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ONE HUNDRED SEVENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

W.J. "BILLY" TAUZIN, LOUISIANA,  
CHAIRMAN

July 12, 2002

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DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Richard K. Armey  
Chairman  
Select Committee on Homeland Security  
U.S. House of Representatives  
H 329 The Capitol  
Washington, D.C. 20515

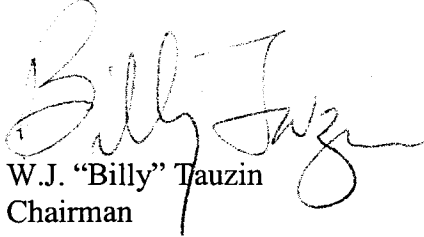
Dear Majority Leader Armey:

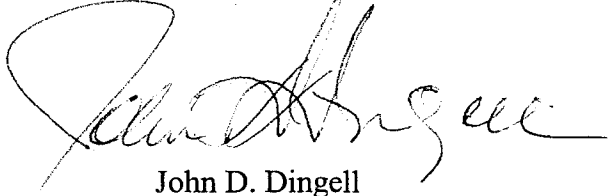
We take pride in transmitting to you herewith the recommendations of the Committee on Energy and Commerce with respect to H.R. 5005, the Homeland Security Act of 2002.

Please find enclosed (1) a Committee Print of the Committee's specific legislative recommendations, and (2) a Report on those recommendations.

The Committee on Energy and Commerce looks forward to working closely with the Select Committee on H.R. 5005. Please do not hesitate to contact us or have your staff contact Mr. David V. Marventano, the Staff Director, or Mr. Reid Stuntz, the Minority Staff Director, if we can be of assistance.

Sincerely,

  
W.J. "Billy" Tauzin  
Chairman

  
John D. Dingell  
Ranking Member

Attachments

cc: The Honorable Nancy Pelosi  
Ranking Member, Select Committee on Homeland Security

## COMMITTEE PRINT

JULY 11, 2002

[Showing provisions agreed to by  
the Committee on Energy and Commerce  
as provisions recommended for inclusion  
in H.R. 5005, as reported]

107TH CONGRESS  
2D SESSION

# H. R. 5005

To establish the Department of Homeland Security, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2002

Mr. ARMEY (for himself, Mr. HASTERT, Mr. DELAY, Mr. WATTS of Oklahoma, Mr. COX, Ms. PRYCE of Ohio, Mrs. CUBIN, Mr. TOM DAVIS of Virginia, Mr. BLUNT, Mr. PORTMAN, Mr. ADERHOLT, Mr. AKIN, Mr. BALLENGER, Mr. BARR of Georgia, Mr. BASS, Mr. BEREUTER, Mr. BOEHLERT, Mr. BONILLA, Mrs. BONO, Mr. BRADY of Texas, Mr. BROWN of South Carolina, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALVERT, Mr. CAMP, Mr. CANTOR, Mrs. CAPITO, Mr. CASTLE, Mr. CHAMBLISS, Mr. COOKSEY, Mr. CRENSHAW, Mrs. JO ANN DAVIS of Virginia, Mr. DREIER, Mr. DEMINT, Ms. DUNN of Washington, Mr. EHRLICH, Mr. ENGLISH, Mr. FERGUSON, Mr. FORBES, Mr. FOSSELLA, Mr. GANSKE, Mr. GEKAS, Mr. GIBBONS, Mr. GILMAN, Mr. GILLMOR, Mr. GOODE, Ms. GRANGER, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. GRUCCI, Mr. HANSEN, Ms. HARMAN, Ms. HART, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HOEKSTRA, Mr. HORN, Mr. HOUGHTON, Mr. ISSA, Mr. JENKINS, Mrs. JOHNSON of Connecticut, Mr. KELLER, Mrs. KELLY, Mr. KING, Mr. KOLBE, Mr. LAHOOD, Mr. LINDER, Mr. MCCRERY, Mr. MCKEON, Mr. MALONEY of Connecticut, Mr. MANZULLO, Mr. DAN MILLER of Florida, Mr. GARY G. MILLER of California, Mrs. MORELLA, Mrs. MYRICK, Mr. NUSSLE, Mr. OSBORNE, Mr. OXLEY, Mr. PICKERING, Mr. PITTS, Mr. PUTNAM, Mr. REHBERG, Mr. ROHRBACHER, Mr. ROYCE, Mrs. ROUKEMA, Mr. RYUN of Kansas, Mr. SAXTON, Mr. SCHROCK, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHAW, Mr. SHAYS, Mr. SHERWOOD, Mr. SIMPSON, Mr. SKEEN, Mr. SOUDER, Mr. SWEENEY, Mr. TANCREDO, Mr. TAUZIN, Mr. THORN-



BERRY, Mr. TIBERI, Mr. UPTON, Mr. SHIMKUS, Mr. WALDEN, Mr. WAMP, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. WHITFIELD, Mr. WICKER, Mrs. WILSON of New Mexico, and Mr. WILSON of South Carolina) (all by request) introduced the following bill; pursuant to House Resolution 449, referred to the Select Committee on Homeland Security for a period to be subsequently determined by the Speaker, and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means, for a period ending not later than July 12, 2002, in each case for consideration of such matters as fall within the jurisdiction of the committee concerned

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## A BILL

To establish the Department of Homeland Security, and  
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

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

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

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

### TITLE I—DEPARTMENT OF HOMELAND SECURITY

- Sec. 101. Executive department; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.

### TITLE II—CYBERSECURITY, INFORMATION ANALYSIS, AND INFRASTRUCTURE PROTECTION

- Sec. 201. Under Secretary for Cybersecurity, Information Analysis, and Infrastructure Protection.



- Sec. 202. Functions transferred.
- Sec. 203. Access to information.
- Sec. 204. Information voluntarily provided.
- Sec. 205. Federal cybersecurity program.

TITLE III—RESEARCH, DEVELOPMENT AND TECHNOLOGY SYSTEMS

- Sec. 301. Under Secretary for Research, Development, and Technology Systems.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.
- Sec. 304. Security at Federal research laboratories.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
- Sec. 403. Visa issuance.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.
- Sec. 502. Functions transferred.
- Sec. 503. Nuclear incident response.
- Sec. 504. Definition.

TITLE VI—MANAGEMENT

- Sec. 601. Under Secretary for Management.
- Sec. 602. Chief Financial Officer.
- Sec. 603. Chief Information Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

Subtitle B—Inspector General

- Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

- Sec. 720. Functions transferred.

Subtitle D—General Provisions

- Sec. 730. Establishment of human resources management system.
- Sec. 731. Advisory committees.
- Sec. 732. Acquisitions; property.
- Sec. 733. Reorganization; transfer.
- Sec. 734. Miscellaneous provisions.
- Sec. 735. Authorization of appropriations.
- Sec. 736. Military activities.
- Sec. 737. Rule of construction regarding regulatory authority.
- Sec. 738. Provisions regarding transfers from Department of Energy.

TITLE VIII—TRANSITION



- Sec. 801. Definitions.
- Sec. 802. Transfer of agencies.
- Sec. 803. Transitional authorities.
- Sec. 804. Savings provisions.
- Sec. 805. Terminations.
- Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

- Sec. 901. Inspector General Act.
- Sec. 902. Executive schedule.
- Sec. 903. United States Secret Service.
- Sec. 904. Coast Guard.
- Sec. 905. Strategic national stockpile and smallpox vaccine development.
- Sec. 906. Biological agents; Public Health Service Act.
- Sec. 907. National Bio-Weapons Defense Analysis Center.

1 **SEC. 2. DEFINITIONS.**

2 The following shall apply for purposes of this Act:

3 (1) The term “American homeland” or “home-  
4 land” means the United States, in a geographic  
5 sense.

6 (2) The term “assets” includes contracts, facili-  
7 ties, property, records, unobligated or unexpended  
8 balances of appropriations, and other funds or re-  
9 sources (other than personnel).

10 (3) The term “Department” means the Depart-  
11 ment of Homeland Security.

12 (4) The term “emergency response providers”  
13 includes Federal, State, and local emergency public  
14 safety, law enforcement, emergency response, emer-  
15 gency medical, and related personnel, agencies, and  
16 authorities.

17 (5) The term “executive agency” means an ex-  
18 ecutive agency and a military department, as de-



1        fined, respectively, in sections 105 and 102 of title  
2        5, United States Code.

3            (6) The term “functions” includes authorities,  
4        powers, rights, privileges, immunities, programs,  
5        projects, activities, duties, responsibilities, and obli-  
6        gations.

7            (7) The term “local government” has the mean-  
8        ing given in section 102(6) of the Robert T. Stafford  
9        Disaster Relief and Emergency Assistance Act (Pub-  
10       lic Law 93–288).

11           (8) The term “major disaster” has the meaning  
12        given in section 102(2) of the Robert T. Stafford  
13        Disaster Relief and Emergency Assistance Act (Pub-  
14        lic Law 93–288).

15           (9) The term “personnel” means officers and  
16        employees.

17           (10) The term “Secretary” means the Secretary  
18        of Homeland Security.

19           (11) The term “United States”, when used in  
20        a geographic sense, means any State (within the  
21        meaning of section 102(4) of the Robert T. Stafford  
22        Disaster Relief and Emergency Assistance Act (Pub-  
23        lic Law 93–288)), any possession of the United  
24        States, and any waters within the jurisdiction of the  
25        United States.



1 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

2 Any provision of this Act held to be invalid or unen-  
3 forceable by its terms, or as applied to any person or cir-  
4 cumstance, shall be construed so as to give it the max-  
5 imum effect permitted by law, unless such holding shall  
6 be one of utter invalidity or unenforceability, in which  
7 event such provision shall be deemed severable from this  
8 Act and shall not affect the remainder thereof, or the ap-  
9 plication of such provision to other persons not similarly  
10 situated or to other, dissimilar circumstances.

