

George W. Bush Presidential Library

Collection: Executive Clerk, Office of the

Series: Saunders, G. Timothy (Tim) - Bill Files

Folder Title: 11/25/2002 [H.R. 5005] [771617] [2]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;
002	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;
003	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;
004	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;
005	Statement	STATEMENT BY THE PRESIDENT [with attachment] - From: The White House	6	11/25/2002	P5;
006	Statement	STATEMENT BY THE PRESIDENT	3	11/22/2002	P5;

COLLECTION TITLE:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [H.R. 5005] [771617] [2]

FRC ID:

6363

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
007	Letter	[H.R. 5005, Homeland Security Act] - To: Mitchell E. Daniels - From: Paul V. Kelly	2	11/21/2002	P5;
008	Draft	State Department Proposed Language for Signing Statement	1	11/21/2002	P5;
009	Draft	[Response to your request for the views of the U.S. Department of Transportation on H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Kirk K. Van Tine	4	11/21/2002	P5;
010	Letter	[Responds to the request for comments on enrolled bill H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Joe M. Albaugh	2	11/22/2002	P5;

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WHITE HOUSE STAFFING MEMORANDUM

Date: 11-22-02 10:30 AM ACTION / CONCURRENCE / COMMENT DUE BY: 11-22-02 5:00 PMSubject: HOMELAND SECURITY SIGNING STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☒	☐
CARD	☒	☐	IRASTORZA	☐	☐
BARTLETT	☒	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☒	☐
BOLTEN	☒	☐	MARBURGER	☐	☐
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CONNAUGHTON	☐	☐	RIDGE	☒	☐
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FLEISCHER	☐	☒	SPELLINGS	☒	☐
GERSON	☒	☐	CLERK	☐	☒
GONZALES	☒	☐	_____	☐	☐
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD YOUR COMMENTS TO BRAD BERENSON, EXTENSION 62318/FAX 65813,
BY 5:00 PM TODAY AND SEND A COPY TO THE STAFF SECRETARY. THANK YOU.

RESPONSE:

Legation Affa (Howard) -

Our comment are attached

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

Withdrawal Marker

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OA Num.:

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NARA Num.:

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THE WHITE HOUSE
OFFICE OF HOMELAND SECURITY

FACSIMILE TRANSMITTAL SHEET

TO: JACK HOWARD FROM: JULIE + DANK
COMPANY: DATE:
FAX NUMBER: SENDER'S PHONE NUMBER:
PHONE NUMBER: SENDER'S FAX NUMBER:
RE: TOTAL NO. OF PAGES INCLUDING COVER:

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

1ST. POINT IS MOST
IMPORTANT.

See

WASHINGTON, DC

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RESPONSE:

OK (SUZY DeFran is for Dan Bartlett)

Harriet E. Miers
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November 23, 2002

RESPONSE: The NSC concurs with changes.

** See change, p. 3*

Condoleezza Rice
 Condoleezza Rice
 Assistant to the President
 For National Security

Harriet E. Miers
 Assistant to the President
 and Staff Secretary
 Ext. 62702

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

November 25, 2002

STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 5005, the "Homeland Security Act of 2002." The Act restructures and strengthens the executive branch of the Federal Government to better meet the threat to our homeland posed by terrorism. In establishing a new Department of Homeland Security, the Act for the first time creates a Federal department whose primary mission will be to help prevent, protect against, and respond to acts of terrorism on our soil.

Section 103(a)(8) of the Act provides for 12 Assistant Secretary positions without defined titles or duties in the new Department that are to be "appointed by the President, by and with the advice and consent of the Senate." Sections 201(b)(1) and 201(b)(2) of the Act provide for two Assistant Secretary positions with defined titles and duties that are to be "appointed by the President." The text and structure of the Act make clear that these two presidentially appointed Assistant Secretary positions were created in addition to the 12 unspecified Assistant Secretary positions, and the executive branch shall construe the relevant provisions accordingly.

With respect to section 201(h), upon the recommendations of the Secretary of Homeland Security, the Director of Central Intelligence, the Secretary of Defense, the Assistant to the President for National Security Affairs, and other appropriate executive branch officials, I will determine which elements of the Department of Homeland Security are concerned with the analysis of foreign intelligence information.

Section 214(a)(1)(D)(ii) provides that voluntarily shared critical infrastructure information shall not be used or disclosed by any Federal employee without the written consent of the person or entity submitting the information, except when disclosure of the information would be to the Congress or the Comptroller General. The executive branch does not construe this provision to impose any independent or affirmative requirement to share such information with the Congress or the Comptroller General and shall construe it in any event in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

Section 231 establishes an "Office of Science and Technology" within the National Institute of Justice, and under the general authority of the Assistant Attorney General for the Office of Justice Programs. According to subsection 231(b), "[t]he Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual." The executive branch will construe this provision in a manner consistent with the requirements of the Appointments Clause of Article II of the Constitution. Because the Director would exercise significant governmental authority and thus be an

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"officer" whose appointment must be made in conformity with the Appointments Clause, I hereby direct the Attorney General to appoint the Director.

Section 232(e) of the Act provides that the Director of the Office of Science and Technology within the Department of Justice shall have sole authority over decisions relating to publications issued by the Office. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch.

Section 306(a) of the Act provides that research conducted by the Department shall be unclassified "to the greatest extent practicable." In addition, section 425 adds section 44901(d)(3) to title 49 of the United States Code, requiring the submission of classified reports concerning the screening of checked baggage for explosives in the aviation system to certain committees of Congress. The executive branch shall construe and carry out these provisions, as well as other provisions of the Act, including those in title II of the Act, in a manner consistent with the President's constitutional and statutory authorities to control access to and protect classified information, intelligence sources and methods, sensitive law enforcement information, and information the disclosure of which could otherwise harm the foreign relations or national security of the United States.

Section 311(h) of the Act provides for the preparation and transmittal to the Congress of reports prepared by the Homeland Security Science and Technology Advisory Committee. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Several sections of the Act, including section 414, 476, and 873(c), purport to require the submission of budget requests for the new Department to the Congress and to require such requests to be in a particular form. The executive branch shall construe this provision in a manner consistent with the constitutional authority of the President to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Section 452(c)(2) of the Act prohibits various officers of the Department or the Office of Management and Budget from reviewing reports and other material prepared by the Citizenship and Immigration Services Ombudsman. The executive branch shall construe this section in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.

Section 473(f) of the Act purports to require the Secretary of Homeland Security or the Attorney General to comply with requests from the General Accounting Office (GAO) for certain information in the course of GAO preparation of reports on demonstration projects relating to disciplinary action. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

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Provisions in the Act, including sections 418(b), 428(e)(7)(B), 460, 477(c)(2)(F), 882(c)(3), and 893(a) purport to require executive branch officials to submit to the Congress plans for internal executive branch activities or recommendations relating to legislation. The executive branch shall construe such provisions in a manner consistent with the President's constitutional authorities to supervise the unitary executive branch and to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Section 507 describes some of the functions of the Federal Emergency Management Agency, specifically referencing "the functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)." Because section 503(1) transfers all functions of the Federal Emergency Management Agency to the Department of Homeland Security, including those existing pursuant to laws other than the Stafford Act, the executive branch shall not construe the specification of the Stafford Act in section 507 as limiting in any way the transfer of the other authorities currently belonging to the Federal Emergency Management Agency.

Section 812(a) authorizes Inspectors General and their assistants and agents to make criminal arrests without warrants for any Federal felony if they have "reasonable grounds to believe" that the subject committed or is committing the offense.

