



Policy Brief.....July 23, 2002

# Department of Homeland Security

*H.R. 5005, as reported by the Select Committee on Homeland Security*

## Provisions of Note

- Creates the Department of Homeland Security as a Cabinet-level department
- Transfers the following existing agencies and functions (among others) to the new Department:
  - Coast Guard
  - Customs Service
  - The *enforcement* duties of the INS (rest of INS is restructured within DOJ)
  - FEMA
  - TSA
  - Secret Service
- Requires that airports that won't be able to fully install explosive detection devices this year commence plans by December 31, 2002, to install explosive detection devices
- Prohibits the DHS Secretary from consolidating, altering, or diminishing the staffing levels or pay of Customs personnel who are: Import Specialists, Entry Specialist, Drawback Specialists, National Import Specialist, Fine and Penalties Specialist, attorney within the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Finance System Specialists
- Prohibits the transfer of any Customs Service funds or collections to other parts of DHS
- Establishes a human resource management system within DHS that would sunset after five years. Such system would have to enforce affirmative action, ensure that DHS employees can join unions (except those employees engaged in intelligence, counterintelligence, investigative, or security work that directly affects national security), and otherwise enforce and protect existing civil service requirements and benefits.
- Prevents any pay modifications (for five years) for certain employees whose rate of pay is fixed in statute
- Provides that transferred employees will not have their terms of employment, including compensation, reduced or terminated for one year after such transfer
- Allows up to 2% of any appropriation available to DHS for the next two years to be transferred between appropriations accounts, after giving the House and Senate Appropriations Committees at least fifteen days' notice
- Explicitly prohibits the implementation of the proposed TIPS Program (Terrorism Information and Prevention System) of citizen informants
- Prohibits the development of a national identification system or card

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## Detailed Summary by Title:

### Title I—Department of Homeland Security

- Defines “terrorism” as any act that is dangerous to human life or potentially destructive of critical infrastructure or key resources AND is a violation of any American criminal law (at any level) AND appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by such intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping.
- Creates the Department of Homeland Security (DHS) as a Cabinet-level department (with a Secretary appointed by the President, subject to Senate confirmation)
- Sets the primary mission of the Department as:
  - preventing terrorist attacks within the U.S.
  - reducing the vulnerability of the U.S. to terrorism
  - minimizing the damage, and assisting in the recovery, from terrorism that does occur within the U.S.
  - carrying out all functions of entities transferred to DHS (including acting as a focal point regarding natural and manmade crises and emergency planning)
  - ensuring that the non-homeland-security functions of the subdivisions within DHS are not diminished or neglected (except by specific Act of Congress)
  - ensuring that the overall economic security of the U.S. is not diminished by efforts aimed at securing the homeland
- Leaves primary responsibility for investigating and prosecuting terrorism with the appropriate law enforcement agencies at all levels of government
- Directs the DHS Secretary (“the Secretary”) to coordinate with non-federal entities for planning, equipment, training, and exercise activities, where appropriate
- Authorizes the Secretary to participate in National Security Council meetings
- Establishes a Special Assistant to the Secretary to essentially act as the chief of public relations
- Establishes Under Secretaries and other officers, as detailed later in this Policy Brief
- Establishes a National Council of First Responders consisting of at least 100 emergency personnel from all over the country to evaluate and report to the Secretary on the latest developments in and needed improvements to emergency response techniques and training

### Title II—Information Analysis and Infrastructure Protection

- Establishes an Under Secretary for Information Analysis and Infrastructure Protection whose primary responsibilities will include analyzing and integrating information and

intelligence, developing a comprehensive national plan to secure key resources and critical infrastructure, coordinating with government and non-government entities on the implementation of the national plan, and warning the public about terrorist threats.

- Transfers to this Under Secretary the following agencies and functions:
  - The FBI's National Infrastructure Protection Center (other than the Computer Investigations and Operations Section)
  - The Department of Defense's (DOD's) National Communications System
  - The Department of Commerce's (DOC's) Critical Infrastructure Assurance Office
  - The Department of Energy's (DOE's) Energy Security and Assurance Program
  - The General Service Administration's (GSA's) Federal Computer Incident Response Center
  - The intelligence element of the Coast Guard
  - The intelligence element of the U.S. Customs Service
  - The intelligence element of the Immigration and Naturalization Service (INS)
  - The intelligence element of the Transportation Security Administration (TSA)
  - The intelligence element of the Federal Protective Service
  
- Directs the Secretary to establish procedures for information sharing to protect the integrity of such information. Grants the Secretary access to all information gathered by federal agencies that relates to homeland security.
  