11 **SEC. 4. EFFECTIVE DATE.**

12 This Act shall take effect thirty days after the date  
13 of enactment or, if enacted within thirty days before Janu-  
14 ary 1, 2003, on January 1, 2003.

15 **TITLE I—DEPARTMENT OF**  
16 **HOMELAND SECURITY**

17 **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

18 (a) **ESTABLISHMENT.**—There is established a De-  
19 partment of Homeland Security, as an executive depart-  
20 ment of the United States within the meaning of title 5,  
21 United States Code.

22 (b) **MISSION.**—(1) The primary mission of the De-  
23 partment is to—

24 (A) prevent terrorist attacks within the United  
25 States;



1 (B) reduce the vulnerability of the United  
2 States to terrorism; and

3 (C) minimize the damage, and assist in the re-  
4 covery, from terrorist attacks that occur within the  
5 United States.

6 (2) The Secretary shall also be responsible for car-  
7 rying out the functions of entities transferred to the De-  
8 partment as provided by law.

9 **SEC. 102. SECRETARY; FUNCTIONS.**

10 (a) SECRETARY.—(1) There is a Secretary of Home-  
11 land Security, appointed by the President, by and with the  
12 advice and consent of the Senate.

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

15 (3) All functions of all officers, employees, and orga-  
16 nizational units of the Department are vested in the Sec-  
17 retary.

18 (b) FUNCTIONS.—The Secretary—

19 (1) may delegate any of his functions to any of-  
20 ficer, employee, or organizational unit of the Depart-  
21 ment;

22 (2) may promulgate regulations as provided in  
23 section 301 of title 5, United States Code; and

24 (3) shall have the authority to make contracts,  
25 grants, and cooperative agreements, and to enter





1 into agreements with other executive agencies, as  
2 may be necessary and proper to carry out his re-  
3 sponsibilities under this Act or otherwise provided by  
4 law.

5 **SEC. 103. OTHER OFFICERS.**

6 (a) DEPUTY SECRETARY; UNDER SECRETARIES.—

7 To assist the Secretary in the performance of his func-  
8 tions, there are the following officers, appointed by the  
9 President, by and with the advice and consent of the Sen-  
10 ate:

11 (1) A Deputy Secretary of Homeland Security,  
12 who shall be the Secretary's first assistant for pur-  
13 poses of chapter 33, subchapter 3, of title 5, United  
14 States Code.

15 (2) An Under Secretary for Cybersecurity, In-  
16 formation Analysis, and Infrastructure Protection.

17 (3) An Under Secretary for Research, Develop-  
18 ment, and Technology Systems.

19 (4) An Under Secretary for Border and Trans-  
20 portation Security.

21 (5) An Under Secretary for Emergency Pre-  
22 paredness and Response.

23 (6) An Under Secretary for Management.

24 (7) Not more than six Assistant Secretaries.



1 (b) INSPECTOR GENERAL.—To assist the Secretary  
2 in the performance of his functions, there is an Inspector  
3 General, who shall be appointed as provided in section  
4 3(a) of the Inspector General Act of 1978.

5 (c) COMMANDANT OF THE COAST GUARD.—To assist  
6 the Secretary in the performance of his functions, there  
7 is a Commandant of the Coast Guard, who shall be ap-  
8 pointed as provided in section 44 of title 14, United States  
9 Code.

10 (d) OTHER OFFICERS.—To assist the Secretary in  
11 the performance of his functions, there are the following  
12 officers, appointed by the President:

13 (1) A General Counsel, who shall be the chief  
14 legal officer of the Department.

15 (2) Not more than ten Assistant Secretaries.

16 (3) A Director of the Secret Service.

17 (4) A Chief Financial Officer.

18 (5) A Chief Information Officer.

19 (e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-  
20 ject to the provisions of this Act, every officer of the de-  
21 partment shall perform the functions specified by law for  
22 his office or prescribed by the Secretary.



1 **TITLE II—CYBERSECURITY, IN-**  
2 **FORMATION ANALYSIS, AND**  
3 **INFRASTRUCTURE PROTEC-**  
4 **TION**

5 **SEC. 201. UNDER SECRETARY FOR CYBERSECURITY, INFOR-**  
6 **MATION ANALYSIS, AND INFRASTRUCTURE**  
7 **PROTECTION.**

8 The Secretary, acting through the Under Secretary  
9 for Cybersecurity, Information Analysis, and Infrastruc-  
10 ture Protection , shall have responsibility for—

11 (1) taking (with respect to those functions es-  
12 tablished under another Act and transferred to the  
13 Secretary by this Act) or seeking to effect necessary  
14 measures to protect the key resources and critical  
15 infrastructures in the United States, in coordination  
16 with other executive agencies and in cooperation  
17 with State and local government personnel, agencies,  
18 and authorities, the private sector, and other enti-  
19 ties;

20 (2) receiving and analyzing law enforcement in-  
21 formation, intelligence, and other information in  
22 order to understand the nature and scope of the ter-  
23 rorist threat to the American homeland and to de-  
24 tect and identify potential threats of terrorism with-  
25 in the United States;



1           (3) comprehensively assessing (in addition to,  
2           and not in lieu of, assessments collected, possessed,  
3           or prepared by other executive agencies) the  
4           vulnerabilities of the key resources and critical infra-  
5           structures in the United States to a terrorist attack  
6           or other intentional act intended to substantially dis-  
7           rupt the functioning of such resources and infra-  
8           structures;

9           (4) integrating relevant information, intelligence  
10          analyses, and vulnerability assessments (whether  
11          such information, analyses, or assessments are pro-  
12          vided or produced by the Department or others) to  
13          identify protective priorities and to support protec-  
14          tive measures by the Department (with respect to  
15          those functions established under another Act and  
16          transferred to the Secretary by this Act), by other  
17          executive agencies, by State and local government  
18          personnel, agencies, and authorities, by the private  
19          sector, and by other entities;

20          (5) developing a comprehensive national plan  
21          for securing the key resources and critical infra-  
22          structures in the United States to a terrorist attack  
23          or other intentional act intended to substantially dis-  
24          rupt the functioning of such resources and infra-  
25          structure;



1 (6) administering the Homeland Security Advi-  
2 sory System, exercising primary responsibility for  
3 public advisories relating to terrorist threats, and (in  
4 coordination with other executive agencies) providing  
5 specific warning information to State and local gov-  
6 ernment personnel, agencies, and authorities, the  
7 private sector, other entities, and the public, as well  
8 as advice about appropriate protective actions and  
9 countermeasures; and

10 (7) reviewing, analyzing, and making rec-  
11 ommendations for improvements in the policies and  
12 procedures governing the sharing of law enforce-  
13 ment, intelligence, and other information relating to  
14 homeland security within the Federal Government  
15 and between such government and State and local  
16 government personnel, agencies, and authorities.

17 **SEC. 202. FUNCTIONS TRANSFERRED.**

18 In accordance with title VIII, there shall be trans-  
19 ferred to the Secretary the functions, personnel, assets,  
20 and liabilities of the following:

21 (1) The National Infrastructure Protection  
22 Center of the Federal Bureau of Investigation (other  
23 than the Computer Investigations and Operations  
24 Section), including the functions of the Attorney  
25 General relating thereto.



1           (2) The National Communications System of  
2 the Department of Defense, including the functions  
3 of the Secretary of Defense relating thereto.

4           (3) The Critical Infrastructure Assurance Of-  
5 fice of the Department of Commerce, including the  
6 functions of the Secretary of Commerce relating  
7 thereto.

8           (4) The Computer Security Division of the Na-  
9 tional Institute of Standards and Technology, in-  
10 cluding the functions of the Secretary of Commerce  
11 relating thereto.

12           (5) The energy security and assurance program  
13 and activities of the Department of Energy (includ-  
14 ing the National Infrastructure Simulation and  
15 Analysis Center), including the functions of the Sec-  
16 retary of Energy relating thereto.

17           (6) The Federal Computer Incident Response  
18 Center of the General Services Administration, in-  
19 cluding the functions of the Administrator of Gen-  
20 eral Services relating thereto.

21 **SEC. 203. ACCESS TO INFORMATION.**

22           The Secretary shall have access to all reports, assess-  
23 ments, and analytical information relating to threats of  
24 terrorism in the United States, and to all information con-  
25 cerning the vulnerabilities of key resources and critical in-



1 frastructures, or other vulnerabilities, of the United States  
2 to terrorism, whether or not such information has been  
3 analyzed, that may be collected, possessed, or prepared by  
4 any executive agency, except as otherwise directed by the  
5 President. The Secretary shall also have access to other  
6 information relating to the foregoing matters that may be  
7 collected, possessed, or prepared by an executive agency,  
8 as the President may further provide. With respect to the  
9 material to which the Secretary has access under this  
10 section—

11 (1) the Secretary may obtain such material by  
12 request, and may enter into cooperative arrange-  
13 ments with other executive agencies to share such  
14 material on a regular or routine basis, including re-  
15 quests or arrangements involving broad categories of  
16 material;

17 (2) regardless of whether the Secretary has  
18 made any request or entered into any cooperative ar-  
19 rangement pursuant to paragraph (1), all executive  
20 agencies promptly shall provide to the Secretary—

21 (A) all intelligence reports, assessments,  
22 and analytical information relating to threats of  
23 terrorism in the United States;

24 (B) all information relating to significant  
25 and credible threats of terrorism in the United



1 States, whether or not such information has  
2 been analyzed, if the President has provided  
3 that the Secretary shall have access to such in-  
4 formation; and

5 (C) such other material as the President  
6 may further provide; and

7 (3) the Secretary shall ensure that—

8 (A) material to which the Secretary has ac-  
9 cess under this section is protected from disclo-  
10 sure to the extent provided under Federal laws  
11 other than this Act, and is handled and used  
12 only for the performance of official duties;

13 (B) such material that is intelligence infor-  
14 mation is transmitted, retained, and dissemi-  
15 nated consistent with the authority of the Di-  
16 rector of Central Intelligence to protect intel-  
17 ligence sources and methods under the National  
18 Security Act and related procedures; and

19 (C) such material that is sensitive law en-  
20 forcement information is transmitted, retained,  
21 and disseminated consistent with the authority  
22 of the Attorney General under applicable law.