Because the Supreme Court has held that the standard of probable cause applies to all arrests, regardless of circumstances, the grounds for making an arrest under this standard are only "reasonable" if they include probable cause to believe that the subject has committed or is committing a crime. The Inspectors General, their assistants, and agents must accordingly have probable cause before making an arrest pursuant to this section.

The authority to make criminal arrests and to exercise other law enforcement authorities conveyed by this section is to be exercised in accordance with guidelines promulgated by the Attorney General, as provided by section 6(e)(4) of the Inspector General Act of 1978, as added by section 812(a).

Section 873(b) describes conditions under which gifts or donations of services or property of the Department may be accepted, used, or disposed of by third parties. The executive branch shall construe this provision in a manner consistent with existing legal authorities being transferred to the Department of Homeland Security and shall not construe it to effect an implied repeal of any such authority.

Section 878 provides that the Secretary of Homeland Security shall appoint a senior official in the Department to assume primary responsibility for certain counternarcotics efforts and to serve as the United States Interdiction Coordinator for the Office of National Drug Control Policy. In making this appointment, the Secretary of Homeland Security will consult with and seek recommendations from the Director of the Office of National Drug Control Policy.

Section 879 establishes an Office of International Affairs with responsibilities to promote information and education exchange with foreign nations with respect to best practices and technologies relating to homeland security. This Office will carry out these functions in close coordination with the Department of State and other relevant Government agencies.

Section 886 recites a series of findings and provides the sense of the Congress concerning aspects of section 1385 of title 18, United States Code, commonly known as the Posse

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Comitatus Act. This provision does not purport to alter, modify, or otherwise affect the Posse Comitatus Act or judicial interpretations of that Act, and the executive branch shall construe this provision accordingly.

Section 895 of the Act purports to amend Rule 6(e) of the Federal Rules of Criminal Procedure by expanding the permissible scope of grand jury information that may be shared by prosecutors. On April 29, 2002, however, the Supreme Court proposed a set of amendments to Rule 6 that, under section 2074 of title 28, are scheduled to take effect on December 1, 2002. There is no indication that the Congress' different amendments to Rule 6(e) were intended to reject the Supreme Court's pending proposal, and my Administration will construe the Act so that the Supreme Court's proposed amendments to Rule 6 will still go into effect, without alteration, on December 1, 2002. As a result of those intervening amendments, when section 895 becomes effective in 60 days, its directions for amendment will no longer correspond to the underlying text of Rule 6(e). In the next Congress, technical amendments will be necessary to add the changes in this section to those already accomplished by the Supreme Court pursuant to sections 2072 and 2074 of title 28.

Section 1313(a)(2) provides authority to the Administrative Office of the United States Courts to establish a program for providing voluntary separation incentive payments to "individuals serving in the judicial branch." Based upon an understanding of the intent of this provision, as well as appropriate respect for principles of judicial independence, the executive branch shall construe "individuals serving in the judicial branch" to exclude those individuals serving as members of the Federal judiciary.

Section 1331 adds an amended section 4107(b)(1)(A) to title 5, United States Code, which requires that, in exercising authority to assign and fund academic degree training for certain Federal employees, an agency "take into consideration the need to maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service." The executive branch shall construe this provision in a manner consistent with the Equal Protection component of the Due Process Clause of the Fifth Amendment to the Constitution

GEORGE W. BUSH

THE WHITE HOUSE,
November 25, 2002.

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

November 25, 2002

STATEMENT BY THE PRESIDENT

Today I have signed into law S. 1214, the "Maritime Transportation Security Act of 2002." This Act will strengthen security at our Nation's seaports by requiring comprehensive security plans for U.S. ports and mandating improved identification and screening of seaport personnel.

Certain provisions of the Act, including sections 102, 103(b), 110(c)(4), and 112(4), purport to require an executive branch official to submit recommendations to the Congress. The executive branch shall construe such provisions in a manner consistent with the President's constitutional authority to supervise the unitary executive branch. Moreover, to the extent such provisions of the Act would require submission of legislative recommendations, they would impermissibly impinge upon the President's constitutional authority to submit only those legislative recommendations that he judges to be necessary and expedient. Accordingly, the executive branch shall construe such provisions as requiring submission of legislative recommendations only where the President judges them necessary and expedient.

Section 102 of the Act adds a new section 70109 to title 46 of the United States Code. This provision purports to require one of my subordinates to notify foreign officials of certain findings and recommend antiterrorism measures to them. The constitutional authority of the President over foreign affairs necessarily entails discretion over these matters, and so the executive branch shall interpret this provision as precatory.

Section 102 of the Act also adds a new section 70112 to title 46. Section 70112(a)(1)(B) purports to authorize an advisory committee in the executive branch to make available to the Congress recommendations that the committee makes to the Secretary of the Department in which the Coast Guard is operating. The executive branch shall construe this provision in a manner consistent with the President's constitutional authority to supervise the unitary executive branch and to protect the deliberative processes of the Executive.

GEORGE W. BUSH

THE WHITE HOUSE,
November 25, 2002.

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Following Page



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

THE DIRECTOR

November 25, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5005 – Homeland Security Act of 2002
Sponsors - Rep. Armey (R) Texas and 118 cosponsors

Last Day for Action

We understand that a signing ceremony is being planned for Monday, November 25, 2002.

Purpose

Establishes a Department of Homeland Security.

Agency Recommendations

Office of Management and Budget (OMB)	Approval
Department of Agriculture	Approval
Department of Energy	Approval
Department of Justice	Approval
Department of State	Approval
Department of Transportation	Approval
Federal Emergency Management Agency (FEMA)	Approval
Department of Commerce	Approval (Informally)
Department of Defense	Approval (Informally)
Department of the Treasury	Approval (Informally)
Department of Labor	No objection (Informally)
General Services Administration	No objection (Informally)
Office of Government Ethics	No objection (Informally)
Office of Personnel Management (OPM)	No objection (Informally)
Department of Health and Human Services (HHS)	Defers to Justice (Informally)
Central Intelligence Agency (CIA)	No comment (Informally)

Discussion

H.R. 5005 contains the core elements of the legislative proposal to establish a Department of Homeland Security that you transmitted to Congress on June 18, 2002.

H.R. 5005 also contains provisions that would: (1) authorize flight deck officers to carry firearms and use lethal force aboard passenger aircraft; (2) transfer portions of the Bureau of Alcohol, Tobacco, and Firearms (ATF) to the Department of Justice from the Department of the Treasury; (3) modify procedures for managing the Federal workforce; and (4) provide liability protections for certain parties involved in the deployment of anti-terrorism technologies and the administration of countermeasures against smallpox.

The enrolled bill contains language that was negotiated between the Administration and Congress that would guarantee specified collective bargaining rights to certain employees of the new Department, and allow the President to waive these protections upon determining that their application would have a substantial adverse impact on the ability of the Department to protect homeland security.

The most significant provisions of H.R. 5005 are summarized below. The components of the new Department of Homeland Security are described at Attachment A and are illustrated in a table at Attachment B. Other important provisions of the enrolled bill are detailed at Attachment C.

Establishment of a Department of Homeland Security

General Mission and Organization

H.R. 5005 would establish a Department of Homeland Security. The mission of the Department would include: (1) preventing terrorist attacks within the United States; (2) reducing the vulnerability of the United States to terrorism; (3) minimizing the damage, and assisting in the recovery, from terrorist attacks that occur within the United States; and (4) carrying out all the functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning. Primary responsibility for investigating and prosecuting acts of terrorism would continue to be vested in Federal, State, and local law enforcement agencies, not in the new Department.

