

**Calendar No. 224**

109TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
109-209

HOMELAND SECURITY FOOD AND  
AGRICULTURE ACT OF 2005

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 572

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO GIVE AD-  
DITIONAL BIOSECURITY RESPONSIBILITIES TO THE DEPART-  
MENT OF HOMELAND SECURITY



DECEMBER 15, 2005.—Ordered to be printed

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DECEMBER 15, 2005.—Ordered to be printed

Ms. COLLINS, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

**R E P O R T**

[To accompany S. 572]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 572) to amend the homeland security act of 2002 to give additional biosecurity responsibilities to the Department of Homeland Security, having considered the same reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE & SUMMARY

The Senate Governmental Affairs Committee (the “Committee”) approved S. 572, the Homeland Security Food and Agriculture Act, on September 22, 2005. This legislation would establish a program at the Department of Homeland Security (the “Department” or “DHS”) to protect agriculture and the food supply by increasing the coordination and communication between federal, state, and local governments on agricultural security.

## II. BACKGROUND

United States agriculture generates over \$1 trillion annually, including \$50 billion in exports.<sup>1</sup> “The agriculture industry represents about 13 percent of Gross Domestic Product and nearly 17 percent of domestic employment.<sup>2</sup> One in eight Americans work in an area directly supported by food production.<sup>3</sup>

An event that causes a loss of confidence in any portion of the U.S. agriculture sector could result in severe economic losses for the U.S. economy. As a result of the detection of only one case of bovine spongiform encephalopathy (BSE or mad cow disease) in the United States in December 2003, most countries banned U.S. beef exports which caused the U.S. beef industry to lose between \$3.2 and \$4.7 billion in 2004. Two years later, Japan and South Korea, which together account for over 50 percent of U.S. beef exports, have not lifted the ban. According to a study conducted by the California Department of Food and Agriculture, each day that an outbreak of foot-and-mouth disease is not contained could cost the United States \$1 billion in trade sanctions alone.<sup>4</sup>

Experts warn that the American food supply system could be a target of terrorist attack. While testifying before the Committee on Agriculture, Nutrition, and Forestry on July 20, 2005, Mr. John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigation (FBI), stated, “Most people do not equate terrorist attacks with agroterrorism. But the threat is real, and the impact could be devastating.”<sup>5</sup> Another witness, Dr. Robert Brackett, Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration (FDA), added, “A terrorist attack on the food supply could have both severe public health and economic consequences, while damaging the public’s confidence in the food we eat.”<sup>6</sup>

A 1999 report to Congress by the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (also known as the Gilmore Commission) stated:

. . . a biological attack against an agricultural target offers terrorists a virtually risk-free form of assault, which has a high probability of success and which also has the prospect of obtaining political objectives, such as undermining confidence in the ability of government or giving the terrorists an improved bargaining position.<sup>7</sup>

In 2003, while testifying before the Senate Governmental Affairs Committee, Dr. Peter Chalk, RAND Corporation, further noted

<sup>1</sup>Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain,” Government Accountability Office, GAO-05-214, March 8, 2005.

<sup>2</sup>Bio-security and Agro-Terrorism: Hearing before the Committee on Agriculture, Nutrition, and Forestry, 109th Congress (2005) (statement of the Honorable Charles F. Conner, Deputy Secretary, United States Department of Agriculture).

<sup>3</sup>Agroterrorism: The Threat to America’s Breadbasket: Hearing before the Committee on Governmental Affairs, S. Hrg. 108-491, (2003) (statement of Dr. Peter Chalk, RAND Corporation) at 14.

<sup>4</sup>Id. at 80.

<sup>5</sup>Hearing supra note 2, (statement of Mr. John E. Lewis, Deputy Assistant Director, Counterterrorism Division Federal Bureau of Investigation).

<sup>6</sup>Id. (statement of Dr. Robert Brackett, Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration).

<sup>7</sup>“First Annual Report to the President and Congress: Assessing the Threat,” Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (the Gilmore Commission), December 15, 1999, at 12-15.

that unlike other types of terrorist attack, an agroterrorist attack could be executed with little technical expertise or financial cost and would not put the attacker in harm's way because most foreign animal and plant diseases are not transmittable to humans.<sup>8</sup>

Since September 11, 2001, the Bush Administration has taken steps to improve U.S. agriculture security, but holes in prevention, preparedness, and response remain.