- Requires the appointment of a privacy officer in the new Department to assume primary responsibility for privacy policy
  
- Adds a new Federal Cybersecurity Program to the duties of this Under Secretary
  
- Establishes an Intelligence Analysis Center, headed by this Under Secretary, to perform the intelligence functions of DHS (including issuing warnings and coordinating information with the rest of the intelligence community). Includes the Intelligence Analysis Center as an element of the intelligence community for the purposes of federal law.
  
- Authorizes the detail of intelligence experts (from such agencies as the CIA, FBI, DIA, etc.) to the new Department

### **Title III—Science and Technology**

- Creates an Under Secretary for Science and Technology to coordinate all research, development, demonstration, testing, and evaluation activities of DHS and otherwise carry out the science and technology agenda of DHS
  
- Gives to this Under Secretary the responsibilities of conducting a national scientific research and development program for DHS and of procuring the technology for preventing the importation and use of chemical, biological, radiological and nuclear weapons

- Transfers to this Under Secretary the following agencies and functions:
  - DOE's chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program
  - DOE's life sciences activities related to microbial pathogen research (as designated by the President)
  - DOE's Environmental Measurements Laboratory
  - The advanced scientific computing research and intelligence programs and activities of DOE's Lawrence Livermore National Laboratory
  - DOD's Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program
  - The Department of Agriculture's Plum Island Animal Disease Center
  
- Directs the Secretary to coordinate with the Department of Health and Human Services (HHS) with respect to civilian, counter-terrorist, health-related research and development activities
  
- Establishes a Science and Technology Coordination Council (composed of all the Department's Under Secretaries) to establish priorities for and assist with research, development, demonstration, and deployment activities of DHS
  
- Authorizes the establishment of university centers of excellence (and other extramural programs in accordance with designated criteria) to perform research in support of DHS
  
- Authorizes the establishment of a headquarters laboratory at a national laboratory of the Secretary's choice for research, development, testing, and evaluation activities of DHS
  
- Requires the Secretary to enter into an agreement with the Secretary of Agriculture giving access to the Plum Island Center for research, diagnostic, and other activities of the Department of Agriculture

#### **Title IV—Border and Transportation Security**

- Creates an Under Secretary for Border and Transportation Security to secure the borders, waterways, ports, terminals, and the air, land, and sea transportation systems of the U.S.
  
- Transfers to this Under Secretary the following agencies and functions:
  - The U.S. Customs Service (except its revenue functions)
  - The Coast Guard (which would remain a distinct entity within DHS)
  - TSA
  - The *enforcement* duties of the INS (rest of INS is restructured within DOJ)
  - The Federal Protective Service
  - The Federal Emergency Management Agency's (FEMA's) Office of National Preparedness
  - The Department of Justice's (DOJ's) Office for Domestic Preparedness of the Office of Justice Programs
  - The FBI's National Domestic Preparedness Office
  - DOJ's Domestic Emergency Support Teams

--The Department of Agriculture's import and entry inspection and related functions (and authorizes not more than 3200 Ag employees to be transferred)

*Visa Provisions:*

- Gives the Secretary rule-making and regulatory authority over visa issuance. The State Department would still actually issue visas and could still direct a consular office (without input or threat of overrule from DHS) to refuse the issuance of a visa
- Authorizes DHS employees to be temporarily or permanently assigned to diplomatic and consular posts abroad to perform functions related to visa issuance, including investigations
- Requires a report to Congress on the role of foreign nationals in the granting or refusal of visas and other such documents
- Terminates all flexible and expedited visa-issuance programs in Saudi Arabia
- Directs the Secretary and other relevant DHS officials to consult with the Federal Aviation Administration (FAA) before taking any aviation-related action
- Maintains the TSA as a distinct entity within DHS for two years
- Mandates an annual assessment of terrorist-related threats to public transportation
- Requires that airports that won't be able to fully install explosive detection devices this year *commence plans* by December 31, 2002, to install explosive detection devices

*Immigration provisions:*

- Establishes under this Under Secretary a Bureau of Border Security to make, analyze and administer policies related thereto (including student visas)
- Establishes within the Department of Justice the Bureau of Citizenship and Immigration Services, headed by a new Assistant Attorney General, to which the INS' *citizenship services* would be transferred
- Establishes in the Bureau of Border Security a liaison to DOJ's Bureau of Citizenship and Immigration Services
- Establishes in DOJ's Bureau of Citizenship and Immigration Services a liaison to DHS' Bureau of Border Security
- Requires new reports on the functioning of the Bureau of Immigration Enforcement, the improving of immigration services, the division of funds and personnel from the INS to the two new bureaus, the response to fluctuating immigration needs, and on the usefulness of the existing interior checkpoints operated by the INS