The Department would be headed by a Secretary of Homeland Security, to be appointed by the President and confirmed by the Senate. The bill would authorize the Secretary to attend and participate in meetings of the National Security Council, subject to the direction of the President.

H.R. 5005 would also provide for a Deputy Secretary of Homeland Security, an Under Secretary for each of four Directorates established in the Department by the enrolled bill, an Under Secretary for Management, a Director of the Bureau of Citizenship and Immigration Services, a Commissioner of Customs, a Director of the Office for Domestic Preparedness, a General Counsel, an Inspector General, a Commandant of the Coast Guard, and no more than 12 Assistant Secretaries, all to be Presidentially-appointed and Senate-confirmed. The four Directorates would be for: (1) Information Analysis and Infrastructure Protection; (2) Science and Technology; (3) Border and Transportation Security; and (4) Emergency Preparedness and Response. The duties of each Directorate are described in Attachment A.

The enrolled bill would provide for the following non-Senate-confirmed Presidentially-appointed positions: (1) a Director of the Secret Service; (2) a Chief Information Officer; (3) a Chief Human Capital Officer; (4) a Chief Financial Officer; (5) an Officer for Civil Rights and Civil Liberties; (6) an Assistant Secretary for Information Analysis; and (7) an Assistant Secretary for Infrastructure Protection.

Management

The enrolled bill is largely consistent with the "managerial flexibilities" provisions included in your proposal to establish a Department of Homeland Security, except for certain changes, including: (1) allowing employee representatives to review and comment on the human resources management system authorized to be established for the Department; (2) limiting the Secretary's authority to alter the pay of certain employees; and (3) requiring the President to uphold labor protections such as collective bargaining for certain Department employees unless the President determines that these protections would have a substantial adverse impact on the ability of the Department to protect homeland security.

Human Resources Management. The enrolled bill would authorize the Secretary of Homeland Security, in regulations prescribed jointly with the Director of OPM, to establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department. This system would have to: (1) be flexible and contemporary; (2) not waive, modify, or otherwise affect public employment principles of merit and fitness; (3) ensure that employees could organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them (subject to any exclusions from coverage or limitation on negotiability established by law); and (4) permit the use of a category rating system for evaluating applicants for positions in the competitive service. Before implementing a new system, the Secretary and the OPM Director would have to give employee representatives the opportunity to review and comment on the new system. After receiving comments, the Secretary and the Director would adopt any recommendations that they determine are advisable and would have to notify Congress of those parts of the proposal for which recommendations of employee representatives were rejected.

The enrolled bill would generally prohibit a reduction in pay or grade of Federal employees who are transferred to the new Department for at least one year after the date of the transfer. Any employee compensated in accordance with the Executive Schedule who is transferred to the Department to perform duties similar to those prior to being transferred would continue to be compensated at no less than the rate provided prior to being transferred for the duration of the employee's service in the new position.

Labor-Management Relations. No component transferred to the Department could be excluded from coverage under Federal labor-management relations laws unless: (1) the mission and responsibilities of the components materially change; and (2) a majority of the employees within the component have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation. Bargaining units that are transferred to the Department would continue to be recognized and employees within those units would remain in those units unless the responsibilities of those units or employees materially change or the primary duties of an employee or a majority of employees within a unit consists of investigative work directly related to terrorism investigation. However, if the President determines that the application of these provisions would have a substantial adverse impact on the ability of the Department to protect homeland security, the President could waive the application of these provisions ten days after submitting to Congress a written explanation of the reasons for the determination. The bill would not exempt the Department from equal employment protections and whistleblower protections that apply to Federal employees.

Transition Provisions

The enrolled bill would take effect 60 days after enactment. The bill would provide for a transition period of 12 months beginning on the effective date.

Reorganization Plan. By no later than 60 days after the date of the enactment, the President would have to transmit to the appropriate congressional committees a reorganization plan regarding the transfer of agencies, personnel, assets, and obligations to the Department and any consolidation, reorganization, or streamlining of agencies transferred to the Department. The plan must specify: (1) any functions of agencies transferred to the Department under the bill that will not be transferred to the Department under the plan; (2) the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan; (3) the funds available to each agency that will be transferred to the Department as a result of transfers under the plan; (4) the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan; (5) any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan; and (6) the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to homeland security.

The reorganization plan would become effective for an agency on the earlier of the date specified in the plan or the end of the transition period. However, the specified date would have to be no earlier than 90 days after the President transmits the reorganization plan to the appropriate congressional committees. The President could modify or revise, on the basis of consultation with the appropriate congressional committees, any part of the reorganization plan at any time until that part becomes effective.

The Secretary would be authorized to allocate or reallocate functions among the officers of the Department and establish, consolidate, alter, or discontinue organizational units within the Department, but only: (1) pursuant to the reorganization plan; or (2) sixty days after providing notice of, and a rationale for, such action to the appropriate congressional committees. This authority would not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained: (1) by the enrolled bill, in the case of the reorganization plan; or (2) by statute, in the case of subsequent actions.

Transitional Authorities. Until the transfer of an agency to the Department, any official having authority over the agency immediately before the effective date of the bill would have to provide any assistance that the Secretary may request in preparing for the transfer to the Department. During the transition period, upon the request of the Secretary, the head of any executive agency could, on a reimbursable basis, provide services or detail personnel to assist with the transition. During the transition period, pending Senate confirmation of appointments to the Department, the President would be authorized to designate any Senate-confirmed officer who was an officer immediately before the effective date of the bill (and who continues in office) to serve as an acting officer until the appointed officer is confirmed. The bill would not require Senate re-confirmation of any Senate-confirmed officer appointed by the President whose agency is transferred to the Department and whose duties following the transfer are germane to those performed before the transfer.

Transfer of Appropriated Funds in the Continuing Resolution. H.J.Res. 124, the continuing resolution that funds Government operations through January 11, 2003, authorizes the Secretary (with OMB approval) to transfer up to \$500 million of funds made available to the Department of Homeland Security. This transfer authority may only be used for higher priority items, based on unforeseen homeland security requirements, than those for which the funds were originally appropriated, and the funds cannot be used for an item that has been denied by the Congress. During FY 2003, OMB may transfer up to \$140 million from unobligated balances of appropriations enacted prior to October 1, 2002, for organizations and entities that will be transferred to the new Department, to be used for the salaries and expenses associated with the initiation of the Department. Of amounts authorized for transfer, except as otherwise specifically authorized by law, no more than two percent of any appropriation available to the Secretary may be transferred between appropriations. At least 15 days notice has to be given to the Senate and House Appropriations Committees before any transfer is made. Under H.R. 5005, the OMB Director, in consultation with the Secretary, would be directed to make any additional incidental dispositions of personnel, assets, and liabilities necessary to accomplish the purposes of the bill.

Consolidation and Co-location of Offices. Within one year of the date of enactment of this bill, the Secretary would have to develop and submit to Congress a plan for consolidating and co-locating: (1) any regional offices or field offices of agencies that are transferred to the Department, if these offices are located in the same municipality; and (2) portions of regional and field offices of other Federal agencies, to the extent that such offices perform functions that are transferred to the Secretary.

Review of Pay and Benefits. The enrolled bill would require the Secretary, in consultation with the Director of OPM, to review the pay and benefit plans of each agency whose functions are transferred to the Department and, within 90 days after the date of enactment, submit a plan to Congress for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles.

