



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1 - Implementing the 9/11 Commission Recommendations Act of 2007

(Rep. Thompson (D) Mississippi and 201 cosponsors)

The President and Congress have restructured and reformed the Federal government to focus resources on counterterrorism and to ensure the Nation's security in an unprecedented fashion. The Administration therefore welcomes the opportunity to work with Congress to continue to address the recommendations of the 9/11 Commission, as well as to take necessary steps to improve the Nation's homeland security. To date, much has been accomplished. The Administration has made significant progress in implementing 37 of the 39 recommendations of the 9/11 Commission that relate to and were adopted by the executive branch and has consistently urged Congress to adopt the two recommendations that relate to its functions. The Administration is disappointed that, in a nearly 300-page piece of legislation entitled "Implementing the 9/11 Commission Recommendations Act of 2007," Congress does not address the two outstanding recommendations that apply to the Legislative Branch, which the 9/11 Commission states may be among the most important of all.

While the Administration supports the underlying intent of H.R. 1, the Administration has serious concerns with several of the bill's provisions and cannot support House passage of the bill in its current form. The Administration looks forward to working with Congress to address these objectionable provisions and to ensure enactment of legislation that takes into account progress underway and that best promotes the safety, security, and economic welfare of the American public.

TSA Personnel Management

The Administration strongly opposes the elimination of the personnel management authorities of the Transportation Security Administration (TSA). In the Aviation and Transportation Security Act, Congress recognized that special flexibility for personnel performing key homeland security roles is critical. Passage of the Homeland Security Act of 2002 was delayed over debate over this same fundamental question. Now, this measure seeks to reverse the flexibility given to TSA to perform its critical aviation security mission. The Administration vigorously disagrees with these provisions of the bill, which were not recommended by the 9/11 Commission and would substantially diminish the Secretary's flexibility to effectively manage the Department.

Existing authorities permit TSA to flexibly manage and deploy its workforce, including its Transportation Security Officer (TSO) workforce, in carrying out important security work directly affecting national security. During Hurricane Katrina and after the United Kingdom air bombing plot was foiled, TSA changed the nature of employees' work—and even the location of their work—to flexibly respond to these emergencies. After the UK air bombing plot, TSOs

employed new standard operating procedures immediately to deal with the new threat. Federal Air Marshals were redeployed on hours' notice to support the evacuation of U.S. citizens from Lebanon. This flexibility is a key component of how the Department of Homeland Security (DHS), through TSA, protects Americans while they travel. By reducing TSA's flexibility to change the nature and location of TSA employees' work and other aspects of their employment, H.R. 1 would reduce travelers' security.

Privacy and Civil Liberties

The Intelligence Reform and Terrorism Prevention Act of 2004 established the Privacy and Civil Liberties Oversight Board (PCLOB) in the Executive Office of the President. The Administration believes it is unjustified and premature to abandon the PCLOB's ongoing efforts through the revisions made in title VIII of the bill. Moreover, many of the provisions in title VIII are highly objectionable on both constitutional and policy grounds. Therefore, the Administration strongly opposes title VIII in its current form. The establishment of a freestanding oversight board within the executive branch, with wide-ranging authority (including subpoena power) over key areas of national security policy, and with provisions purporting to place restrictions on whom the President may nominate and appoint to this Board, would infringe on the President's ability to direct and manage the executive branch and to perform his constitutional duties. The multiple restrictions and conditions placed upon the President's authority to appoint members of this Board would violate the constitutional requirements of the Appointments Clause. The statutory establishment of privacy and civil liberty officers at certain agencies also is objectionable, as is the purported requirement that the DHS privacy officer report directly to Congress. Finally, title VIII would vest the independent oversight board with unprecedented discretionary authority to direct Department and agency heads throughout the executive branch to create and fill necessary privacy and civil liberties offices within their agencies if the Board merely determined that such action was appropriate. The Administration is adamant that the objectionable provisions of title VIII must be changed and looks forward to working with Congress to accomplish this end.

