(v) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(vi) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner; and

(vii) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security.

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders, that shall—

(A) ensure coordination among the Federal agencies involved with—

(i) State, local, and community-based law enforcement;

(ii) fire and rescue operations; and

(iii) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee on First Responders shall be composed of—

(A) the Chief Homeland Security Liaison Officer of the Department;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having

a significant role in the purposes of the Interagency Committee on First Responders.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee on First Responders and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee on First Responders shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee on First Responders shall meet—

(A) at the call of the Chief Homeland Security Liaison Officer of the Department; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Federal Interagency Committee on First Responders (in this section referred to as the “Advisory Council”).

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee on First Responders.

(B) REPRESENTATION.—The Interagency Committee on First Responders shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee on First Responders not less frequently than once every 3 months.

SEC. 138. BORDER COORDINATION WORKING GROUP.

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term “border security functions” means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term “relevant agencies” means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in this section referred to as the “Working Group”), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) **RELEVANT AGENCIES.**—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 139. LEGISLATIVE PROPOSALS AND SUPPORTING AND ENABLING LEGISLATION.

(a) **DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.**—Not earlier than February 3, 2003, the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Border and Transportation Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Border and Transportation Protection, to provide for homeland security.

(b) **DIRECTORATE OF INTELLIGENCE AND DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.**—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (a), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Intelligence and the Directorate of Critical Infrastructure Protection, to provide for homeland security.

(c) **DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE AND DIRECTORATE OF SCIENCE AND TECHNOLOGY.**—Not earlier than 120 days after the submission of the proposals and recommendations under subsection (b), the Secretary shall submit to Congress—

(1) any legislative proposals necessary to further the objectives of this title relating to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology; and

(2) recommendations for supporting and enabling legislation, including the transfer of authorities, functions, personnel, assets, agencies, or entities to the Directorate of Emergency Preparedness and Response and the Directorate of Science and Technology, to provide for homeland security.

(d) **SAVINGS AND ADMINISTRATIVE PROVISIONS OF SUPPORTING AND ENABLING LEGISLATION.**—Sections 183, 184, and 194 shall apply to any supporting and enabling legislation described under subsection (a), (b), or (c) enacted after the date of enactment of this Act.

(e) **DEADLINE FOR CONGRESSIONAL ACTION.**—Not later than 13 months after the date of enactment of this Act, the Congress shall complete action on all supporting and ena-

bling legislation described under subsection (a), (b), or (c).

SEC. 140. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Border and Transportation, Department of Homeland Security.

“Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

“Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

“Under Secretary for Immigration, Department of Homeland Security.

“Under Secretary for Intelligence, Department of Homeland Security.

“Under Secretary for Science and Technology, Department of Homeland Security.”.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the “National Emergency Preparedness Enhancement Act of 2002”.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) **ESTABLISHMENT OF CLEARINGHOUSE.**—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the “Clearinghouse”). The Clearinghouse shall be headed by a Director.

(b) **CONSULTATION.**—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to homeland security.

(c) DUTIES.—

(1) **DISSEMINATION OF INFORMATION.**—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) **CENTER.**—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) **PUBLIC AWARENESS CAMPAIGN.**—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) **BEST PRACTICES INFORMATION.**—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) **EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.**—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities’ facilities about emergency preparedness.

(b) **USE OF FUNDS.**—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) **FEDERAL SHARE.**—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of \$250,000 per grant recipient.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) **DESIGNATION.**—Each week that includes September 11 is “National Emergency Preparedness Week”.

(2) **PROCLAMATION.**—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) **FEDERAL AGENCY ACTIVITIES.**—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) **ESTABLISHMENT.**—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the “Center”).