23 **SEC. 204. INFORMATION VOLUNTARILY PROVIDED.**

24 *[Omitted from Committee consideration]*





1 **SEC. 205. FEDERAL CYBERSECURITY PROGRAM.**

2 (a) **IN GENERAL.**—The Secretary, acting through the  
3 Under Secretary for Cybersecurity, Information Analysis,  
4 and Infrastructure Protection, shall establish and manage  
5 a program to improve the security of Federal critical infor-  
6 mation systems, including carrying out responsibilities  
7 under paragraphs (2) and (3) of section 201 that relate  
8 to such systems.

9 (b) **DUTIES.**—The duties of the Secretary under sub-  
10 section (a) are—

11 (1) to evaluate the increased use by civilian ex-  
12 ecutive agencies of techniques and tools to enhance  
13 the security of Federal critical information systems,  
14 including, as appropriate, consideration of cryptog-  
15 raphy;

16 (2) to provide assistance to civilian executive  
17 agencies in protecting the security of Federal critical  
18 information systems, including identification of sig-  
19 nificant risks to such systems; and

20 (3) to coordinate research and development for  
21 critical information systems relating to supervisory  
22 control and data acquisition systems, including, as  
23 appropriate, the establishment of a test bed.

24 (c) **FEDERAL INFORMATION SYSTEM SECURITY**  
25 **TEAM.**—



1           (1) IN GENERAL.—In carrying out subsection  
2           (b)(2), the Secretary shall establish, manage, and  
3           support a Federal information system security team  
4           whose purpose is to provide technical expertise to ci-  
5           vilian executive agencies to assist such agencies in  
6           securing Federal critical information systems by con-  
7           ducting information security audits of such systems,  
8           including conducting tests of the effectiveness of in-  
9           formation security control techniques and per-  
10          forming logical access control tests of interconnected  
11          computer systems and networks, and related vulner-  
12          ability assessment techniques.

13          (2) TEAM MEMBERS.—The Secretary shall en-  
14          sure that the team under paragraph (1) includes  
15          technical experts and auditors, computer scientists,  
16          and computer forensics analysts whose technical  
17          competence enables the team to conduct audits  
18          under such paragraph.

19          (3) AGENCY AGREEMENTS REGARDING AU-  
20          DITS.—Each civilian executive agency may enter into  
21          an agreement with the team under paragraph (1) for  
22          the conduct of audits under such paragraph of the  
23          Federal critical information systems of the agency.  
24          Such agreement shall establish the terms of the  
25          audit and shall include provisions to minimize the



1 extent to which the audit disrupts the operations of  
2 the agency.

3 (4) REPORTS.—Promptly after completing an  
4 audit under paragraph (1) of a civilian executive  
5 agency, the team under such paragraph shall pre-  
6 pare a report summarizing the findings of the audit  
7 and making recommendations for corrective action.  
8 Such report shall be submitted to the Secretary, the  
9 head of such agency, and the Inspector General of  
10 the agency (if any), and upon request of any con-  
11 gressional committee with jurisdiction over such  
12 agency, to such committee.

13 (d) DEFINITION.—For purposes of this section, the  
14 term “Federal critical information system” means an “in-  
15 formation system” as defined in section 3502 of title 44,  
16 United States Code, that—

17 (1) is, or is a component of, a key resource or  
18 critical infrastructure;

19 (2) is used or operated by a civilian executive  
20 agency or by a contractor of such an agency; and

21 (3) does not include any national security sys-  
22 tem as defined in section 5142 of the Clinger-Cohen  
23 Act of 1996.



1 **TITLE III—RESEARCH, DEVELOP-**  
2 **MENT AND TECHNOLOGY SYS-**  
3 **TEMS**

4 **SEC. 301. UNDER SECRETARY FOR RESEARCH, DEVELOP-**  
5 **MENT AND TECHNOLOGY SYSTEMS.**

6 The Secretary, acting through the Under Secretary  
7 for Research, Development, and Technology Systems,  
8 shall have responsibility for—

9 (1) conducting and supporting a national sci-  
10 entific research and development program to support  
11 the mission of the Department, except that such re-  
12 sponsibility does not extend to human health-related  
13 research and development activities;

14 (2) establishing long-term research and develop-  
15 ment needs and capabilities for all elements of the  
16 Department;

17 (3) integrating similar research and develop-  
18 ment needs between the operating elements of the  
19 Department;

20 (4) aligning research and development pro-  
21 grams with other executive agencies to reduce dupli-  
22 cation and identify unmet needs;

23 (5) in consultation with other appropriate exec-  
24 utive agencies, developing a national policy and stra-  
25 tegic plan for, identifying priorities for, and coordi-



1 nating the Federal Government's civilian efforts to  
2 identify and develop countermeasures to chemical,  
3 biological, radiological, nuclear, and other emerging  
4 terrorist threats;

5 (6) establishing priorities for, conducting, and  
6 supporting national research, development, dem-  
7 onstration, and, as appropriate, transitional oper-  
8 ation of technology and systems—

9 (A) for preventing the importation of  
10 chemical, biological, radiological, nuclear weap-  
11 ons and related material;

12 (B) for detecting, preventing, and pro-  
13 tecting against terrorist attacks that involve  
14 such weapons or related material; and

15 (C) for interoperability of communications  
16 systems for emergency response providers;

17 (7) establishing a central Federal repository for  
18 information relating to technologies and systems de-  
19 scribed in paragraph (6) for dissemination to Fed-  
20 eral, State and local government and private sector  
21 personnel, agencies and authorities; and

22 (8) developing nonmandatory and technology-  
23 neutral standards, and providing recommendations  
24 and technical assistance as appropriate, to assist  
25 Federal, State and local government and private sec-



1 tor efforts to evaluate and implement the use of  
2 technologies and systems described in subparagraphs  
3 (A) and (B) of paragraph (6).

4 **SEC. 302. FUNCTIONS TRANSFERRED.**

5 In accordance with title VIII, there shall be trans-  
6 ferred to the Secretary the functions, personnel, assets,  
7 and liabilities of the following:

8 (1) The program under section 351A of the  
9 Public Health Service Act, and functions thereof, in-  
10 cluding the functions of the Secretary of Health and  
11 Human Services relating thereto, subject to the  
12 amendments made by section 906(3), except that  
13 such transfer shall not occur unless the program  
14 under section 212 of the Agricultural Bioterrorism  
15 Protection Act of 2002 (subtitle B of title II of Pub-  
16 lic Law 107-188), and functions thereof, including  
17 the functions of the Secretary of Agriculture relating  
18 thereto, subject to the amendments made by section  
19 907, is transferred to the Department.

20 (2) Such aspects of programs and activities of  
21 the Department of Energy as relate to homeland se-  
22 curity, including the functions of the Secretary of  
23 Energy relating thereto (but not including programs  
24 and activities relating to the strategic nuclear de-  
25 fense posture of the United States), as follows:



1 (A) The chemical and biological national  
2 security and supporting programs and activities  
3 of the non-proliferation and verification re-  
4 search and development program.

5 (B) The nuclear smuggling programs and  
6 activities, and other programs and activities,  
7 within the proliferation detection program of  
8 the non-proliferation and verification research  
9 and development program, except that the pro-  
10 grams and activities described in this subpara-  
11 graph may be designated by the President ei-  
12 ther for transfer to the Department or for joint  
13 operation by the Secretary and the Secretary of  
14 Energy.

15 (C) The nuclear assessment program and  
16 activities of the assessment, detection, and co-  
17 operation program of the international mate-  
18 rials protection and cooperation program.

19 (D) Such life sciences activities of the bio-  
20 logical and environmental research program re-  
21 lated to microbial pathogens as may be des-  
22 ignated for transfer to the Department by the  
23 President.

24 (E) The Environmental Measurements  
25 Laboratory.



1 (F) The advanced scientific computing re-  
2 search program and activities, and the intel-  
3 ligence program and activities, at Lawrence  
4 Livermore National Laboratory.

5 (3) The National Bio-Weapons Defense Anal-  
6 ysis Center of the Department of Defense, including  
7 the functions of the Secretary of Defense related  
8 thereto.

9 (4) The Plum Island Animal Disease Center of  
10 the Department of Agriculture, including the func-  
11 tions of the Secretary of Agriculture relating there-  
12 to.

13 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**  
14 **ACTIVITIES.**

15 With respect to civilian human health-related re-  
16 search and development activities relating to counter-  
17 measures for chemical, biological, radiological, and nuclear  
18 and other emerging terrorist threats carried out by the  
19 Department of Health and Human Services (including the  
20 Public Health Service), the Secretary of Health and  
21 Human Services shall set priorities for such activities in  
22 collaboration with the Secretary of the Department of  
23 Homeland Security.