Cargo and Passenger Scanning

The Administration has invested heavily in managing the risk associated with the approximately ten million cargo containers that enter our seaports each year, and enhanced targeting and risk management will continue to be a key priority. The Administration has taken important steps domestically and internationally to build a layered defense to protect the homeland against terrorist threats – especially from the threat of nuclear terrorism. The Administration shares the House's intent to expand national capabilities to prevent and detect illicit trafficking of nuclear material in shipping containers entering the United States. The Administration has undertaken several major initiatives to scan cargo intended to enter the United States in support of this important goal. As part of the implementation of the SAFE Port Act—enacted just last fall—the Administration's Secure Freight Program is pursuing a cooperative international approach to container scanning. Similarly, DHS's Container Security Initiative enables Customs and Border Protection officers already working in 50 overseas ports to inspect high risk containers before they are loaded on vessels destined for the U.S.; it already covers more than 80 percent of maritime containerized cargo shipped to the homeland. Additionally, the Department of Energy's

Megaports Initiative has completed deployments of radiation detection equipment at six international seaports and is at various stages of implementation in 12 additional countries around the world. At U.S. ports, DHS has already deployed enough radiation portal monitors to scan over 80 percent of all cargo containers entering the country by sea for radiation, and is on target to meet the Secretary's goal of 98 percent scanning of seaborne containers by the end of 2007.

The Administration strongly opposes the bill's requirement to scan, within five years, 100 percent of all U.S.-bound containers prior to loading at overseas ports. Such a requirement is neither executable nor feasible. Nevertheless, the Administration understands the need for a cooperative international approach to container scanning and is working diligently with its international trading partners to test the concept of operations to scan 100 percent of the containers in three foreign ports as part of the implementation of the SAFE Port Act enacted just last fall. While that testing is ongoing, the Administration does not yet know whether the concept of operations would be effective and would not significantly impact trade capacity and flow of cargo if it were extended to the more than 700 ports worldwide that ship to the United States. Moreover, there are significant costs associated with container scanning equipment and infrastructure that would need to be passed on to commercial carriers, and the United States has limited ability to put these requirements in place in a foreign port without the express permission of the host government. Imposing such requirements ignores two crucial facts. First, the United States cannot force foreign ports to provide 100 percent scanning. Second, the United States needs to be able to determine, for security-related or other reasons, that such scanning operations are not appropriate at a particular foreign port. The Administration believes that a layered approach leveraging both overseas and domestic detection capabilities, as reflected by the Megaports program, the Container Security Initiative, and the Domestic Nuclear Detection Office, is a more rational and effective approach to container security.

The Administration supports provisions in the bill that will continue to improve the effectiveness and efficiency of checked baggage screening technology. The Administration also supports the House's intent to improve the security of air cargo transported aboard passenger aircraft, and, as with container security, the Administration has already made great strides in this area. The Administration has enhanced air cargo security through a combination of layered security measures, screening and vetting, and operational and technological initiatives that balance the twin goals of enhancing security without unduly disrupting the flow of commerce. Last year, TSA issued a final regulation to strengthen air cargo security throughout the supply chain, and it has since issued detailed, targeted Security Directives that set additional requirements for regulated parties in the air cargo industry. TSA devotes hundreds of inspectors and K-9 teams to air cargo carried on passenger aircraft. TSA vigorously enforces the regulations and Security Directives through a committed staff of 300 air cargo security inspectors and additional aviation security inspectors, who inspect and enforce its regulations and security requirements and impose civil penalties for violations. This program successfully manages risk while allowing the airline industry to provide air cargo service on passenger flights.

While the Administration demonstrates its support for the goal of air cargo safety in these ways, the Administration does not support the bill's mandate to achieve 100 percent inspection of air cargo in the next three years. Technology does not currently exist that would allow for physical

inspection of all air cargo at the level of screening of passenger checked baggage without impeding the legitimate flow of commerce. Imposition of this requirement would likely result in the shifting of all cargo shipping away from passenger airlines; a step that we should consider taking only if the layered defenses put in place are not working—a premise with which we disagree. The Administration urges the House to adopt a more sustainable, risk-based approach to air cargo security.

The Administration appreciates the House's desire to enhance passenger screening capabilities, but opposes the establishment of a separate Fund to provide \$250 million in new passenger screening equipment in 2008. TSA's Passenger Screening Program already provides for technology that screens passengers and their personal property to deter, detect, and prevent transportation of explosives and weapons on commercial aircraft. TSA is also aggressively investing in technology that is designed to detect explosives on persons and their carry-on baggage as it becomes available and deemed effective for use at passenger checkpoints.