(b) **MISSION.**—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) **REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.**—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) **CONTENTS.**—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) **RESPONSE OF THE SECRETARY.**—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) **FINDINGS.**—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) **EXCHANGE OF EMPLOYEES.**—

(1) **IN GENERAL.**—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) **CONDITIONS.**—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking “(d) **SCREENER PERSONNEL.**—Notwithstanding any other provision of law,” and inserting the following:

“(d) **SCREENER PERSONNEL.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law (except as provided under paragraph (2)),”;

(2) by adding at the end the following:

“(2) **WHISTLEBLOWER PROTECTION.**—

“(A) **DEFINITION.**—In this paragraph, the term “security screener” means—

“(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

“(ii) an applicant for the position of a security screener under that subsection.

“(B) **IN GENERAL.**—Notwithstanding paragraph (1)—

“(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

“(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

“(C) **COVERED POSITION.**—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.”.

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) **IN GENERAL.**—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking “(a) **DISCRIMINATION AGAINST AIRLINE EMPLOYEES.**—No air carrier or contractor or subcontractor of an air carrier” and inserting the following:

“(a) **DISCRIMINATION AGAINST EMPLOYEES.**—

“(1) **IN GENERAL.**—No air carrier, contractor, subcontractor, or employer described under paragraph (2)”;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

“(2) **APPLICABLE EMPLOYERS.**—Paragraph (1) shall apply to—

“(A) an air carrier or contractor or subcontractor of an air carrier;

“(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

“(C) an employer of private screening personnel described in section 44919 or 44920 of this title.”.

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”;

(2) in clause (iii), by striking “paragraphs (1) through (4) of subsection (a)” and inserting “subparagraphs (A) through (D) of subsection (a)(1)”.

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472-4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

“(c) **BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**—

“(1) **ESTABLISHMENT.**—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the ‘Division’).

“(2) **MISSION.**—The Division shall have the following primary missions:

“(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

“(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and,

in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

“(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

“(3) **RESPONSIBILITIES.**—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

“(A) The Bioterrorism Preparedness and Response Program.

“(B) The Strategic National Stockpile.

“(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

“(4) **DIRECTOR.**—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

“(5) **STAFFING.**—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

“(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

“(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.”.

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) **IN GENERAL.**—The annual Federal response plan developed by the Secretary under section 102(b)(14) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) **DISCLOSURES AMONG RELEVANT AGENCIES.**—

(1) **IN GENERAL.**—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) **PUBLIC HEALTH EMERGENCY.**—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) **POTENTIAL PUBLIC HEALTH EMERGENCY.**—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) \$375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) \$778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels

built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) \$55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

“(c) PERSONNEL GRANTS.—

“(1) EXCLUSION.—Grants awarded under subsection (b) to hire ‘employees engaged in fire protection’, as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

“(2) DURATION.—Grants awarded under paragraph (1) shall be for a 3-year period.

“(3) MAXIMUM AMOUNT.—The total amount of grants awarded under paragraph (1) shall not exceed \$100,000 per firefighter, indexed for inflation, over the 3-year grant period.

“(4) FEDERAL SHARE.—

“(A) IN GENERAL.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

“(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

“(5) APPLICATION.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

“(A) an explanation for the need for Federal assistance; and

“(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

“(6) MAINTENANCE OF EFFORT.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.”; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

“(3) \$1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).”.

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities;

(2) review all available information on vulnerabilities at aviation, seaport, rail and transit facilities; and

(3) review the steps taken by agencies since September 11, 2001, to improve aviation, seaport, rail, and transit security to determine their effectiveness at protecting passengers

and transportation infrastructure from terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress and the Secretary a comprehensive report containing—

(1) the findings and conclusions from the reviews conducted under subsection (a); and

(2) proposed steps to improve any deficiencies found in aviation, seaport, rail, and transit security including, to the extent possible, the cost of implementing the steps.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(1) the response of the Department to the recommendations of the report; and

(2) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) CONTENT.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated

versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

SEC. 172. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including

by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term “foreign incorporated entity” means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms “person”, “domestic”, and “foreign” have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

(e) EFFECTIVE DATE.—This section shall take effect 1 day after the date of enactment of this Act.