On December 17, 2003, the Administration issued Homeland Security Presidential Directive 7 (HSPD-7) which established a national policy for federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. HSPD-7 tasks the Secretary of Homeland Security with coordinating the overall national effort to enhance the protection of the critical infrastructure and designates the Department of Agriculture with the sector-specific responsibility for food and agriculture protection.<sup>9</sup>

On January 30, 2004, the Administration issued Homeland Security Presidential Directive 9 (HSPD-9) to establish a national policy to defend the agriculture and food system against terrorist attacks, major disasters, and other emergencies. HSPD-9 generally instructs the Secretaries of Homeland Security, Agriculture (USDA), and Health and Human Services, the Administrator of the Environmental Protection Agency, the Attorney General, and the Director of Central Intelligence to coordinate their efforts to prepare for, protect against, respond to, and recover from an agroterrorist attack. HSPD-9 specifically tasks DHS with developing a coordinated agriculture and food-specific standardized response plan, ensuring that adequate response capabilities exist at the federal, state, and local levels for an attack on the agriculture sector, establishing information sharing and analysis mechanisms for agriculture and food, and coordinating the federal research efforts into countermeasures against catastrophic animal, plant, and zoonotic diseases.

According to a March 2005 Government Accountability Office (GAO) report entitled, "Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain," DHS's communication with state and local officials and coordination of federal activities is lacking. GAO reported a lack of communication between DHS and states regarding the development of emergency response plans, grant guidance, and best practices. State and industry officials reported that there is no mechanism to share lessons learned from exercises or real-life animal disease outbreaks. The GAO report also stated that shortcomings exist in DHS's federal coordination of national efforts to protect against agroterrorism. Federal officials claim that there is confusion in interagency working groups as to which responsibility falls with whom. According to GAO, DHS has been unable to coordinate agriculture security research efforts throughout the government as it was tasked to do in HSPD-9. While some program staff from DHS, USDA, and Health and Human Services have engaged in prelimi-

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<sup>8</sup>Hearing supra note 3 at 79.

<sup>9</sup>Homeland Security Presidential Directive 7, "Critical Infrastructure Identification, Prioritization, and Protection," December 17, 2003.

nary discussions, there is no overall departmental coordination of policy and budget issues between the various federal agencies.<sup>10</sup>

The lack of DHS leadership on agriculture security can be seen in the June 2004 incident in Washington State where 18 cattle developed chromium contamination. Agroterrorism was suspected, yet neither USDA nor DHS were notified for over a week. In May 2004, representatives from the FBI, FDA, and USDA gave a presentation at an agroterrorism conference in Kansas City, Missouri on lessons learned from the Washington outbreak which included a slide stating that the following agencies should be contacted if agroterrorism is suspected: a state's Department of Agriculture, FDA, USDA, FBI, local law enforcement, and state and county public health officials. However, despite presidential directives, the Department of Homeland Security was not on the list. It is apparent that federal coordination remains inadequate if notification of DHS is considered unnecessary by other responding agencies.

Since September 11, 2001, the Senate has held three hearings on agriculture security. The Subcommittee on Emerging Threats of the Senate Committee on Armed Services held a hearing titled, "Agricultural Biological Weapons Threat to the United States," on October 27, 1999. Four years later the Governmental Affairs Committee held a hearing focusing on the federal government's preparedness and response capabilities titled, "Agroterrorism: The Threat to America's Breadbasket," on November 18, 2003. The Committee on Agriculture, Nutrition, and Forestry held a hearing on the subject, "Biosecurity and Agroterrorism," on July 20, 2005.

However, no comprehensive agriculture security legislation exists and the Department of Homeland Security's role in agriculture security remains largely undefined in statute. S. 572 would define and codify the important role DHS should play in agriculture security preparedness and response.

### III. LEGISLATIVE HISTORY

S. 572 was introduced on March 9, 2005, by Senators Akaka and Durbin and was referred to the Committee on Homeland Security and Governmental Affairs. On September 22, 2005, the Committee considered S. 572 and ordered the bill, as amended by an Akaka substitute amendment, favorably reported by voice vote. Members present were Senators Collins, Lieberman, Voinovich, Coleman, Chafee, Lieberman, Levin, Akaka, Lautenberg, and Pryor.

Senator Akaka introduced similar bills in the 107th and 108th Congresses. S. 2767, the Agriculture Security Preparedness Act, was introduced on July 22, 2002, and referred to the Committee on Agriculture, Nutrition, Forestry, and S. 427, the Agriculture Security Assistance Act, and S. 430, the Agriculture Security Preparedness Act, were introduced on February 24, 2003, and referred to the Committee on Agriculture, Nutrition, Forestry.

### IV. SECTION-BY-SECTION ANALYSIS

#### *Section 1. Short title*

This Act may be cited as the "Homeland Security Food and Agriculture Act of 2005."

<sup>10</sup> Report supra note 2.