Homeland Security Council

The enrolled bill would establish within the Executive Office of the President a Homeland Security Council to advise the President on homeland security matters. Members of the Council would include the President, the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and any other individuals designated by the President. The enrolled bill would provide for a staff for the Council, to be headed by an Executive Secretary appointed by the President. The enrolled bill would authorize the President to convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct. These provisions are generally consistent with your October 8, 2001, Executive Order that established the Homeland Security Council.

Other Provisions

Other major provisions of the enrolled bill are described at Attachment C. These include:

- authority for certain airline pilots to carry firearms and use lethal force aboard passenger aircraft;
- the transfer of portions of the ATF to the Department of Justice from the Department of the Treasury;
- Government-wide personnel management provisions, including the establishment of a Chief Human Capital Officer in each executive agency;
- Government-wide information security provisions;

- liability protection for certain providers of anti-terrorism technologies and certain doctors, drug manufacturers, and hospitals that are involved in the administration of the smallpox vaccine; and
- a requirement that your FY 2004 Budget include a separate budget request for the new Department.

Agency Views

The Department of Transportation recommends approval of H.R. 5005. The Department advises that it will work aggressively to meet the December 31, 2002, deadline in current law for the deployment of explosive detection systems to screen baggage at airports. The Department does not expect that a large number of airports will need the additional flexibility provided by the enrolled bill with respect to this deadline. (These provisions are described in Attachment C.)

FEMA recommends approval of the enrolled bill, but identifies several provisions that "require clarification or need to be addressed in subsequent technical corrections to the Act." For example, FEMA recommends administrative or legislative action to transfer the new Department's Office of Domestic Preparedness from the Border and Transportation Security Directorate to the Emergency Preparedness and Response Directorate.

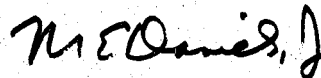
The Department of Justice recommends approval of H.R. 5005, and has recommended signing statement language (attached to its views letter) to address constitutional issues.

The Department of State recommends approval, and has submitted signing statement language (attached to its views letter) containing proposed interpretations of three provisions.

Conclusion and Recommendations

We join the Departments of Agriculture, Commerce, Defense, Energy, Justice, State, Transportation, and the Treasury, and FEMA in recommending approval of H.R. 5005, which passed the Senate by a vote of 90-9 and the House by unanimous consent after an earlier vote on a nearly identical bill of 299-121.

We understand that the White House Counsel's Office is preparing a signing statement for your consideration.



Mitchell E. Daniels, Jr.
Director

Enclosures

Components of the Department of Homeland Security

Below is a description of the components that would be transferred to or created within the new Department of Homeland Security, beginning with the four major Directorates established in the bill: (1) an Information Analysis and Infrastructure Protection Directorate; (2) a Science and Technology Directorate; (3) a Border and Transportation Security Directorate; and (4) an Emergency Preparedness and Response Directorate.

Information Analysis and Infrastructure Protection Directorate

The Under Secretary for Information Analysis and Infrastructure Protection would be responsible for, among other things: (1) accessing, receiving, and analyzing law enforcement and intelligence information from Federal, State, and local government agencies and private sector entities and integrating this information in order to detect and identify threats of terrorism against the United States; (2) carrying out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States; (3) developing a comprehensive national plan for securing the key resources and critical infrastructure of the United States; and (4) administering the Homeland Security Advisory System.

The functions of the following agencies would be transferred to the Secretary for assignment to the Under Secretary: (1) the Federal Bureau of Investigation's (FBI) National Infrastructure Protection Center (except for its Computer Investigations and Operations Section); (2) the Defense Department's National Communications System; (3) the Commerce Department's Critical Infrastructure Assurance Office; (4) the Energy Department's National Infrastructure Simulation and Analysis Center and its energy security and assurance program and activities; and (5) the General Services Administration's Federal Computer Incident Response Center. The enrolled bill would also designate the elements of the new Department involved in analyzing foreign intelligence information as elements of the Intelligence Community.

The enrolled bill would also allow personnel of the following agencies to be detailed to the Department to perform analytic functions and related duties – the State Department, the Central Intelligence Agency (CIA), the FBI, the National Security Agency, the National Imagery and Mapping Agency, the Defense Intelligence Agency, and any other Federal agency that the President considers appropriate.

Access to Information. Except as otherwise directed by the President, the enrolled bill would provide the Secretary such access as he or she considers necessary to all information (including unevaluated intelligence) relating to threats of terrorism against the United States and all information concerning infrastructure or other vulnerabilities of the United States to terrorism that may be collected, possessed, or prepared by any other Federal agency. The Secretary could obtain this material upon request and would be authorized to enter into cooperative arrangements with other agencies to provide this material or access to it. In addition, the enrolled bill would require Federal agencies to promptly provide certain types of information to the Secretary, regardless of whether he or she has made any request or entered into any cooperative arrangement.

The enrolled bill would deem the Secretary to be a Federal law enforcement, intelligence, protective, national defense, immigration, and national security official. The Secretary would have to be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence (DCI) under the USA PATRIOT Act and certain other laws. The Secretary, in consultation with the DCI, would have to work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the Intelligence Community or other elements of the Federal Government responsible for analyzing terrorist threat information.

NET Guard. The enrolled bill would authorize the Under Secretary to establish a national technology guard, to be known as "NET Guard," comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond to and recover from attacks on information systems and communications networks.

Science and Technology Directorate

The Under Secretary for Science and Technology would be responsible for, among other things: (1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions; (2) developing, in consultation with other executive agencies, a national policy and strategic plan for developing countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats; (3) conducting basic and applied research, development, demonstration, testing, and evaluation activities (except for human health-related research and development activities); and (4) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material and for detecting, preventing, protecting against, and responding to terrorist attacks.

The functions of the following agencies would be transferred to the Secretary: (1) the Department of Energy's chemical and biological national security programs and activities of the nonproliferation and verification research and development program; (2) Energy's nuclear smuggling programs within the proliferation detection program of the nonproliferation and verification research and development program (except that the President would be required to designate whether such programs will be transferred to the Department or will be operated jointly by the Homeland Security Secretary and the Secretary of Energy); (3) Energy's nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program; (4) life sciences activities of Energy's biological and environmental research program related to microbial pathogens, if and to the extent designated for transfer by the President; (5) Energy's Environmental Measurements Laboratory; (6) Energy's advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; (7) the National Bio-Weapons Defense Analysis Center of the Department of Defense; and (8) the Plum Island Animal Disease Center of the Department of Agriculture. At least 60 days before transferring the Department of Energy's life

sciences activities, the President would be required to notify the appropriate congressional committees of the proposed transfer, including the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

Conduct of Certain Public Health-Related Activities. With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by HHS, the Secretary of HHS would be required to set priorities, goals, objectives, and policies and develop a coordinated strategy in collaboration with the Secretary of Homeland Security. The strategy would include developing specific benchmarks and outcome measurements for evaluating progress toward achieving goals and priorities.

Homeland Security Advanced Research Projects Agency. The bill would establish within the Directorate a Homeland Security Advanced Research Projects Agency (HSARPA) to support research to promote revolutionary changes in technologies that would promote homeland security. HSARPA would be headed by a Director appointed by the Secretary. The bill would establish an Acceleration Fund for Research and Development of Homeland Security Technologies. The Fund would be administered by the Director to award competitive, merit-reviewed grants, cooperative agreements, and contracts to public or private entities, to: (1) support basic and applied homeland security research; (2) advance the development, testing, evaluation, and deployment of critical homeland security technologies; and (3) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities. The bill would authorize appropriations to the Fund of \$500 million for FY 2003 and such sums as may be necessary in subsequent years. At least ten percent of the funds authorized for each year through FY 2005 would be only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved port, waterway, and coastal security surveillance and perimeter protection capabilities.