1 **SEC. 304. SECURITY AT FEDERAL RESEARCH LABORA-**  
2 **TORIES.**

3 *[Former section 304 transferred to title VII]*

4 The Secretary, in consultation with the Attorney  
5 General, shall have authority to establish standards for se-  
6 curity at Federal civilian facilities, other than facilities of  
7 the Department of Energy, that conduct research and de-  
8 velopment to identify and develop countermeasures to  
9 chemical, biological, radiological, nuclear, and other  
10 emerging terrorist threats.

11 **TITLE IV—BORDER AND**  
12 **TRANSPORTATION SECURITY**

13 *[Omitted from Committee consideration]*

14 **TITLE V—EMERGENCY**  
15 **PREPAREDNESS AND RESPONSE**

16 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**  
17 **NESS AND RESPONSE.**

18 The Secretary, acting through the Under Secretary  
19 for Emergency Preparedness and Response, shall have re-  
20 sponsibility for—

- 21 (1) assisting in the preparedness of emergency  
22 response providers for terrorist attacks, major disas-  
23 ters, and other emergencies;



1           (2) with respect to Federal emergency response  
2 providers, conducting joint and other exercises and  
3 training and evaluating performance in consultation  
4 with the heads of the relevant executive agencies;

5           (3) with respect to emergency response func-  
6 tions transferred to the Secretary by this Act, pro-  
7 viding the Federal Government's response to ter-  
8 rorist attacks and major disasters;

9           (4) coordinating other Federal response re-  
10 sources in the event of a terrorist attack or major  
11 disaster;

12           (5) assisting in the recovery from terrorist at-  
13 tacks and major disasters;

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

18           (7) consolidating existing Federal Government  
19 emergency response plans into a single, coordinated  
20 national response plan; and

21           (8) with respect to Federal programs that pro-  
22 vide assistance to emergency response providers to  
23 enhance preparedness and response for terrorist at-  
24 tacks or major disasters—

25                   (A) identifying preparedness priorities;



1 (B) evaluating the effectiveness of, and co-  
2 ordination among, such programs; and

3 (C) making recommendations to enhance  
4 the effectiveness of such programs, and to mini-  
5 mize inconsistencies and duplication among  
6 such programs.

7 **SEC. 502. FUNCTIONS TRANSFERRED.**

8 In accordance with title VIII, there shall be trans-  
9 ferred to the Secretary the functions, personnel, assets,  
10 and liabilities of the following:

11 (1) The Federal Emergency Management Agen-  
12 cy, including the functions of the Director of the  
13 Federal Emergency Management Agency relating  
14 thereto.

15 (2) The Office for Domestic Preparedness of  
16 the Office of Justice Programs, including the func-  
17 tions of the Attorney General relating thereto.

18 (3) The National Domestic Preparedness Office  
19 of the Federal Bureau of Investigation, including the  
20 functions of the Attorney General relating thereto.

21 (4) The Domestic Emergency Support Teams  
22 of the Department of Justice, including the func-  
23 tions of the Attorney General relating thereto.

24 (5) The Office of Emergency Preparedness, the  
25 National Disaster Medical System, and the Metro-



1       politan Medical Response System of the Department  
2       of Health and Human Services, including the func-  
3       tions of the Secretary of Health and Human Serv-  
4       ices and the Assistant Secretary for Public Health  
5       Emergency Preparedness relating thereto.

6               (6) To the extent provided pursuant to the  
7       amendments made by section 905, the Strategic Na-  
8       tional Stockpile of the Department of Health and  
9       Human Services.

10 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

11       (a) NUCLEAR INCIDENT RESPONSE TEAM.—At the  
12       direction of the Secretary (in connection with an actual  
13       or threatened terrorist attack or major disaster), the Nu-  
14       clear Incident Response Team shall operate as an organi-  
15       zational unit of the Department. While so operating, the  
16       Nuclear Incident Response Team shall be subject to the  
17       direction, authority, and control of the Secretary.

18       (b) CONSTRUCTION.—Nothing in this title limits the  
19       authority of the Secretary of Energy or the Administrator  
20       of the Environmental Protection Agency to organize,  
21       train, equip, or utilize their respective entities in the Nu-  
22       clear Incident Response Team, or to exercise direction, au-  
23       thority, and control of their respective entities when the  
24       entities are not operating as a unit of the Department.



1 **SEC. 504. DEFINITION.**

2 For purposes of this title, “nuclear incident response  
3 team” means a resource that includes—

4 (1) those entities of the Department of Energy  
5 that perform nuclear or radiological emergency sup-  
6 port functions (including accident response, search  
7 response, advisory, and technical operations func-  
8 tions), radiation exposure functions at the medical  
9 assistance facility known as Oak Ridge National  
10 Laboratory, radiological assistance functions, and re-  
11 lated functions; and

12 (2) those entities of the Environmental Protec-  
13 tion Agency that perform radiological emergency re-  
14 sponse and support functions.

15 **[SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RE-**  
16 **LATED ACTIVITIES.]**

17 *[The Committee Print strikes section 505.]*

18 **TITLE VI—MANAGEMENT**

19 *[Omitted from Committee consideration]*



1 **TITLE VII—COORDINATION WITH**  
2 **NON-FEDERAL ENTITIES; IN-**  
3 **SPECTOR GENERAL; UNITED**  
4 **STATES SECRET SERVICE;**  
5 **GENERAL PROVISIONS**

6 *[Omitted from Committee consideration, except section*  
7 *701; 733; the addition of a section 736 (transferred from*  
8 *title III of the bill); and the addition of new sections 737*  
9 *and 738.]*

10 **[SEC. 701. RESPONSIBILITIES.]**

11 *[The Committee Print strikes section 701.]*

12 **SEC. 733. REORGANIZATION; TRANSFER.**

13 The Secretary may allocate or reallocate functions  
14 among the officers of the Department, and may establish,  
15 consolidate, alter, or discontinue organizational units with-  
16 in the Department, but only after the expiration of 90  
17 days after providing notice of such action to the Congress,  
18 which shall include an explanation of the rationale for the  
19 action. Authority under this section does not extend to the  
20 abolition of any entity established or required to be main-  
21 tained as a distinct entity by this Act, or to any entity



1 or function transferred to the Department by this Act and  
2 established by statute.

3 **SEC. 736. MILITARY ACTIVITIES.**

4 *[Formerly was section 304]*

5 Except as specifically provided in this Act, nothing  
6 in this Act shall confer upon the Secretary any authority  
7 to engage in warfighting, the military defense of the  
8 United States, or other traditional military activities.

9 **SEC. 737. RULE OF CONSTRUCTION REGARDING TRANSFER**  
10 **OF AUTHORITY.**

11 (a) **REGULATORY AUTHORITY.**—With respect to reg-  
12 ulatory authority (whether applying by order, by regula-  
13 tion, or by direct operation of law), this Act may not be  
14 construed as—

15 (1) establishing such authority for the Sec-  
16 retary, except to the extent that a function trans-  
17 ferred to the Secretary by section 202, 302, 402,  
18 403, 502, or 720 includes such authority; or

19 (2) altering or diminishing such authority of  
20 any other executive agency, except to the extent that  
21 a function of such agency that includes such author-  
22 ity is transferred to the Secretary by a section speci-  
23 fied in paragraph (1).



1 (b) OTHER AUTHORITY.—With respect to authority  
2 that is not regulatory authority, this Act may not be con-  
3 strued as—

4 (1) transferring to the Secretary such authority  
5 of another executive agency, except to the extent  
6 that a function transferred to the Secretary by a  
7 section specified in subsection (a)(1) includes such  
8 authority; or

9 (2) altering or diminishing such authority of  
10 any other executive agency, except to the extent  
11 that—

12 (A) a function of such agency that includes  
13 such authority is transferred to the Secretary  
14 by a section specified in subsection (a)(1); or

15 (B) with respect to functions not so trans-  
16 ferred to the Secretary, such agency is required  
17 by this Act to coordinate or collaborate with the  
18 Secretary, or to provide information or docu-  
19 ments to the Secretary.

20 **SEC. 738. PROVISIONS REGARDING TRANSFERS FROM DE-**  
21 **PARTMENT OF ENERGY.**

22 (a) SEPARATE CONTRACTING.—To the extent that  
23 programs or activities transferred by this Act from the De-  
24 partment of Energy to the Department of Homeland Se-  
25 curity are being carried out through contracts with the





1 operator of a national laboratory of the Department of  
2 Energy, the Secretary of Homeland Security and the Sec-  
3 retary of Energy shall ensure that contracts for such pro-  
4 grams and activities between the Department of Home-  
5 land Security and such operator are separate from the  
6 contracts of the Department of Energy with such oper-  
7 ator.

8 (b) REIMBURSEMENT OF COSTS.—In the case of an  
9 activity carried out by the operator of a national labora-  
10 tory of the Department of Energy but under contract with  
11 the Department of Homeland Security, the Department  
12 of Homeland Security shall reimburse the Department of  
13 Energy for costs of such activity through a method under  
14 which the Secretary of Energy waives any requirement for  
15 the Department of Homeland Security to pay administra-  
16 tive charges or personnel costs of the Department of En-  
17 ergy or its contractors in excess of the amount that the  
18 Secretary of Energy pays for an activity carried out by  
19 such contractor and paid for by the Department of En-  
20 ergy.