- Creates in DOJ a Citizenship and Immigration Services Ombudsman to essentially function as a customer service agent for the Bureau of Citizenship and Immigration Services (and authorizes the appointment of at least one local ombudsman for each state)
- Establishes within DOJ's Bureau of Justice Statistics an Office of Immigration Statistics to maintain statistical information of the Bureau of Citizenship and Immigration Services
- Transfers INS' Statistics Branch of the Office of Policy and Planning to DOJ's new Office of Immigration Statistics
- Authorizes the collection of fees for adjudication and naturalization services and authorizes "such sums as may be necessary" for refugee and asylum adjudications
- Establishes an Internet-based system (overseen by the newly established Technology Advisory Committee) for people to track their immigration requests and other actions
- Transfers the INS' functions regarding the care of unaccompanied alien children to HHS' Director of the Office of Refugee Resettlement
- Authorizes voluntary separation incentive payments for employees of the INS and the new bureaus related to immigration at DHS and DOJ to help with restructuring
- Authorizes DHS and DOJ to conduct demonstration projects relating to internal disciplinary action (for improved personnel management)
- Outlines various details for the INS' division and transition into the new bureaus

*Customs provisions:*

- Creates a Commissioner of Customs within DHS
- Keeps the revenue functions of the Customs Service in the Treasury Department and transfers the rest of the Customs Service to the Under Secretary for Border and Transportation Security
- Allows the Secretary of the Treasury to delegate revenue authority to DHS
- Permits the Secretary of the Treasury to appoint 20 new personnel to work with DHS on performing Customs revenue functions
- Prohibits the DHS Secretary from consolidating, altering, or diminishing the staffing levels or pay of Customs personnel who are: Import Specialists, Entry Specialist, Drawback Specialists, National Import Specialist, Fine and Penalties Specialist, attorney within the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Finance System Specialists
- Prohibits the transfer of any Customs Service funds or collections to other parts of DHS

- Requires establishment of a cost accounting system for the Customs Service
- Directs the Secretary to ensure that adequate staffing is provided to maintain current levels of Customs revenue
- Requires Congressional notification prior to changes in Custom revenue services, elimination or relocation of any Customs revenue service office, and elimination of any port of entry
- Requires the continuation of all Customs Service reports
- Directs the President to include a separate budget request for the Customs Service within each budget he submits to Congress
- Creates a new account within the general fund of the Treasury to be known as the Customs Commercial and Homeland Security Automation Account, into which customs user fees would be deposited and from which funds may be appropriated for the development and implementation of the Automated Commercial Environment computer system (for the processing of merchandise that is entered or released) or for other DHS functions

#### **Title V—Emergency Preparedness and Response**

- Creates an Under Secretary for Emergency Preparedness and Response to ensure the preparedness of emergency response providers and to actually respond to and aid the recovery from terrorist attacks (via a national incident management system with governments at all levels)
- Transfers to this Under Secretary the following agencies and functions:
  - All of FEMA except its Office of National Preparedness
  - HHS' Office of Emergency Preparedness
  - HHS' National Disaster Medical System
  - HHS' Metropolitan Medical Response System
  - HHS' Strategic National Stockpile
- Gives the Secretary organizational control of the Nuclear Incident Response Team (currently controlled by DOE with contributing efforts from the EPA) in connection with an actual or threatened attack or other major emergency
- Directs HHS to set priorities and preparedness goals and a coordination strategy (in conjunction with DHS) with respect to all public health-related activities to improve state, local, and hospital preparedness and response to terrorist attacks

#### **Title VI—Management**

- Creates an Under Secretary for Management to handle the internal operations of DHS, including such matters as internal auditing, procurement, human resources, the transition

process, and other such management duties. This Under Secretary would also be responsible for maintaining immigration statistics.