Grants Programs

The Administration strongly supports the provisions in the bill that modify the statutory formula for homeland security grants. The Administration has consistently sought to increase the percentage of State Homeland Security Grant Program funding that is allocated on the basis of risk and welcomes the House's desire to reduce the minimum level of funding that is currently guaranteed to each State regardless of risk. In addition, the Administration supports the concept of providing grant funding directly to Tribes. However, the Administration should maintain the flexibility to administer the Urban Area Security Initiative completely on the basis of risk and without any formula-driven minimum allocation requirements.

The Administration applauds the House's desire to improve the interoperability of first responders. However, the Administration believes that the creation of a new interoperability grant program is unnecessary and potentially detrimental to existing grant programs, as the funding for those new programs may diminish the funding for already existing programs. Interoperable communications receive the highest allocation of Federal funds granted to States and urban areas through the existing Homeland Security Grant Program, and the issue remains one of the Administration's top seven designated National preparedness priorities – a designation that governs the allocation of Federal funds. From FY 2003 through FY 2007, States and local communities have allocated nearly \$3 billion in Federal grants for communications interoperability projects - more than any other purpose. Further, an additional \$1.7 billion in grants will be awarded to State and local governments this summer through the 2007 Homeland Security Grant Program that is available to be spent on interoperability projects, and the Commerce Department, in consultation with DHS, is expected to award an additional \$1 billion in interoperability grants in late FY 2007.

The Administration opposes the creation of a new grant program for law enforcement agencies to participate in fusion centers. Although the Administration supports the fusion center mission and also supports providing adequate funding to fusion centers, it opposes a direct grant program to local law enforcement authorities, which not only circumvents State and local homeland security leadership, but also duplicates efforts already underway in existing programs. Up to 25 percent

of the funding provided under the Urban Area Security Initiative and the Law Enforcement Terrorism Prevention Program is available for personnel costs associated with information, investigative, and intelligence sharing and analysis activities. These funds are provided through the State and local governments in coordination with their homeland security strategies.

Intelligence and Information Sharing

The bill's information-sharing provisions do not recognize or capitalize on the substantial progress that the Administration has made in creating the government-wide Information Sharing Environment established by the Intelligence Reform and Terrorism Prevention Act of 2004. These provisions would unravel the coordinated government-wide approach to information sharing mandated by Congress and currently being implemented at the President's direction by the Program Manager for Information Sharing. By eschewing government-wide responsibility for information-sharing, the proposed provisions would undermine the fundamental premise of information-sharing reform -- coordination among all Federal entities with counterterrorism responsibilities. In addition, many Federal agencies and departments interact regularly and routinely with State, local, and tribal officials and the private sector. The bill pays no regard to those existing relationships, and, by focusing exclusively on DHS's interactions with those non-Federal actors, risks undermining those valuable and necessary relations and harming the Federal government's ongoing efforts to communicate in a coordinated fashion with our non-Federal information-sharing partners.

The Administration has concerns regarding the collateral consequences of the bill's provisions that attempt to reorganize intelligence and infrastructure protection offices of DHS. These provisions conflict with reorganizations that DHS has already undertaken, including improvements made as part of DHS's Second Stage Review and very recent changes to implement Federal law and policy, including the information sharing, intelligence, infrastructure protection, emergency communications, and cyber security requirements of the Intelligence Reform and Terrorism Prevention Act and the Post-Katrina Emergency Management Reform Act. The Administration would like to work with Congress to complete the implementation of the Second Stage Review and to strengthen Intelligence and Analysis without the unintended consequences the current language would cause.

Weapons of Mass Destruction

The Administration opposes creating the new position of U.S. Coordinator for the Prevention of WMD Proliferation and Terrorism. The position is unnecessary given extensive coordination and synchronization mechanisms that now exist within the executive branch, including the September 2006 National Strategy for Combating Terrorism which sets forth a comprehensive multi-layered strategy to combat the threat of WMD terrorism. The Administration also opposes establishment of a Commission on the Prevention of Weapons of Mass Destruction as unnecessary. In addition, the Administration does not support many of the bill's provisions related to WMD interdiction efforts. Among other things, the bill fails to take into account the strong international support for, and the strong international and national legal authorities that already underpin, the Proliferation Security Initiative.