21 **TITLE VIII—TRANSITION**

22 *[Omitted from Committee consideration]*



1     **TITLE IX—CONFORMING AND**  
2     **TECHNICAL AMENDMENTS**

3     *[Sections 901 through 904 omitted from Committee*  
4     *consideration]*

5     **SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-**  
6     **POX VACCINE DEVELOPMENT.**

7     (a) IN GENERAL.—The Public Health Security and  
8     Bioterrorism Preparedness and Response Act of 2002 is  
9     amended—

10         (1) in section 121(a)(1)—

11             (A) by striking “Secretary of Health and  
12             Human Services” and inserting “Secretary of  
13             Homeland Security”;

14             (B) by inserting “the Secretary of Health  
15             and Human Services and” between “in coordi-  
16             nation with” and “the Secretary of Veterans  
17             Affairs”; and

18             (C) by inserting “of Health and Human  
19             Services” after “as are determined by the Sec-  
20             retary”; and

21         (2) in subsections 121(a)(2) and (b), by insert-  
22         ing “of Health and Human Services” after “Sec-  
23         retary” each place it appears.



1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the date of transfer of  
3 the Strategic National Stockpile of the Department of  
4 Health and Human Services to the Department.

5 **SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC**  
6 **HEALTH SERVICE ACT.**

7 (a) PUBLIC HEALTH SERVICE ACT.—The Public  
8 Health Service Act is amended—

9 (1) in section 351A(a)(1)(A), by inserting “(as  
10 defined in subsection (l)(9))” after “Secretary”;

11 (2) in section 351A(h)(2)(A), by inserting “De-  
12 partment of Homeland Security, the” before “De-  
13 partment of Health and Human Services”; and

14 (3) in section 351A(l), by inserting after para-  
15 graph (8) a new paragraph as follows:

16 “(9) The term ‘Secretary’ means the Secretary  
17 of Homeland Security, in consultation with the Sec-  
18 retary of Health and Human Services.”.

19 (b) PUBLIC HEALTH SECURITY AND BIOTERRORISM  
20 PREPAREDNESS AND RESPONSE ACT OF 2002.—Section  
21 201(b) of the Public Health Security and Bioterrorism  
22 Preparedness and Response Act of 2002 is amended by  
23 striking “Secretary of Health and Human Services” and  
24 inserting “Secretary of Homeland Security”.





# REPORT

## THE RECOMMENDATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE TO THE SELECT COMMITTEE ON HOMELAND SECURITY CONCERNING H.R. 5005, THE HOMELAND SECURITY ACT OF 2002

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### BACKGROUND AND NEED FOR LEGISLATION

The events of September 11, 2001, and other acts of terrorism since then, have highlighted the need for a stronger emphasis on homeland security. President Bush recognized this need by mobilizing, upgrading, and coordinating Federal resources, and by appointing Governor Tom Ridge as the Director of a newly created Office of Homeland Security to lead the effort in enhancing the security of our country and its citizens.

On June 18, 2002, President Bush sent to Congress a proposed bill to establish a Department of Homeland Security. Majority Leader Dick Armey introduced the President's bill on June 24, 2002, as H.R. 5005, the Homeland Security Act of 2002. The bill would consolidate a number of Federal agencies, offices, programs, and functions in a new Department in an effort to streamline and enhance homeland security efforts, and to apply increased direction, coordination, and focus to homeland security issues. The general concept of creating such a Cabinet-level department has been supported on a bipartisan basis. The Committee on Energy and Commerce has direct jurisdiction over much of H.R. 5005, including issues contained in Title II on cybersecurity, information analysis, and infrastructure protection; Title III on research and development programs within the Department of Energy (DOE) and the Department of Health and Human Services (HHS), and on the selection, safety and security of dangerous biological agents; Title V on emergency preparedness and response; and related provisions elsewhere in the bill.

Given the Committee's decades of experience dealing with complex public health and energy-related policy issues, and its aggressive oversight of Federal agencies in these same areas, the Committee has the primary expertise to ensure that programs within DOE and HHS are coordinated with, or transferred to, programs in the new Department of Homeland Security in a manner that best effectuates the dual goals of increasing homeland security and preserving other national priorities in the health and energy areas. Indeed, on June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188), on which this Committee spent months of careful work and thoughtful deliberation. This critical legislation will greatly enhance the structure, coordination, and effectiveness of Federal programs for bioterrorism and other public health emergency preparedness and response by building up the Nation's public health infrastructure. This Act also takes important steps to improve the safety, security, and tracking of dangerous biological agents and toxins, as well as the protection of our food and drinking water supplies.

In the area of critical infrastructure protection (including cyber security) -- addressed in Title II of H.R. 5005 -- the Committee also has extensive expertise, as the Committee is responsible for policy and oversight of the Nation's key critical infrastructures. These include the energy and telecommunications systems, chemical, oil and gas, and nuclear facilities, and the food and drinking water supplies. The Committee has used its expertise in this area, as well as the other areas discussed above, to craft a strongly bipartisan Committee Print to enhance homeland security, and to ensure the most effective approach with respect to the new Department of Homeland Security.

#### HEARINGS

On Tuesday, June 25, 2002, the Subcommittee on Oversight and Investigations held a hearing on "Creating the Department of Homeland Security: Consideration of the Administration's Proposal," focusing on the emergency preparedness and response functions proposed for transfer to the new Department. The Subcommittee received testimony from: The Honorable Tom Ridge, The White House; The Honorable Claude Allen, Deputy Secretary, Department of Health and Human Services;

General John A. Gordon, Administrator, National Nuclear Security Administration; Ms. Jan Heinrich, Director, Health Care and Public Health Issues, U.S. General Accounting Office; Dr. Harry C. Vantine, Program Leader, Counterterrorism and Incident Response, Lawrence Livermore National Laboratory; Mr. David Nokes, Director, Systems Assessment and Research Center, Sandia National Laboratories; Dr. Donald D. Cobb, Associate Director for Threat Reduction, Los Alamos National Laboratory; Dr. Lew Stringer, Medical Director, Division of Emergency Management, North Carolina Department of Crime Control and Public Safety; Mr. Edward P. Plaughter, Chief, Arlington County Fire Department, Executive Agent for the Washington Area National Medical Response Team; Mr. Philip Anderson, Senior Fellow, Center for Strategic and International Studies; Dr. Ronald Atlas, President-Elect, American Society for Microbiology; and Dr. Tara O'Toole, Director, Center for Civilian Biodefense Studies, Johns Hopkins University.

On Tuesday, July 9, 2002, the Subcommittee on Oversight and Investigations continued its hearing on "Creating the Department of Homeland Security: Consideration of the Administration's Proposal," focusing on the research and development and critical infrastructure activities proposed for transfer to the new Department. The Subcommittee received testimony from: Mr. Jerome Hauer, Director, Office of Public Health Emergency Preparedness, Department of Health and Human Services; Ms. Jan Heinrich, Director, Health Care and Public Health Issues, U.S. General Accounting Office; Dr. Gail Cassell, Vice President, Scientific Affairs, Distinguished Lilly Research Scholar for Infectious Diseases, Eli Lilly and Company; Dr. Margaret Hamburg, Vice President, Biological Programs, Nuclear Threat Initiative; Mr. John S. Tritak, Director, Critical Infrastructure Assurance Office, Department of Commerce; Mr. James McDonnell, Director, Energy Security and Assurance Program, Department of Energy; Dr. Samuel G. Varnado, Director, Infrastructure and Information Systems Center, Sandia National Laboratories; Dr. Donald D. Cobb, Associate Director for Threat Reduction, Los Alamos National Laboratory; Mr. Robert F. Dacey, Director, Information Security Issues, U.S. General Accounting Office; Mr. William Smith, Executive Vice President, Network Operations, BellSouth; Mr. Guy Copeland, Vice President, Information Infrastructure Advisory Programs, Federal Sector, Computer Sciences Corporation, on behalf of the Information Technology Association of America; Ms. Lynn

P. Costantini, Director, Online Services, North American Electric Reliability Council; Mr. John P. Sullivan, Jr., President and Chief Engineer, Boston Water and Sewer Commission, on behalf of the Association of Metropolitan Water Agencies; Mr. Kenneth C. Watson, President, Partnership for Critical Infrastructure Security, Cisco Systems, Inc.; Mr. Jeremiah Baumann, Environmental Health Advocate, U.S. Public Interest Research Group; Mr. David L. Sobel, General Counsel, Electronic Privacy Information Center; Mr. Jason Ahearn, Assistant Commissioner, Field Operations, United States Customs Service; Ambassador Linton Brooks, Acting Administrator, National Nuclear Security Administration; Ms. Gary Jones, Director, Natural Resources and Environment Issues, U.S. General Accounting Office; Mr. Frank Panico, Manager, International Networks and Transportation, United States Postal Service; Mr. David Nokes, Director, Systems Assessment and Research Center, Sandia National Laboratories; Dr. Wayne J. Shotts, Associate Director for Nonproliferation, Arms Control and International Security, Lawrence Livermore National Laboratory; Mr. Steven W. Martin, Director, Homeland Security Programs, Pacific Northwest National Laboratory; Mr. Robert A. Bryden, Vice President, Corporate Security, FedEx Corporation; Mr. Jim Holsen, Vice President, Engineering, United Parcel Service, Inc.; and Mr. Barry Howe, Vice President, Thermo Electron Corporation.

#### COMMITTEE CONSIDERATION

On Thursday, July 11, 2002, the Full Committee met in open markup session for the consideration of a Committee Print to provide recommendations to the Select Committee on Homeland Security with respect to H.R. 5005, and approved the Committee Print, without amendment, by voice vote.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short Title; Table of Contents.*

Section 1 of H.R. 5005 sets forth the title and table of contents of this Act. The Committee Print makes only technical and conforming changes to this section.



*Section 2. Definitions.*

Section 2 of H.R. 5005 sets forth the definitions for certain terms used in this Act. The Committee Print makes a change to the definition of the term "emergency response providers" to ensure that non-governmental personnel are included within the definition used in this Act.