SEC. 173. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “September 30, 2003” and inserting “March 31, 2004”.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term “agency” includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) TRANSITION PERIOD.—The term “transition period” means the 1-year period beginning on the effective date of this division.

SEC. 182. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all

transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 183. SAVINGS PROVISIONS.

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

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

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

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings

and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

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

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

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

(f) **EMPLOYMENT AND PERSONNEL.**—

(1) **EMPLOYEE RIGHTS.**—

(A) **TRANSFERRED AGENCIES.**—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(B) **TRANSFERRED EMPLOYEES.**—An employee transferred to the Department under this Act, who was in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section unless—

(i) the primary job duty of the employee is materially changed after the transfer; and

(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) **TRANSFERRED FUNCTIONS.**—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this Act or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) **OTHER AGENCIES, EMPLOYEES, AND FUNCTIONS.**—

(i) **EXCLUSION OF SUBDIVISION.**—Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or in-

vestigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) **EXCLUSION OF EMPLOYEE.**—Subject to subparagraphs (B) and (C), an employee of the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(E) **PRIOR EXCLUSION.**—Subparagraphs (A) through (D) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(2) **TERMS AND CONDITIONS OF EMPLOYMENT.**—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(3) **CONDITIONS AND CRITERIA FOR APPOINTMENT.**—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(4) **WHISTLEBLOWER PROTECTION.**—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) **NO EFFECT ON INTELLIGENCE AUTHORITIES.**—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 184. USE OF APPROPRIATED FUNDS.

(a) **APPLICABILITY OF THIS SECTION.**—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) **USE OF TRANSFERRED FUNDS.**—Except as may be provided in an appropriations Act in accordance with subsection (d), balances of appropriations and any other funds or assets transferred under this Act—

(1) shall be available only for the purposes for which they were originally available;

(2) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limita-

tions and notification requirements related to the reprogramming of appropriated funds; and

(3) shall not be used to fund any new position established under this Act.

(c) **NOTIFICATION REGARDING TRANSFERS.**—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(d) **ADDITIONAL USES OF FUNDS DURING TRANSITION.**—Subject to subsection (c), amounts transferred to, or otherwise made available to, the Department may be used during the transition period for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(e) **DISPOSAL OF PROPERTY.**—

(1) **STRICT COMPLIANCE.**—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) **DEPOSIT OF PROCEEDS.**—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(f) **GIFTS.**—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(g) **BUDGET REQUEST.**—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) **REORGANIZATION AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) **LIMITATION.**—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) **DELEGATION AUTHORITY.**—

(1) **SECRETARY.**—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) **OFFICERS.**—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) **LIMITATIONS.**—

(A) **INTERUNIT DELEGATION.**—Any function assigned by this title to an organizational

unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) **FUNCTIONS.**—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) **ANNUAL EVALUATIONS.**—The Comptroller General of the United States shall monitor and evaluate the implementation of titles I and XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 182;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) **BIENNIAL REPORTS.**—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) **POINT OF ENTRY MANAGEMENT REPORT.**—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) **RESULTS-BASED MANAGEMENT.**—

(1) **STRATEGIC PLAN.**—

(A) **IN GENERAL.**—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) **PERIOD; REVISIONS.**—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) **CONTENTS.**—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) **PERFORMANCE PLAN.**—

(A) **IN GENERAL.**—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) **CONTENTS.**—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) **SCOPE.**—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) **PERFORMANCE REPORT.**—

(A) **IN GENERAL.**—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) **CONTENTS.**—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) **IN GENERAL.**—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) **SECRETARY OF LABOR.**—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SEC. 195. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) **IN GENERAL.**—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) **CONTENTS.**—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) **TIMING.**—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 196. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) **IN GENERAL.**—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) **CONTENTS.**—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) **EFFECTIVE DATE.**—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 197. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) **DEFINITIONS.**—In this section:

(1) **CRITICAL INFRASTRUCTURE.**—The term “critical infrastructure” has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) **FURNISHED VOLUNTARILY.**—

(A) **DEFINITION.**—The term “furnished voluntarily” means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) **BENEFIT.**—In this paragraph, the term “benefit” does not include any warning, alert, or other risk analysis by the Department.