Extramural Programs. The Under Secretary would be required to carry out extramural research programs to distribute funds through grants, cooperative agreements, and contracts in a manner that ensures that: (1) colleges and universities from as many parts of the country as possible participate; and (2) the research funded is of high quality. The enrolled bill would also require the Under Secretary to establish, within one year of enactment, a university-based center or centers for homeland security. Universities would be selected according to detailed criteria established in the bill. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out this program.

Federal Labs. The Under Secretary would be authorized to draw upon the expertise of any laboratory of the Federal Government (whether operated by a contractor or the Government), establish a headquarters laboratory for the Department at any laboratory or site, and establish additional laboratory units at other laboratories or sites.

The enrolled bill would authorize the Secretary to utilize Department of Energy laboratories and sites through various agreements that the Secretary of Homeland Security may consider appropriate. These laboratories would be authorized to perform work for the Secretary on an equal basis to other missions at the laboratory. The Department would be authorized to become a joint sponsor of one or more Department of Energy laboratories or sites, but the Department of Energy would remain the primary sponsor and lead agent of any facility. The bill would establish within the Directorate an Office of National Laboratories responsible for the coordination and utilization of the Department of Energy national laboratories and sites to support the missions of the Department of Homeland Security.

The enrolled bill would authorize the Under Secretary to establish or contract with one or more existing federally-funded research and development centers to provide independent analysis of homeland security issues. The enrolled bill would also require that, to the greatest extent practicable, research conducted or supported by the Department be unclassified. The enrolled bill would authorize the Secretary, acting through the Under Secretary, to issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department.

Homeland Security Science and Technology Advisory Committee. The enrolled bill would establish within the Department, a Homeland Security Science and Technology Advisory Committee made up of 20 members appointed by the Under Secretary to make recommendations with respect to the activities of the Under Secretary, including identifying research areas of potential importance to the security of the Nation. The Committee would have to submit annual reports to the Under Secretary for transmittal to Congress and would terminate three years after the effective date of the enrolled bill.

Technology Clearinghouse. The enrolled bill would also require the Under Secretary to establish and promote a program to encourage technological innovation in facilitating the mission of the Department. The program would include: (1) the establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination to Federal, State, and local government and private sector entities for additional review, purchase, or use; and (2) the issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

Border and Transportation Security Directorate

The Under Secretary for Border and Transportation Security would be responsible for:

- (1) preventing the entry of terrorists and the instruments of terrorism into the United States;
- (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States;
- (3) carrying out the immigration enforcement functions of the Immigration and Naturalization Service (INS);
- (4) establishing and administering rules governing the granting of visas and other entry documents to individuals who are not either U.S. citizens or permanent resident aliens;
- (5) establishing national immigration

enforcement policies and priorities; (6) administering the customs laws of the United States (although authority for certain customs revenue and trade act enforcement functions would remain vested in the Secretary of the Treasury); (7) conducting certain agricultural import and entry inspection activities; and (8) ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

The functions of the following agencies would be transferred to the Secretary: (1) the Treasury Department's United States Customs Service (except certain revenue and trade act enforcement functions); (2) the Department of Transportation's Transportation Security Administration (TSA); (3) the General Services Administration's Federal Protective Service; (4) Treasury's Federal Law Enforcement Training Center; (5) the Department of Justice's Office of Domestic Preparedness; (6) the Department of Agriculture's agricultural import and entry inspection activities (excluding quarantine activities); and (7) the immigration enforcement functions of Justice's INS. (As explained below, most other INS functions would be transferred to a new bureau that would report directly to the Deputy Secretary.)

Immigration Enforcement Functions. The enrolled bill would transfer to the Under Secretary from INS all of the functions performed by: (1) the Border Patrol program; (2) the detention and removal program; (3) the intelligence program; (4) the investigations program; and (5) the inspections program. These functions would be carried out by a Bureau of Border Security within the Directorate, to be headed by an Assistant Secretary who would report directly to the Under Secretary. The Assistant Secretary would be responsible for administering the program to collect information relating to nonimmigrant foreign students, including the Student and Exchange Visitor Information System. The bill would establish the positions of a Chief of Policy and Strategy for the Bureau and a principal legal advisor to the Assistant Secretary.

The Under Secretary would be responsible for, among other things, conducting investigations of noncriminal allegations of misconduct involving any employee of the Bureau that are not subject to investigation by the Department's Inspector General. The Under Secretary would also be authorized to impose disciplinary action, including termination of employment pursuant to procedures applicable to FBI employees, on any employee of the Bureau who willfully deceives Congress or agency leadership on any matter.

Customs Service. After the effective date of the enrolled bill, the Secretary of the Treasury would be authorized to delegate authority to the Secretary of Homeland Security for certain customs revenue and trade act enforcement functions. The enrolled bill would prohibit the Homeland Security Secretary from consolidating, discontinuing, or diminishing these functions or reducing staff levels or resources attributable to these functions. The Treasury Secretary would be authorized to appoint up to 20 new personnel to work with personnel of the Homeland Security Department in performing customs revenue functions.

The enrolled bill would prohibit the transfer of funds made available to the Customs Service for use by any other agency or office in the new Department. The enrolled bill would also require the President to include a separate budget request for the Customs Service in each budget transmitted to Congress. The General Accounting Office would be required to submit a report to Congress within three months of the effective date of the enrolled bill that sets forth all the trade functions performed by the Executive Branch, specifying each agency that performs each function.

The Homeland Security Secretary would be required to ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of the bill will continue to be provided. The Secretary would have to notify the House Ways and Means Committee and the Senate Finance Committee at least 90 days prior to taking any action that would: (1) result in any significant reduction in customs services; (2) eliminate or relocate any office of the Department that provides customs revenue services; or (3) eliminate any port of entry.

The enrolled bill would create a separate account within the general fund of the Treasury to be known as the "Customs Commercial and Homeland Security Automation Account." For each of FYs 2003 through 2005, the enrolled bill would require the deposit of \$350 million into the Account from Customs user fees for the processing of merchandise that is entered or released. The enrolled bill would authorize appropriations from the Account in each of FYs 2003 through 2005 of any amounts available in the Account for the development of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released.

Transportation Security. The enrolled bill would require TSA to be maintained as a distinct entity within the Homeland Security Department under the Border and Transportation Directorate until two years after the date of enactment. The enrolled bill would require the Secretary and other officials of the new Department to consult with the Administrator of the Federal Aviation Administration (FAA) before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Homeland Security Secretary would have to establish a liaison office for consulting with the FAA Administrator. The enrolled bill would transfer the Transportation Security Oversight Board from the Department of Transportation to the Department of Homeland Security.

Emergency Preparedness and Response Directorate

The Under Secretary for Emergency Preparedness and Response would be responsible for, among other things: (1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies; (2) with respect to the Nuclear Incident Response Team, establishing standards and certifying when those standards have been met, conducting exercises and training and evaluating performance, and providing funds to the Department of Energy and the Environmental Protection Agency (EPA), as appropriate, for

homeland security planning, exercises and training, and equipment; (3) providing the Federal Government's response to terrorist attacks and major disasters; (4) aiding the recovery from terrorist attacks and major disasters; (5) building a comprehensive national incident management system; (6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and (7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

The functions of the following agencies would be transferred to the Secretary: (1) all of the Federal Emergency Management Agency (FEMA); (2) the Integrated Hazard Information System of the Commerce Department's National Oceanic and Atmospheric Administration; (3) the FBI's National Domestic Preparedness Office; (4) the Justice Department's Domestic Emergency Support Teams; and (5) HHS's Office of Emergency Preparedness, National Disaster Medical System, Metropolitan Medical Response System, and Strategic National Stockpile.