*Section 3. Construction; Severability.*

Section 3 of H.R. 5005 sets forth a rule of construction regarding severability of the Act's provisions. The Committee Print does not make any changes to this section.

*Section 4. Effective Date.*

Section 4 of H.R. 5005 sets forth the effective date of the Act. The Committee Print does not make any changes to this section.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

*Section 101. Executive Department; Mission.*

Section 101 of H.R. 5005 establishes the Department of Homeland Security and sets forth its primary mission and responsibilities. The Committee Print alters this section of H.R. 5005 by striking subsection (b)(2) -- which sets forth primary responsibilities of the Department using different language than that which is contained in subsequent titles of the bill -- in order to avoid potential confusion or misinterpretation of the specific responsibilities provided to the new Department.

*Section 102. Secretary; Functions.*

Section 102 of H.R. 5005 establishes a Secretary for the new Department and sets forth the Secretary's functions and authorities. The Committee Print alters subsection (b)(2) -- which authorizes the promulgation of regulations by the Secretary -- by adding the phrase "as provided in section 301 of title 5, United States Code." The intent of this

change is to ensure that the regulatory authority granted to the Secretary in this section is circumscribed to administrative matters relating to the organization and functioning of the Department.

*Section 103. Other Officers.*

Section 103 of H.R. 5005 sets forth other officers of the Department, including a Deputy Secretary and five Under Secretaries. The Committee Print makes only technical and conforming changes to this section.

TITLE II—CYBERSECURITY, INFORMATION ANALYSIS  
AND INFRASTRUCTURE PROTECTION

*Section 201. Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection.*

Section 201 of H.R. 5005 establishes an Undersecretary for Information Analysis and Infrastructure Protection, whose responsibilities include: receiving and analyzing law enforcement, intelligence, and other information regarding terrorist threats; comprehensively assessing the vulnerabilities of key resources and critical infrastructures in the United States; integrating relevant information, intelligence analyses, and vulnerability assessments; developing a comprehensive national plan for securing key resources and critical infrastructures in the United States; taking or seeking to effect necessary measures to protect key resources and critical infrastructures in the United States; administering the Homeland Security Advisory System; and making recommendations for improvements in the policies and procedures for sharing of law enforcement, intelligence and other information.

The Committee Print makes six changes to this section as introduced. First, the Committee Print clarifies that the Secretary's responsibility to comprehensively assess critical infrastructure vulnerabilities is a function that is in addition to, and not in lieu of, assessments collected, possessed, or prepared by other executive agencies. Second, the Committee Print clarifies that the responsibilities of the Secretary in this section to assess critical infrastructure

vulnerabilities and to develop a national plan for securing those infrastructures are related to threats to those infrastructures posed by “a terrorist attack or other intentional act intended to substantially disrupt the functioning of such resources and infrastructures.” Third, the Committee Print clarifies that the Secretary’s responsibility for public advisories is limited to those relating to terrorist threats. Fourth, the Committee Print renames the Undersecretary for Information Analysis and Infrastructure Protection, as proposed in H.R. 5005, to the “Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection,” in order to emphasize the role of the Department relating to cybersecurity.

Fifth, by striking the word “primary” before “responsibility” in the first sentence of this section as introduced, the Committee Print makes clear that the Secretary’s responsibilities do not alter or diminish the authority of another executive agency, except to the extent that a function of such agency that includes such authority is transferred to the Department under this Act. Finally, in sections 201(1) and 201(4), the Committee Print clarifies that the Secretary’s authority to “take” necessary measures and to “support protective measures by the Department” is limited to those functions established under another Act and transferred to the Department by this Act.

#### *Section 202. Functions Transferred.*

Section 202 of H.R. 5005 transfers to the Department the following functions or programs of other executive agencies: the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI) (other than the Computer Investigations and Operations Section); the National Communications System at the Department of Defense (DOD); the Critical Infrastructure Assurance Office of the Department of Commerce (DOC); the Computer Security Division of the National Institute of Standards and Technology (NIST); the National Infrastructure Simulation and Analysis Center (NISAC) of the Department of Energy (DOE); and the Federal Computer Incident Response Center of the General Services Administration (GSA).

The Committee Print makes one change to this section from H.R. 5005, as introduced. The Committee Print includes the transfer of the DOE energy security and assurance program in section 202, moving it from section 303 of H.R. 5005. The Committee recognizes that the

NISAC, which is operated jointly by Sandia National Laboratories and Los Alamos National Laboratory, has been established as part of the energy security and assurance program at DOE. Rather than transferring the NISAC and its functions to the Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection, and also separately transferring the energy assurance and security program to the Undersecretary for Research, Development and Technology Systems, the Committee Prints consolidates the transfer of both programs in section 202.

*Section 203. Access to Information*

Section 203 of H.R. 5005 provides the Secretary with access to all reports, assessments, and analytical information relating to threats of terrorism in the United States, and to information concerning the vulnerabilities of key resources and critical infrastructures, or other vulnerabilities, of the United States to terrorism that may be collected, possessed, or prepared by any executive agency. In addition, this section requires all executive agencies to promptly provide, regardless of whether the Secretary has requested, all intelligence reports, assessments and analytical information relating to threats of terrorism in the United States, all information concerning infrastructure and other vulnerabilities, and all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed. Section 203 also requires the Secretary to ensure that such information is protected from unauthorized disclosure.

The Committee Print makes two changes to section 203 of H.R. 5005, as introduced. First, it changes section 203 by eliminating the requirement for all executive agencies to provide, regardless of whether requested, all information concerning infrastructure and other vulnerabilities of the United States to terrorism. The Committee is concerned that the phrase “all information concerning infrastructure” included in section 203(2)(B) of H.R. 5005 is overly broad in scope, and that requiring all such information to be submitted to the Secretary automatically, including in situations where the Secretary has not requested such information, could inundate the Secretary with information and make it more difficult to identify the most significant vulnerabilities to terrorism of critical infrastructures in the United States.

As a result, the Committee strikes the provision from the bill requiring the delivery of such information regardless of whether the Secretary has requested it; however, the Secretary retains the authority to request such information. Second, the Committee Print clarifies that the Secretary's obligation to protect from unauthorized disclosure information to which the Secretary has access under this section means that the Secretary shall ensure that such information is protected from disclosure to the extent provided under Federal laws other than this Act.

*Section 204 Omitted from Committee consideration.*

*Section 205. Federal Cybersecurity Program.*

There is no comparable provision in H.R. 5005. Section 205 of the Committee Print creates a new Federal cybersecurity program. Section 205 directs the Secretary to establish and manage a program to improve the security of Federal critical information systems. It establishes three duties for the Secretary. First, the Secretary is responsible for evaluating the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical systems, including, as appropriate, consideration of cryptography. Second, the Secretary is responsible for providing assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems. Third, the Secretary is responsible for coordinating research and development to enhance the security of critical information systems, including supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

Section 205 also establishes, as part of the program to improve security of Federal critical information systems, a Federal Information System Security Team to provide technical expertise to civilian executive agencies by conducting cybersecurity audits of civilian executive agency information systems (other than national security systems), in accordance with agreements between the Secretary and the head of such agencies. This team will be comprised of computer security technical experts who will conduct tests of the effectiveness of logical access controls of interconnected computer systems and networks of civilian executive agencies and contractors, including penetration tests and other

vulnerability assessment techniques on Federal critical information systems.

The Committee includes section 205 in the Committee Print because greater emphasis is needed on information security of Federal critical information systems, and on research and development to enhance security of the Nation's critical information systems. Over the past several years, the Committee has conducted a series of investigations, including information security reviews at HHS, DOE, the Department of Commerce (DOC), and the Environmental Protection Agency (EPA). The U.S. General Accounting Office (GAO) has performed many of the information security audits for the Committee, and has documented the results of its penetration testing in a series of reports that found pervasive computer security weaknesses.

Moreover, many of the Nation's critical infrastructures are controlled and maintained using process control, operations, and maintenance technologies, called supervisory access control and data acquisition (SCADA) systems. These are information systems and computer networks that serve command and control functions for such critical infrastructures as electric power distribution and drinking water systems. The Committee supports the transfer of the National Infrastructure Simulation and Analysis Center to the Department of Homeland Security and recognizes the work of Sandia and Los Alamos National Laboratories in the area of SCADA systems. As part of its cybersecurity program under section 205, the Committee encourages the Secretary to develop a program to identify and address potential vulnerabilities of SCADA systems.

### TITLE III—RESEARCH, DEVELOPMENT, AND TECHNOLOGY SYSTEMS

*Section 301. Under Secretary for Research, Development and Technology Systems.*

Section 301 of H.R. 5005 creates an Under Secretary for Chemical, Biological, Radiological and Nuclear Countermeasures, whose principal responsibilities include: conducting a national research and development program to support the mission of the Department; coordinating Federal civilian efforts to identify, develop, and demonstrate countermeasures and

technologies to protect against chemical, biological, radiological, and nuclear terrorist threats; and establishing guidelines for state and local government efforts to implement such countermeasures.

The Committee Print makes several significant changes to section 301. First, it changes the title of this officer to the Under Secretary for Research, Development and Technology Systems in order to reflect the principal responsibilities assigned to the Under Secretary, and to emphasize the critical role of research, development, and technology in the new Department. Second, the Committee Print clarifies that the Department will not conduct human health-related research and development activities (for reasons more fully described in section 303), but will nonetheless play an important role in identifying priorities and developing national policy and a strategic plan for such research as it pertains to the threats of biological, chemical, radiological, and nuclear terrorism. The Committee notes that other executive agencies shall continue to carry out their similar responsibilities under existing authorities, and the new Department shall consult closely with such agencies in carrying out its planning and coordination roles. Third, the Committee Print adds additional responsibilities to the Secretary with respect to research and development within and for the Department, and among its various elements.