(b) **IN GENERAL.**—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) **RECORDS SHARED WITH OTHER AGENCIES.**—

(1) **IN GENERAL.**—

(A) **RESPONSE TO REQUEST.**—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) **SEGREGABLE PORTION OF RECORD.**—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) **DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.**—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of

whether or not the Department has a similar or identical record.

(d) **WITHDRAWAL OF CONFIDENTIAL DESIGNATION.**—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) **PROCEDURES.**—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) **EFFECT ON STATE AND LOCAL LAW.**—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) **REPORT.**—

(1) **REQUIREMENT.**—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) **COMMITTEES OF CONGRESS.**—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) **FORM.**—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 198. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

SA 4674. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

The Security is responsible for ensuring that Federal, State, and local entities share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SA 4675. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

“SENSE OF CONGRESS.—It is the sense of Congress that the Department of Homeland Security shall comply with all laws protecting the civil rights and civil liberties of United States persons.”.

SA 4676. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following: “The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.”.

SA 4677. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following: “It is the sense of Congress that the Department of Homeland Security shall comply with all laws protecting the privacy of United States persons.”.

SA 4678. Mrs. FEINSTEIN (for herself and Mr. MCCAIN) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, between lines 9 and 10, insert the following:

SEC. 512. AIRPORT SECURITY SCREENER STANDARDS AND TRAINING.

(a) **IN GENERAL.**—Section 44935(e)(2) of title 49, United States Code, is amended—

(1) by striking “States;” in subparagraph (A)(ii) and inserting “States or described in subparagraph (C);”;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

“(C) **OTHER INDIVIDUALS.**—An individual is described in this subparagraph if that individual—

“(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));;

“(ii) was born in a territory of the United States;

“(iii) was honorably discharged from service in the Armed Forces of the United States; or

“(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107-71).”.

(b) **CORRECTION OF SUBSECTION DESIGNATION.**—Subsection (i) of section 44935 of title 49, United States Code, relating to accessibility of computer-based training facilities, is redesignated as subsection (k).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to hold a hearing during the session of the Senate on Wednesday, September 18, 2002, at 9:30 a.m. in SD-366. The purpose of the hearing is to receive testimony on the effectiveness and sustainability of U.S. technology transfer programs for energy efficiency, nuclear, fossil and renewable energy; and to identify necessary changes to those programs to support U.S. competitiveness in the global marketplace.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, September 18, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on H.R. 2880, a bill to amend laws relating to the lands of the enrollees and lineal descendants of enrollees whose names appear on the final Indian rolls of the Muscogee (Creek), Seminole, Cherokee, Chickasaw, and Choctaw Nations, and for other purposes.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on “Judicial Nominations” on Wednesday, September 18, 2002 in Dirksen Room 226 at 10:00 a.m.

Panel I: The Honorable Joseph R. Biden, Jr.; The Honorable Orrin Hatch; The Honorable Phil Gramm; The Honorable Robert Bennett; The Honorable Kay Bailey Hutchison; The Honorable Fred Thompson; The Honorable William Frist; The Honorable Thomas Carper; and The Honorable Jon Corzine.

Panel II: Michael W. McConnell to be a United States Circuit Court Judge for the Tenth Circuit.

Panel III: Kent A. Jordan to be United States District Court Judge for the District of Delaware; Alia Moses Ludlum to be United States District Court Judge for the Western District of Texas; William J. Martini to be United States District Court Judge for the District of New Jersey; Thomas W. Phillips to be United States District Court Judge for the Eastern District of Tennessee; and Jeffrey S. White to be United States District Court Judge for the Northern District of California.

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