Nuclear Incident Response Team. At the direction of the Secretary, the Nuclear Incident Response Team would be required to operate as an organizational unit of the Department. While so operating, the Team would be subject to the direction, authority, and control of the Secretary. These requirements would not limit the ordinary responsibility of the Secretary of Energy and the EPA Administrator for organizing, training, and utilizing their respective entities in the Team, or from exercising control over them when they are not operating as a unit of the Homeland Security Department.

Public Health-Related Activities. With respect to all public health-related activities carried out by HHS to improve State, local, and hospital preparedness and response to terrorist threats, the Secretary of HHS would be required to set priorities and preparedness goals and further develop a coordinated strategy for these activities in collaboration with the Secretary of Homeland Security.

Other Entities Established Within the Department

Under Secretary for Management. The Under Secretary for Management would be responsible for the management and administration of the Department, including: (1) the budget, appropriations, expenditures of funds, accounting, and finance; (2) procurement; (3) human resources and personnel; (4) information technology and communications systems; (5) facilities, property, equipment, and other material resources; (6) security for personnel, information technology and communications systems and other material resources; (7) identification and tracking of performance measures relating to the responsibilities of the Department; (8) grants and other assistance programs; (9) the transition and reorganization process, including the development of a transition plan; and (10) the conduct of internal audits and management analyses of the Department's programs and activities.

The Under Secretary would also be responsible for the maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. The enrolled bill would require the transfer to the Under Secretary for Management of all functions performed by the Statistics Branch of the Office of Policy and Planning of the INS with respect to both enforcement and service functions.

Coast Guard. The enrolled bill would transfer from the Department of Transportation to the Department of Homeland Security all of the authorities, functions, personnel, and assets of the Coast Guard, to be maintained as a distinct entity within the new Department. The bill would require that the Commandant of the Coast Guard report directly to the Secretary. The enrolled bill would require that the authorities, functions, and capabilities of the Coast Guard be maintained intact and without significant reduction after the transfer. The Secretary of Homeland Security would be prohibited from substantially or significantly reducing the missions of the Coast Guard or its capability to perform those missions, except for any period of up to 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for a waiver to these restrictions. As under current law, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.

United States Secret Service. The enrolled bill would transfer to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service of the Department of the Treasury, to be maintained as a distinct entity within the Department.

Federal Law Enforcement Training Center (FLETC). The enrolled bill would transfer FLETC from the Department of the Treasury to the Department of Homeland Security. The bill would require that all activities of FLETC transferred to the Department of Homeland Security continue to be carried out at the locations where they were carried out prior to the transfer. The transfer of an authority or an agency to the Department of Homeland Security would not affect training agreements already entered into by those agencies with FLETC.

Citizenship and Immigration Services. The enrolled bill would establish a Bureau of Citizenship and Immigration Services to be headed by a Director who would report directly to the Deputy Secretary. The Director would be responsible for carrying out the functions transferred from the INS relating to adjudication of immigrant visa petitions, naturalization petitions, and asylum and refugee applications, and all other adjudications performed by the INS. The bill would establish the following positions in the Bureau: (1) a Chief of Policy and Strategy; (2) a principal legal advisor to the Director; (3) a Budget Officer; and (4) a Chief of the Office of Citizenship. In addition, a Citizenship and Immigration Services Ombudsman would report directly to the Deputy Secretary.

The Director would also be responsible for, among other things, conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau that are not subject to investigation by the Department's Inspector

General. The Director would also be authorized to impose disciplinary action, including termination of employment pursuant to procedures applicable to FBI employees, against any employee of the Bureau who willfully deceives Congress or agency leadership on any matter.

After completing a feasibility study, the Secretary would be required to establish, within one year of the effective date of the bill, an Internet-based system that will permit any individual who has filings with the Secretary for any benefit under the Immigration and Nationality Act to access online information about the processing status of the filing.

The enrolled bill would transfer to the Director of the Office of Refugee Resettlement of HHS all of the functions carried out by the INS relating to the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status.

Abolishment of the INS. The INS would be abolished upon completion of all transfers of its components. The enrolled bill would also prohibit the Secretary of Homeland Security from using the enrolled bill's reorganization authority to recombine the Bureaus of Border Security and Citizenship and Immigration Services or combine, join, or consolidate functions or organizational units of the two Bureaus with each other.

The enrolled bill would authorize the INS and its two successor Bureaus to use voluntary separation incentive payments, or "buyouts," for workforce restructuring. The agency must pay to the Civil Service Retirement and Disability Fund the greater of: (1) the amount necessary to offset additional costs to retirement systems; or (2) 45 percent of the total of the final basic pay of employees accepting buyouts. This payment would not be required for other agencies under the Government-wide buyout authority provided under Federal workforce improvement provisions elsewhere in the bill.

The enrolled bill would establish, within the Office of the Deputy Secretary, the position of Director of Shared Services to be responsible for the coordination of certain resources for the two Bureaus, including information resources management, records and file management, and forms management. The enrolled bill would also require that the two Bureaus be funded through separate accounts in the Treasury and that the Director of OMB separate the budget requests for each Bureau.

Visa Issuance. The enrolled bill would vest exclusive authority in the Secretary of Homeland Security to administer all immigration and nationality laws relating to the functions of consular officers in connection with the granting or refusal of visas. These authorities would be exercised through the Secretary of State, and the Secretary of Homeland Security would not have the authority to alter or reverse the decision of a consular officer to refuse a visa to an alien. The Secretary of State would be authorized to direct a consular official to refuse a visa if he or she deems that doing so would be necessary or advisable in the foreign policy or security interests of the United States. Consular officers would remain employees of the Department of State. After the effective date of the bill, all third party screening programs in Saudi Arabia would be terminated; on-site personnel of the Department of Homeland Security would have to review all visa applications prior to adjudication.

Whenever a consular officer denies a visa to an applicant, the officer would be required to enter the basis of the denial and the name of the applicant into the interoperable electronic data system established under the Border Security and Visa Entry Reform Act of 2002. Any alien who is denied a visa would be prohibited from being issued a subsequent visa unless the consular officer certifies that he or she has reviewed the information concerning the alien in the electronic data system and has stated for the record why the visa is being issued. The alien could not be admitted into the United States unless a visa has been issued in accordance with these procedures.

Inspector General. The Inspector General (IG) of the Department would be under the authority, direction, and control of the Secretary of Homeland Security with respect to audits or investigations, or issuances of subpoenas, that require access to sensitive information. In such instances, the Secretary could prohibit the IG from carrying out or completing any audit or investigation, or issuing any subpoena, if the Secretary determines that the prohibition is necessary to preserve the national security or prevent a significant impairment to the interests of the United States. In exercising this authority, the Secretary would be required to notify the IG in writing stating the reasons for the prohibition. Within 30 days after receipt of this notice, the IG would be required to transmit a copy of the notice, and a written response that states whether the IG agrees or disagrees with the Secretary's action, to appropriate members and committees of Congress.

Office for State and Local Government Coordination. The enrolled bill would establish, within the Office of the Secretary, an Office for State and Local Government Coordination to oversee and coordinate departmental programs for and relationships with State and local governments.

Counternarcotics Officer. The Secretary would be required to appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

Office of International Affairs. The enrolled bill would establish within the Office of the Secretary an Office of International Affairs to be headed by a Director, who would have to be a senior official appointed by the Secretary. The Director would be responsible for promoting information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security.