Moreover, the Committee Print directs the Secretary to establish, acting through the Under Secretary, a central Federal repository to receive and, as appropriate, review solicited and unsolicited submissions relating to homeland security-relevant technologies and systems developed by the Department, universities and other academic institutions, other governmental agencies, and the private sector. The purpose of this repository is to serve as a centralized clearinghouse for commercial, governmental, and other technology developers, and for the dissemination of information about available technologies and systems to appropriate Federal, state and local governments, emergency response providers, and private sector users of such technologies and systems. The Under Secretary shall also recommend to the Secretary changes necessary to improve policies relating to the acquisition of information about governmental, commercial, and other homeland security technologies, and regarding the procurement of those technologies. Finally, the Committee Print gives the Secretary responsibility for developing nonmandatory and technology-neutral standards, and

providing recommendations and technical assistance as appropriate, to assist the government and private sector in evaluating and implementing the use of such technologies.

*Section 302. Functions Transferred.*

Section 302 of H.R. 5005 transfers specific functions and programs from other executive agencies to the new Department, specifically (1) the select agent program of HHS for the possession and transfer of dangerous biological agents and toxins; (2) various DOE research, development, and assessment programs relating to chemical, biological, radiological and nuclear agents; and, (3) two other research centers from DOD and the Department of Agriculture (USDA).

The Committee Print amends the transfer of the HHS select agent program by making it conditional upon the transfer of the overlapping select agent program of USDA to the new Department, as well as upon a continuing consultation role for the Secretary of HHS in all aspects of the program. While the Committee recognizes the disadvantages to transferring the HHS select agent program from a scientific, research-oriented agency to a department whose focus is combating terrorism, the Committee believes that, on balance, the advantages of transferring the program will outweigh the disadvantages, provided that the companion program currently at USDA is transferred as well. If both programs are transferred to a single department, it will enhance the coordination and joint registration and regulatory system required under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. However, if the agricultural select agent program remains at USDA, then the Committee views the transfer of the HHS program to the new Department as only exacerbating the existing coordination problems by involving yet a third government agency (since the HHS consultation role will and must continue).

With respect to the DOE programs, the Committee Print modifies this category of transfers to the new Department by emphasizing that only those aspects of these programs that are related to homeland security would be transferred to the new Department. The Committee recognizes that many of these programs serve vital interests and responsibilities of the Department of Energy, and thus care must be taken



to ensure that DOE is not left without critical abilities and resources, and that unrelated programs are not transferred.

*Section 303. Conduct of Certain Public Health-Related Activities.*

Section 303 of H.R. 5005 provides that, except as the President otherwise may direct, the Secretary shall carry out his responsibilities for civilian, human health-related biological, biomedical, and infectious disease defense research and development through HHS, under agreements with the HHS Secretary; may transfer funds to the HHS Secretary for carrying out such research; and has the authority to establish the research and development program and set its priorities, in consultation with the HHS Secretary. It also permits similar arrangements between the new Department and other executive agencies.

The Committee Print revises section 303 in accordance with amendments made to section 301, which clarify that the new Department will not have authority to conduct human health-related research and development. In recognition of the fact that the new Department will have important intelligence, threat, and vulnerability-related information necessary for the identification of certain research priorities, the Committee Print provides that the Secretary of HHS shall set priorities in collaboration with the Secretary of the Department of Homeland Security with respect to human health-related research and development activities on countermeasures for chemical, biological, radiological, and nuclear terrorist threats. The Committee Print also eliminates the transfer of funds provision in this section.

The reasons for these changes are substantial. The Committee understands, based on testimony from Governor Ridge, that it was not the intent behind the Administration's proposal in this area to grant the new Secretary authority to conduct or unilaterally direct the research and development programs carried out by HHS through the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC). However, the original statutory language of section 303 appears to grant such authority. The Committee's amendments seek to ensure that the primary responsibility for such research remains with HHS, while requiring that the HHS Secretary collaborate with the Secretary of Homeland Security with respect to setting priorities for

research activities involving countermeasures for chemical, biological, radiological, or nuclear terrorism. As experts with GAO emphasized in testimony before the Committee on H.R. 5005, much of the terrorism-related research currently being performed by HHS, through NIH and CDC, is dual-purpose in nature, and the Committee believes it would be counter-productive to separate such purposes, even if it could be done. Accordingly, the Committee believes it would be inappropriate for the Homeland Security Department to control this research agenda. Similar concerns have been expressed by a wide range of national, state, and local health and research-related associations. The approach adopted by the Committee Print responds to such concerns.

The Committee also believes it would be unwise, unnecessary, and administratively cumbersome for the funds for such activities to be appropriated in the first instance to the new Department, only to be "contracted" back to HHS for further distribution to NIH, CDC, and the hundreds of grant recipients conducting such research. The Committee understands the need and desire of the Administration to improve the coordination of funding on such research activities across the Federal government. But the Committee believes that such coordination can occur without the control of HHS funds that H.R. 5005 contemplates, by providing in section 301 an explicit grant of authority to the new Secretary to coordinate all Federal civilian research efforts in this area. Indeed, under the original Administration proposal, the new Secretary would not receive control over the substantial research funds of other agencies that conduct research activities similar to those of HHS, including the Departments of Defense, Veterans' Affairs, and Agriculture, the Central Intelligence Agency, and others. Given that fact, the Committee does not believe that budgetary control is necessary with respect to HHS research dollars in order to ensure such coordination.

*Section 304. Security at Federal Research Laboratories.*

The Committee Print moves section 304 of H.R. 5005, entitled "Military Activities," to section 736 of this Act without further change, and creates a new section 304 regarding security at Federal civilian research laboratories. The Committee Print adopts the concept for this section from section 505(a)(1) of H.R. 5005, which the Committee understands to grant certain authorities to the new Secretary with respect

to security-related enhancements to certain HHS research facilities. The Committee Print revises the language to ensure that the scope of the new Secretary's authority is broadened to include all Federal civilian research facilities (except for those of the Department of Energy), but appropriately limits such authority to setting standards for the security of facilities conducting research to identify and develop countermeasures to chemical, biological, radiological, or nuclear terrorism.

#### TITLE IV—BORDER AND TRANSPORTATION SECURITY

*Title IV was omitted from Committee consideration.*

#### TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

*Section 501. Under Secretary for Emergency Preparedness and Response.*

Section 501 of H.R. 5005 creates an Under Secretary for Emergency Preparedness and Response, whose principal responsibilities include enhancing the preparedness of emergency response providers at the Federal, state and local levels for terrorist attacks, major disasters, and other emergencies; managing the Federal government's response to terrorist attacks and major disasters, including directing certain response assets under the Department's control and coordinating other Federal response resources; assisting in the recovery from such attacks or disasters; establishing standards and conducting joint and other exercises and training for the Federal nuclear incident response teams; and developing and promoting acquisition of interoperable communications technology for emergency response providers.

The Committee Print makes modifications to section 501 of H.R. 5005, including adding a new paragraph (8) that provides the Secretary with additional responsibilities with respect to Federal assistance programs to enhance the preparedness of state and local emergency response providers for terrorist attacks. Specifically, the Secretary will have the responsibility to identify preparedness priorities for all such programs (including those run by HHS), to evaluate the effectiveness and coordination of such programs to eliminate inconsistencies and duplication, and to make recommendations to enhance the effectiveness

of such programs.

Through amendments to sections 501(3) and (4), the Committee Print ensures that the new Homeland Security Department will have the responsibility for coordinating all Federal response resources in the event of a terrorist attack or major disaster. Importantly, however, the Committee Print eliminates any suggestion that the new Department will itself direct programs that are under the jurisdiction of other executive agencies. The Committee believes such language could supercede authorizations, duties, and responsibilities under other laws, such as the Public Health Service Act, which provide specific responsibilities and duties to other executive agencies and their officers. The Committee believes that such responsibilities should remain with such agencies and officials, unless those duties are expressly and specifically transferred to the new Department.

*Section 502. Functions Transferred.*

Section 502 of H.R. 5005 transfers specific functions and programs from other executive agencies to the new Department, including the Federal Emergency Management Agency (FEMA), and other emergency preparedness and response functions from the Departments of Justice and Health and Human Services. The latter category includes, from HHS, the Office of the Assistant Secretary for Public Health Emergency Preparedness, the Office of Emergency Preparedness, the National Disaster Medical System, the National Strategic Stockpile, and the Metropolitan Medical Response System.

The Committee Print transfers all of the offices and programs transferred in H.R. 5005, as introduced, with certain modifications. Subsection 502(5) of the Committee Print provides for a more limited transfer of authorities from HHS, by retaining at HHS the coordination, liaison, and other functions of the Office of the Assistant Secretary for Public Health Emergency Preparedness. The specific functions of the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System are transferred, along with the responsibilities of the Secretary and Assistant Secretary relating thereto. Nothing in this section should otherwise reduce the responsibilities of the HHS Secretary or the Assistant Secretary for Public Health Emergency Preparedness. HHS retains primary

responsibility for public health emergency preparedness. Moreover, all provisions of the Public Health Service Act continue to apply to officials at HHS, except for any provisions that specifically apply directly to the Office of Emergency Preparedness, the National Disaster Medical System, or the Metropolitan Medical Response System.

*Section 503. Nuclear Incident Response.*

Section 503 of H.R. 5005 provides that the Secretary may call into action certain nuclear incident response elements of DOE and EPA, in response to a terrorist attack, major disaster, or other emergency.