- Creates a Director for Civil Rights and Civil Liberties within DHS to assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by DHS employees and officials

### **Title VII—Miscellaneous**

- Gives the Secretary authority over the Inspector General with respect to access to sensitive information (including intelligence, undercover operations, confidential witnesses, etc.) and allows the Secretary to prohibit certain investigations by the Inspector General if necessary to preserve national security or prevent a significant impairment to U.S. interests
- Transfers the Secret Service in its entirety to DHS and maintains the Service as a distinct entity within the Department
- Authorizes the creation of a "critical infrastructure protection program" to share non-public information about critical infrastructure and protected information systems among appropriate federal agencies (including information submitted by the public)
- Provides certain non-disclosure protections for voluntarily shared critical infrastructure information (and punishments for its illegal divulging)
- Authorizes the Secretary to conduct a pilot program (within five years of this bill's enactment) to attract nontraditional contractors for anti-terrorism projects
- Authorizes DHS to procure the temporary or intermittent services of outside experts and consultants
- Authorizes streamlined acquisition procedures through September 30, 2007, if necessary to avoid impairing the mission of the Department
- Establishes within DHS an Office of Small and Disadvantaged Business Utilization
- Mandates the construction of a new headquarters for the Department (preferably on existing federal property at a location to be determined by the GSA)

#### *Liability provisions:*

- Establishes a federal cause of action for claims relating to terrorism when anti-terrorism technologies purchased by the federal government have been deployed against terrorism and result in loss of property, personal injury, or death. Prohibits punitive damages and liability for interest on losses prior to judgment. Limits noneconomic damages to those plaintiffs who have suffered physical harm. Reduces any recovery by a plaintiff by the amount of collateral source compensation to which the plaintiff is due.

- Requires that contractors providing anti-terrorism technologies obtain liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of such technologies. Contractor liability could not exceed this amount of coverage.

*Civil service and human resources provisions:*

- Establishes a human resource management system within DHS that would sunset after five years. Such system would have to enforce affirmative action, ensure that DHS employees can join unions (except those employees engaged in intelligence, counterintelligence, investigative, or security work that directly affects national security), and otherwise enforce and protect existing civil service requirements and benefits.
- Prevents any pay modifications (for five years) for certain employees whose rate of pay is fixed in statute
- Provides that transferred employees will not have their terms of employment, including compensation, reduced or terminated for one year after such transfer

*Reallocation provisions:*

- Allows up to 2% of any appropriation available to DHS for the next two years to be transferred between appropriations accounts, after giving the House and Senate Appropriations Committees at least fifteen days' notice
- Allows the Secretary to allocate or reallocate functions within the Department and may establish, consolidate, alter, or discontinue organizational units within the Department, as long as such reorganization occurs 60 days after notifying Congress and does not abolish any entity or function established or required to be maintained by this legislation or by statute
- Reaffirms the sole authority of DOD and the Armed Forces to engage in war-fighting, the military defense of the United States, and other military activities. DHS could not engage in such activities.
- Directs the Secretary to appoint a counternarcotics officer
- Establishes an Office of International Affairs to conduct international exchanges of information and training relating to homeland security
- Explicitly prohibits the implementation of the proposed TIPS Program (Terrorism Information and Prevention System) of citizen informants
- Directs the Secretary to ensure, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout DHS, especially among law enforcement personnel

- Directs the Secretary to work in cooperation with the Mayor of the District of Columbia to integrate DC into the planning, coordination, and execution of federal attack-preparedness activities
- Transfers to DOJ the Treasury Department's Federal Law Enforcement Training Center

### **Title VIII—Transition**

- Directs the President to submit to Congress a reorganization plan regarding the transfer of agencies, personnel, assets, and obligations to DHS and outlining the details of how such transition will occur
- Sets certain details about authorities during the transition
- Prohibits funds from the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterway Trust Fund, the Harbor Maintenance Trust Fund or the Oil Spill Liability Trust Fund from being made available to DHS. Provides an exception for funds provided to FAA in FY '03 for security programs.
- Prohibits the development of a national identification system or card

### **Title IX—Conforming and Technical Amendments**

- Authorizes the assignment of Department employees as armed officers and agents (with arresting, investigatory, and subpoena powers) for the protection of federal property and the people on the property

### **Title X—National Homeland Security Council**

- Establishes the Homeland Security Council within the Executive Office of the President to advise the President on homeland security matters
- Council membership would include the President, Vice President, DHS Secretary, Attorney General, HHS Secretary, CIA Director, DOD Secretary, Treasury Secretary, Secretary of State, DOE Secretary, Secretary of Agriculture, and other appropriate individuals designated by the President. Authorizes staff for the Council.
- Directs the Office of Management and Budget (OMB) to prepare a homeland security budget to be included as part of the President's annual budget request to Congress
- Authorizes joint meetings between the Homeland Security Council and the National Security Council

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**Cost Estimate:** A CBO cost estimate is unavailable for the version of H.R. 5005 that was reported to the House by the Select Committee on Homeland Security.

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