Office of National Capital Region Coordination. The enrolled bill would establish, within the Office of the Secretary, an Office of National Capital Region Coordination to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region. The Office would be headed by a Director to be appointed by the Secretary.

Joint Interagency Task Force. The enrolled bill would authorize the Secretary to establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the U.S. Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

Homeland Security Institute. The enrolled bill would establish a Federally-funded research and development center to be known as the "Homeland Security Institute," to be administered as a separate entity by the Secretary. The Institute's duties would be determined by the Secretary but could include systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures. The Institute would have to submit annual reports to the Department for transmittal to Congress and would terminate three years after the effective date of the enrolled bill.

Other Officers. The enrolled bill would require the Secretary to appoint: (1) a Special Assistant to the Secretary who would be responsible for communications and partnerships with the private sector; and (2) a senior official in the Department to assume primary responsibility for privacy policy.

Department of Homeland Security
Organizational Structure

Major Components (and Current Law Agency)
Border and Transportation Security Directorate Transportation Security Administration (<i>Transportation</i>) Bureau of Border Security (<i>Justice/INS</i>) United States Customs Service – excluding revenue functions (<i>Treasury</i>) Federal Protective Service (<i>GSA</i>) Agricultural Import and Entry Inspection Activities (<i>Agriculture</i>) Federal Law Enforcement Training Center (<i>Treasury</i>) Office of Domestic Preparedness (<i>Justice</i>)
Emergency Preparedness and Response Directorate Federal Emergency Management Agency (<i>FEMA</i>) Strategic National Stockpile (<i>Health and Human Services</i>) Nuclear Incident Response (<i>Energy</i>) Domestic Emergency Support Teams (<i>Justice</i>) National Domestic Preparedness Office (<i>Justice/FBI</i>) Integrated Hazard Information System – renamed FIRESAT (<i>Commerce/NOAA</i>)
Science and Technology Directorate National Bio-weapons Defense Analysis Center (<i>Defense</i>) Chemical, Biological, Radiological, and Nuclear Countermeasures (<i>Energy</i>) Plum Island Animal Disease Center (<i>Agriculture</i>)
Information Analysis and Infrastructure Protection Directorate National Communications System (<i>Defense</i>) National Infrastructure Protection Center – excluding the Computer Investigations and Operations Section (<i>Justice/FBI</i>) National Infrastructure Simulation and Analysis Center/Energy Assurance (<i>Energy</i>) Critical Infrastructure Assurance Office (<i>Commerce</i>) Federal Computer Incident Response Center (<i>GSA</i>)
Components Reporting Directly to the Secretary or the Deputy Secretary Coast Guard – reporting to the Secretary (<i>Transportation</i>) Bureau of Citizenship and Immigration Services – reporting to the Deputy Secretary (<i>Justice/INS</i>) United States Secret Service (<i>Treasury</i>)

Other Provisions of H.R. 5005

Transportation Security Provisions

Arming Pilots Against Terrorism Act

The enrolled bill would require the Under Secretary of Transportation for Security to establish a two-year pilot program to deputize airline pilots who volunteer for duty as Federal law enforcement officers (to be called "Federal flight deck officers"). These pilots would defend the flight decks of aircraft against acts of criminal violence or air piracy. The enrolled bill would require the Under Secretary, no later than three months after enactment, to begin the process of training and deputizing qualified pilots to be Federal flight deck officers under the program. The Under Secretary would be responsible for providing the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer at no cost to the pilot or airline.

The bill would direct the Under Secretary to authorize flight deck officers to carry firearms and to use force, including lethal force, according to standards and circumstances the Under Secretary prescribes. The bill would also shield: (1) air carriers from liability for damages in Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm; and (2) flight deck officers from liability for acts or omissions in defending the flight deck of an aircraft against acts of criminal violence or air piracy, except in cases of gross negligence or willful misconduct. The enrolled bill would specify that if an accidental discharge of a firearm results in the injury or death of a passenger or crew member on the aircraft, the Under Secretary: (1) would have to revoke the deputization of the responsible Federal flight deck officer if the discharge was attributable to the officer's negligence; and (2) could temporarily suspend the pilot program if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge. An air carrier could not prohibit a pilot from, or threaten any retaliatory action against a pilot for, becoming a Federal flight deck officer.

The enrolled bill would require the Under Secretary, in updating the guidance for training flight and cabin crews, to issue a rule to: (1) require both classroom and effective hands-on situational training in specified elements of self-defense; (2) require training in the proper conduct of a cabin search, including the duty time required to conduct it; (3) establish the required number of hours of training and the qualifications for training instructors; (4) establish the intervals, number of hours, and elements of recurrent training; and (5) ensure that air carriers provide the initial training within 24 months of the enactment of this Act. The bill would also require the Under Secretary to designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program.

H.R. 5005 would also authorize the Under Secretary to take certain enhanced security measures, including requiring that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilot of an aircraft. The bill would require the Under Secretary to study and report to Congress on the benefits and risks of providing flight attendants with nonlethal weapons to aid in combating air piracy and criminal violence on commercial airlines. The enrolled bill would also require the Under Secretary to respond within 90 days of receiving a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons.

The enrolled bill would direct the Secretary of Transportation to study and report within six months to Congress on: (1) the number of armed Federal law enforcement officers (other than Federal air marshals) who travel on commercial airliners annually, and the frequency of their travel; (2) the cost and resources necessary to provide such officers with supplemental aircraft anti-terrorism training comparable to the training that Federal air marshals receive; (3) the cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to Federal air marshal training; (4) the feasibility of implementing a certification program designed to ensure Federal law enforcement officers have completed aircraft anti-terrorism training, and track their travel over a six-month period; and (5) the feasibility of staggering the flights of such officers to ensure that the maximum number of flights have a certified trained Federal officer on board.

Baggage Screening

If the Under Secretary of Transportation for Security determines that TSA is not able to deploy explosive detection systems required to be deployed under current law by December 31, 2002, then, with respect to each airport, the Under Secretary would have to: (1) submit to designated congressional committees a detailed plan for the deployment of these systems as soon as practicable, but no later than December 31, 2003; and (2) take all necessary steps to ensure that alternate means of screening all checked baggage are implemented until the systems are deployed. The enrolled bill would also allow U.S. nationals, in addition to U.S. citizens, to serve as baggage screeners.

Airline War Risk Insurance

The enrolled bill would extend the Secretary of Transportation's authority to issue war-risk insurance to airlines until December 31, 2003. The bill would also require the Secretary to extend airlines' existing war-risk insurance policies through August 31, 2003, and authorize the Secretary to extend these policies until December 31, 2003. The enrolled bill would require policy coverage to be amended to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for these losses and injuries as of the date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage. The Secretary of Transportation would be required to submit a report to

specified committees of Congress within 90 days of enactment that: (1) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties; (2) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and (3) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

Airline Transportation Security

Privacy Issues. The Under Secretary of Transportation for Security would be required to prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out aviation security functions under specified laws if the Under Secretary decides that disclosing the information would: (1) be an unwarranted invasion of personal privacy; (2) reveal a trade secret or privileged or confidential commercial or financial information; or (3) be detrimental to the security of transportation.

Civil Penalties. The enrolled bill would establish that the maximum civil penalty for violating aviation security laws or other transportation laws administered by the Under Secretary of Transportation for Security would be \$10,000, except that the maximum civil penalty would be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation.