The Committee Print provides clarifications concerning the nuclear incident response team and the new working relationship among the Department of Homeland Security, DOE, and EPA. Except as specifically directed by the Secretary of Homeland Security in connection with an actual or threatened terrorist attack or major disaster, the EPA Administrator and the DOE Secretary will continue to exercise control of their respective entities in the Nuclear Incident Response Team for responding to emergencies and other incidents. For example, the radiological and emergency response team at EPA has previously responded to emergencies at the Hanford Nuclear Reservation in Washington, and in Los Alamos, New Mexico. Similarly, DOE's radiological assistance teams often deploy at the request of state or local officials to investigate potential radiation exposures or contamination events. The Committee intends for DOE and EPA to continue to exercise their responsibilities to respond to emergencies and other incidents as in the past, without the need for direction by the Secretary of Homeland Security.

*Section 504. Definition.*

Section 504 of H.R. 5005 defines the term "nuclear incident response team" as used in section 503. The Committee Print makes minor clarifications to this section.

*Section 505. Conduct of Certain Public Health-Related Activities.*

Section 505 of H.R. 5005 provides that the new Secretary shall

carry out certain responsibilities through HHS, under agreements with the HHS Secretary, including (1) preparedness-related construction, renovation and enhancement of security for research and development or other facilities owned or occupied by HHS, and (2) public health-related activities carried out by HHS to assist state and local governments and other non-Federal public and private health care and educational entities to plan or prepare for chemical, biological, radiological, and nuclear events and other public health emergencies.

Section 505, as introduced, was eliminated in the Committee Print. The Committee found this provision, as introduced, highly problematic. While it is not unusual to have statutory provisions requiring a Cabinet-level official to have responsibilities that flow through certain offices within the jurisdiction of that Cabinet-level official, section 505 gave broad legal responsibilities to the new Secretary of Homeland Security to operate through the Secretary of HHS – a co-equal Cabinet-level official. Moreover, section 505, as introduced, states that the new Secretary of Homeland Security “shall have authority to establish the preparedness and response program, including the setting of priorities.” The Committee is unclear how this provision would impact the duties and authorities of the Secretary of HHS with respect to public health emergency preparedness and response, including grants and contracting. Those responsibilities are specifically spelled out under the Public Health Service Act, and the Committee believes that they should not be superceded unless there are direct amendments to that Act.

The Committee also is concerned because the language in section 505 is unclear in several other respects: would the new Secretary have the authority to exercise discretion under the provisions of the Public Health Services Act, or even supercede or modify those provisions with respect to “the emergency preparedness and response program”? What would be the power to “establish” the program? Would this include the authority to declare public health emergencies? If grants were issued, would they need approval from both the Secretary of Homeland Security and the Secretary of HHS? The uncertainty created by this approach is substantial, and could cause damage to a recently implemented HHS preparedness program that has been winning praise from States, local governments, and public health and emergency response communities across the Nation.

The Committee does not believe it is feasible to separate legal responsibilities from the statutes that authorize those responsibilities. Nor is it feasible to separate the officials charged with administering those responsibilities from the personnel required to do so. The Committee believes these activities are properly authorized under the Public Health Service Act and administered by the Secretary of HHS. Neither a wholesale transfer of these responsibilities, nor some unusual splitting of responsibilities in this area, is warranted.

It also has become clear during the Committee's months of deliberation on bioterrorism legislation that many public health emergency preparedness programs serve dual roles that cannot easily be separated from core public health activities. The approach of the Committee Print on this issue is amply supported in hearings reviewing this legislation. At a hearing on June 25, 2002, Dr. Tara O'Toole, M.D., Director, Center for Civilian Biodefense Studies, Johns Hopkins University, stated:

Instead of consolidating similar programs, the proposed agency would split bioterrorism preparedness programs from the related but more encompassing mission of public health protection which is DHHS' main objective . . . [T]he country would be forced to create parallel workforces: one in Homeland Security for bioterrorism preparedness and another in DHSS for 'normal' public health functions.

The same argument was made by Ms. Janet Heinrich, Director, Health Care Issues, at GAO:

Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met.

The Committee Print provides an overall coordination role for the new Secretary of Homeland Security, applying to all executive agencies, with

respect to Federal response resources in the event of a terrorist attack or major disaster. The Committee believes, however, that the Secretary of HHS must maintain the primary role in public health preparedness. Both Secretaries, of course, report to the President, and executive authority to create task forces or issue executive orders, consistent with other provisions of law, remain as the traditional way to ensure coordination, cooperation, and collaboration among Cabinet officials.

The Committee also questions why funding authority for certain research facilities at HHS should be transferred to the new Department. Obviously, there are many Federal research facilities and a need for increased security in many areas. As discussed above, the Committee Print provides a role for the new Department in establishing standards for security at certain Federal civilian research facilities. The assignment to the new Department of specific responsibilities for construction, renovation and enhancement of certain HHS facilities is not appropriate.

#### TITLE VI—MANAGEMENT

*Title VI was omitted from Committee consideration.*

#### TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

##### SUBTITLE A—COORDINATION WITH NON-FEDERAL ENTITIES

##### *Section 701. Responsibilities.*

Section 701 of H.R. 5005 sets forth responsibilities of the Secretary relating to coordination with state and local governments, the private sector, and other entities, with respect to planning, equipment, training and exercise activities, Federal communications systems, and Federal grant programs for emergency response providers.

The Committee Print strikes section 701. The Committee recognizes the critical importance of Federal coordination with state and local governments and private sector entities with respect to homeland security matters, especially emergency response functions. However, the



Committee views the responsibilities set forth in this section as either duplicative of responsibilities contained in other titles of the act, or inconsistent with such responsibilities, particularly as amended by the Committee Print.

#### SUBTITLE B—INSPECTOR GENERAL

*Section 710. Omitted from Committee consideration.*

#### SUBTITLE C—UNITED STATES SECRET SERVICE

*Section 720. Omitted from Committee consideration.*

#### SUBTITLE D—GENERAL PROVISIONS

*Section 730. Omitted from Committee consideration.*

*Section 731. Omitted from Committee consideration.*

*Section 732. Omitted from Committee consideration.*

*Section 733. Reorganization; Transfer.*

Section 733 of H.R. 5005 provides that the Secretary may reorganize the Department or reallocate its functions among officers of the Department, including establishing, discontinuing, or consolidating organizational units within the Department. The section prohibits the abolition of any entity established or required to be maintained as a distinct entity under this Act, or the abolition of any entity or function transferred to the Department and established by statute unless 90 days notice is given to Congress.

The Committee Print alters the authorities in section 733 by requiring notice to Congress of any changes to the organization of, or allocation of functions within, the Department, and expressly prohibits the abolition of entities established or required to be maintained as a distinct entity under this Act, or the abolition of any entity or function transferred to the Department and established by statute, regardless of any notification to Congress.

*Section 734. Omitted from Committee consideration.*

*Section 735. Omitted from Committee consideration.*

*Section 736. Military Activities.*

Section 736 (originally, section 304 of H.R. 5005) provides that the Secretary shall have no authority to engage in military activities. The Committee Print does not alter this language.

*Section 737. Rule of Construction Regarding Transfer of Authority.*

There is no comparable provision in H.R. 5005. The Committee Print adds a new Section 737 to provide a rule of construction regarding the transfers of authority made by this Act. Importantly, the rule of construction ensures that, with respect to regulatory authority, this Act does not establish such authority for the Secretary, except to the extent that a function transferred to the Secretary by sections 202, 302, 402, 403, 502 or 720 of this Act includes such authority. This rule of construction also ensures that the Act does not alter or diminish the regulatory authority of any other executive agency, except to the extent that a function of such agency that includes such authority is transferred to the Secretary by one of the sections listed in the preceding sentence. Section 737 also provides a similar rule of construction for other non-regulatory authorities that are transferred to the Secretary.

*Section 738. Provisions Regarding Transfers from Department of Energy.*

There is no comparable provision in H.R. 5005. The Committee Print adds a new section 738 to clarify how the transfers of authority from DOE to the new Department will occur with respect to the activities being carried out for DOE by its national laboratories. In such circumstances, the two Secretaries shall ensure that the contracts between the Department of Homeland Security and the operators of the national laboratories are separate from the general management contracts between DOE and the operators of the national laboratories. Given that the

national laboratories performing work for the Department of Homeland Security will continue to utilize DOE facilities, section 738 further provides that the new Department shall reimburse DOE for costs relating to such activities. However, the new Department shall not be required to pay administrative or personnel costs of DOE or its contractors in excess of the amount that the Secretary of Energy normally pays for an activity carried out by such a contractor. Through this provision, the Committee intends to permit direct tasking of the national laboratories by the new Department with respect to those transferred activities. The Department also may contract with the operators of such laboratories to perform other tasks through the existing “work for others” program of DOE.

#### TITLE VIII—TRANSITION

*Title VIII was omitted from Committee consideration.*

#### TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

*Section 901. Omitted from Committee consideration.*

*Section 902. Omitted from Committee consideration.*

*Section 903. Omitted from Committee consideration.*

*Section 904. Omitted from Committee consideration.*

*Section 905. Strategic National Stockpile and Small-Pox Vaccine Development.*

Section 905 of H.R. 5005 makes technical and conforming changes to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, consistent with the transfer of certain authorities over the National Strategic Stockpile from HHS to the new Department in section 502 of this Act. The Committee Print does not alter the language of this section.

*Section 906. Biological Agent Registration; Public Health Service Act.*

Section 906 of H.R. 5005 makes technical and conforming changes to the Public Health Service Act with respect to the program established in section 351A of such Act governing the registration of dangerous biological agents and toxins, if the program is transferred to the new Department. The Committee Print makes minor modifications to this section to address errors in the original text.

*Section 907. Omitted from Committee consideration.*