*Section 2. Agricultural biosecurity*

(a) This subsection amends the Homeland Security Act of 2002 (P.L. 107–296) to create Subtitle J, Agricultural Biosecurity, after Subtitle I under Title VII.

*Section 899(a)—Definitions*

Section 899(a) of the new Subtitle J defines the terms agriculture disease, agriculture, agroterrorist act, and biosecurity for the purposes of this Subtitle.

*Section 899(b)—Agriculture security responsibilities of the Department of Homeland Security*

Subsection (a) authorizes an agriculture security program within the Department to include advising and coordinating with federal, state, local, regional, and tribal homeland security officials regarding preparedness, detection, prevention, and mitigation of an agroterrorist act and executing the agriculture security responsibilities of the Secretary described in Homeland Security Presidential Directive 7 (December 17, 2003) and Homeland Security Presidential Directive 9 (February 3, 2004).

Subsection (b) tasks the Secretary of Homeland Security with the following responsibilities under the agriculture security program: organizing communication among federal, state and local emergency response providers for agricultural emergencies; ensuring that emergency response providers execute their roles in the event of an agroterrorist attack; ensuring that emergency response providers have the necessary information and resources regarding an agroterrorism; developing information sharing procedures among emergency response providers; working with the Department of Transportation to developing guidelines for the transportation of agricultural products in response to an agricultural disease; coordinating with the Environmental Protection Agency about the potential environmental impact of an agricultural disease; coordinating with the Department of Agriculture regarding recognizing agricultural products from suspected locations; coordinating with Department of State to establish mutual assistance agreements with other countries; ensuring state, local, and regional response plans include an agriculture security component; and establishing a taskforce of state and local homeland security officials to identify best agriculture security practices and disseminate the best practices to all states.

Subsection (c) creates a grant program in the Office of State and Local Government Coordination and Preparedness to facilitate the participation of agriculture specialists in agricultural security emergency preparedness. This grant program is intended to be used for events such as conferences and exercises that will bring emergency management and animal and plant healthcare officials together for planning and preparedness purposes.

(b) This subsection makes technical and conforming amendments.

## V. ESTIMATED COST OF LEGISLATION

*S. 572—Homeland Security Food and Agriculture Act of 2005*

S. 527 would amend the Homeland Security Act to require the Department of Homeland Security (DHS) to establish a program to protect the agriculture industry and the nation's food supply from terrorist acts. In addition, the legislation would authorize the appropriation of \$5 million in fiscal year 2006 for grants to state and local animal health care officials.

CBO estimates that implementing S. 572 would cost \$8 million in 2006 and \$53 million over the 2006–2010 period, assuming appropriation of the necessary amounts. Enacting the legislation would not affect direct spending or revenues.

S. 572 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Any costs incurred by these governments to participate in the activities authorized by this bill would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 572 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Establish Food Supply Protection Program:					
Estimated Authorization Level .....	6	9	12	12	12
Estimated Outlays .....	5	8	11	12	12
Local Community Emergency Planning:					
Authorization Level .....	5	0	0	0	0
Estimated Outlays .....	3	2	0	0	0
Total Changes:					
Estimated Authorization Level .....	11	9	12	12	12
Estimated Outlays .....	8	10	11	12	12

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in fiscal year 2006 and that spending will follow historical patterns for similar programs.

DHS currently has a Directorate for Preparedness that identifies and assesses current and future threats to the United States. According to that office, it is working to coordinate the protection of the agriculture industry and food supply throughout the United States.

S. 572 would codify and expand the current duties of the Directorate for Preparedness. The directorate would be responsible for communicating and coordinating among federal, state, and local emergency response providers regarding threats to the agriculture industry and food supply, for ensuring that state and local officials have access to information on agricultural terrorism, and for planning to prevent and respond to food and agriculture emergencies. Based on information from DHS, CBO estimates that the office would need about \$12 million a year for additional staff to carry out its additional responsibilities under S. 572. CBO expects that the office would steadily expand its budget and staff over the next three years before it reached that level of effort. We estimate that

the added duties for the directorate would cost \$48 million over the 2006–2010 period, assuming appropriation of the necessary funds.

The legislation also would authorize the appropriation of \$5 million for grants to state and local animal care officials to participate in community emergency planning efforts. CBO estimates that implementing the grant program would cost \$5 million over the 2006–2007 period.

**Intergovernmental and private-sector impact:** S. 572 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Any costs incurred by these governments to participate in the activities authorized by this bill would be incurred voluntarily.

**Estimate prepared by:** Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Paige Piper/Bach.

**Estimate approved by:** Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

#### VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, S. 572 adds entirely new language and, therefore does not change existing law.