The Administration generally opposes mandatory sanctions and other comparable constraints on the President's flexibility such as those included in this bill. The bill imposes security assistance and export control sanctions on Pakistan, putting at risk our relationship with a crucial partner against terrorism. It also conditions all foreign assistance on a country's not cooperating with states or individuals who may be engaged in objectionable nuclear explosive-related activities. Other provisions also provide for sanctions to be imposed in connection with WMD activities and black market trade which may be counterproductive in the capitals of countries whose cooperation we need, thereby limiting the flexibility of the President to conduct foreign policy.

Current law authorizes the President to stay the imposition of sanctions for a limited period of time if the imposition of sanctions without delay would seriously risk or compromise an ongoing criminal investigation or an intelligence source or method directly related to the activities giving rise to the sanction. Under the provisions of this bill, the only options available to the President would be to impose sanctions, and possibly jeopardize an ongoing criminal investigation or intelligence sources and methods, or waive the imposition of sanctions entirely, but only if he determines that waiver is "important to the national security interests of the United States."

Promoting Democracy

Since 2001, the Administration has supported a significant expansion of broadcasting to Arab audiences and has expanded assistance programs that improve public education systems, increase exchanges, and promote democracy in Muslim countries. Some of the additional authorities proposed in the bill in these areas would limit flexibility in the pursuit of democracy, exchange, and education initiatives in these countries and would create excessively burdensome reporting requirements. For example, the Administration is concerned with imposing a requirement that micromanages its international assistance efforts concerning Muslim youth and education by creating a new fund mechanism.

The Administration opposes the five year country-by-country plan for democratization and the establishment of a Middle East Foundation to promote democracy. The Administration already has an active strategy to promote democracy in the Arab and Muslim world. Moreover, the proposed Foundation replicates in many respects the already established Foundation for the Future, which was recently established with strong U.S. support, to promote democracy in Arab and Muslim countries.

Strategy for Relationship with Afghanistan, Pakistan, and Saudi Arabia

The Administration has strengthened our strategic relationships with Pakistan, Afghanistan, and Saudi Arabia ever since September 11th. The Government of Pakistan continues to demonstrate its commitment to cooperating with U.S. counterterrorism efforts and has successfully aided our efforts in a number of important areas. Pakistan has developed, with U.S. support, a multi-pronged strategy to strengthen governance, promote economic development and improve security, which is aimed at reducing extremism and thereby eliminating the Taliban presence--in areas bordering Afghanistan. The Administration therefore opposes restricting assistance to Pakistan based on a certification requirement that the Government of Pakistan is making all possible efforts to combat the Taliban in areas bordering Afghanistan. Such conditionality would

be counterproductive to the important goal, identified by the legislation, of fostering a closer relationship with Pakistan. The Administration proposes instead that the President report on Government of Pakistan efforts to combat the Taliban presence in areas bordering Afghanistan.

The Administration also opposes a reporting requirement on the United States-Saudi Arabia Strategic Dialogue that would require the disclosure of sensitive negotiations or discussions with a foreign government. There are possible constitutional implications regarding the President's foreign affairs authorities, particularly with respect to his ability to engage in discussions and negotiations with foreign governments, as well as his ability to withhold information that impairs foreign relations or the national security of the United States.

Detention Policy and Practices

Under the laws of war, the United States may detain enemy combatants captured in the war on terror until the end of the conflict. The United States complies with applicable domestic and international law, including the laws of war, regarding the detention of enemy combatants. The Administration opposes section 1433 concerning communications with foreign nations on detainee policy and related reports and certifications, as both unnecessary and unconstitutional.

Strategic Planning

The Administration opposes further changes to Transportation Security Strategic Planning. The provisions of the bill that would make such changes are unnecessary as their objectives are being met through the forthcoming Transportation Sector Specific Plan as part of the National Infrastructure Protection Plan and the Transportation Sector's Modal Annexes. Furthermore, by diverting key resources away from planning responsibilities toward reporting requirements, the detailed reporting requirements anticipated by this bill would greatly impede the Administration's ability to achieve its core mission of ensuring security. Detailed information regarding the current planning regime is already available in an unclassified format.

Constitutional Concerns

The Administration has constitutional concerns with several provisions of the bill, particularly in title VIII and in several provisions of titles XII, XIII, and XIV, and has other concerns with some provisions. The Administration looks forward to working with Congress to address these concerns.

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