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. Plaugher, 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, 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.


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
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’s 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.