Liability Protections. The enrolled bill would amend current law establishing the September 11th Victim Compensation Fund, which: (1) provides compensation to any individual who was physically injured or killed as a result of the September 11th attacks; and (2) limits air carrier liability arising from claims related to these attacks to no more than the amount of liability coverage maintained by the air carrier. The enrolled bill would amend the definition of an air carrier, which includes agents of an airline, by specifying that the term agent includes entities engaged in providing transportation security, but only if they have contracted directly with the Federal Aviation Administration to provide security services on or after February 17, 2002. This provision is intended to provide liability protection for certain security companies responsible for security on September 11, 2001.

Department of Justice Provisions

Bureau of Alcohol, Tobacco, Firearms, and Explosives

The enrolled bill would establish a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE) within the Department of Justice and transfer certain authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury to the new Bureau. The new Bureau would be headed by a Director to be appointed by the Attorney General and would be responsible for: (1) investigating criminal and regulatory

violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws; (2) the functions transferred from the Department of the Treasury; and (3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General. The Department of the Treasury would retain the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of the Bureau's revenue collection functions. These authorities would be executed by a newly established Tax and Trade Bureau within the Department of the Treasury.

Special agents of the ATFE would be authorized to: (1) carry firearms; (2) serve warrants and subpoenas issued under the authority of the United States; (3) make arrests without warrant for any offense against the United States committed in their presence, or for any felony if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and (4) make seizures of property subject to forfeiture to the United States.

The enrolled bill would establish within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia. The facility would be used to train Federal, State, and local law enforcement officers to: (1) investigate bombings and explosions; (2) properly handle, utilize, and dispose of explosive materials and devices; (3) train canines on explosive detection; and (4) conduct research on explosives. The enrolled bill would authorize appropriations of such sums as may be necessary to establish and maintain this facility.

Safe Explosives Act

The enrolled bill would amend Federal criminal code provisions regarding the purchase of explosives to create a new "limited permit" category. The bill would prohibit a holder of a limited permit: (1) from transporting, shipping, causing to be transported, or receiving in interstate or foreign commerce explosive materials; (2) from receiving explosive materials from a licensee or permittee whose premises are located outside the holder's State of residence; or (3) on more than six separate occasions during the period of the permit, from receiving explosive materials from one or more licensees or permittees whose premises are located within the holder's State of residence.

The enrolled bill would also require license, user permit, and limited permit applicants to include the names of and identifying information (including fingerprints and a photograph of each responsible person) regarding all employees who will be authorized by the applicant to possess explosive materials. Limited permits would be valid for no longer than one year. The Secretary would be required to approve or deny an application within 45 days for limited permits and 90 days for licenses and user permits.

The enrolled bill would include among aliens who may lawfully receive or possess explosive materials any alien who is in lawful non-immigrant status, is a refugee admitted under the Immigration and Nationality Act (INA), or is in asylum status under the INA and who is:

(1) a foreign law enforcement officer of a friendly government; (2) a person having the power to direct the management and policies of a corporation; (3) a member of a North Atlantic Treaty Organization or other friendly foreign military force; or (4) lawfully present in the United States in cooperation with the Director of the Central Intelligence Agency. The bill would expand the category of persons who are prohibited from receiving or possessing explosives to include any individual who: (1) is subject to a court restraining order (that meets specified requirements); or (2) has been convicted in any court of a misdemeanor crime of domestic violence.

H.R. 5005 would require licensed manufacturers, licensed importers, and those who manufacture or import explosive materials or ammonium nitrate to furnish samples and relevant information when required by the Secretary. The enrolled bill would also create penalties for the destruction of property of institutions receiving Federal financial assistance.

The enrolled bill would allow a person who is prohibited from engaging in activity with respect to explosive materials to apply to the Secretary for relief from the disabilities imposed by Federal law with respect to violations, and the Secretary to grant that relief, if specified conditions are met. Under the enrolled bill, a holder of a license, user permit, or limited user permit would be required to report to the Secretary not later than 24 hours after discovering the theft of any explosive materials. A holder of a license or permit who does not report a theft would be subject to a fine of not more than \$10,000, imprisonment of not more than five years, or both.

The enrolled bill would authorize appropriations of such sums as necessary to carry out these provisions.

Executive Office for Immigration Review

The enrolled bill would establish in statute the Department of Justice's Executive Office for Immigration Review and make it subject to the regulation and direction of the Attorney General. This office administers and interprets Federal immigration laws and regulations through the conduct of immigration court proceedings, appellate reviews, and administrative hearings.

Office of Science and Technology

The enrolled bill would establish in statute an Office of Science and Technology within the Department of Justice's National Institute of Justice under the general authority of the Assistant Attorney General for Justice Programs. The Office would serve as the national focal point for work on law enforcement technology. The bill would require the Director of the Office to operate and support National Law Enforcement and Corrections Technology Centers.

Other Management Issues Within the Department

Procurement. The enrolled bill would authorize the Secretary to: (1) establish employer-employee relationships with consultants and experts through temporary "personal services contracts" in situations where direct hiring under civil service laws may not be sufficiently flexible; and (2) during the five-year period following the effective date of the enrolled bill, engage in transactions for research and development and prototype efforts with certain contractors that are exempt from most laws applicable to contracts, grants, and cooperative agreements. These authorities were requested by the Administration, the latter on a permanent basis.

The enrolled bill would further authorize a series of flexibilities that could be exercised through FY 2007 if the Secretary (or another Presidentally-appointed, Senate-confirmed official) determines that the Department's mission would be seriously impaired without their use and Congress is notified within seven days of the determination. First, the Secretary would be authorized to increase, for a limited number of employees, the maximum size of individual purchases that may be acquired using purchase cards from \$2,500 to \$7,500. Second, the Secretary would be authorized to increase the current \$100,000 limitation on use of simplified acquisition procedures to \$200,000 for contracts awarded and performed, or purchases made, within the United States, and \$300,000 for contracts awarded and performed, or purchases made, outside the United States. Finally, the Secretary could waive certain accounting and other compliance requirements by deeming a purchase to be a "commercial item" for purposes of Federal procurement law.

Generally similar flexibilities for use of purchase cards, simplified acquisition procedures, and waivers of accounting and compliance requirements would apply to any procurements by or for an executive agency to be used to facilitate defense against or recovery from terrorist attacks. However, these flexibilities would only apply if a solicitation of offers for the procurement is issued during the one-year period beginning on the date of enactment.

The enrolled bill would prohibit the Secretary from entering into any contract with a foreign corporation which is deemed to be an inverted domestic corporation (i.e., a corporation that, after the date of enactment, completes the acquisition of substantially all of the properties held by a domestic corporation and does not have substantial business activities in the foreign country in which the acquisition is executed). However, the Secretary would have to waive this prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, to prevent the loss of any jobs in the United States, or to prevent the Government from incurring any additional costs that otherwise would not occur.

The President's Budget. The enrolled bill would require the President to submit to Congress a detailed budget request for the Department for FY 2004, and for each subsequent fiscal year. Starting in FY 2005, each budget request submitted to Congress for the Department would have to be accompanied, at or about the same time, by a "Future Years Homeland Security

Program," which would have to be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense.

In addition, in the annual budget submitted to Congress, the President would be required to include a detailed, separate analysis identifying amounts that contribute to homeland security, including: (1) summaries of the total amount of appropriations requested for homeland security; (2) an estimate of the current service levels of homeland security spending; (3) the most recent risk assessment and summary of homeland security needs in each initiative area; and (4) an estimate of user fees collected by the Federal Government on behalf of homeland security activities. The President's Budget would also have to include an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year. In implementing these provisions, OMB would have to consult periodically, but at least annually, with the House and Senate Budget and Appropriations Committees and with the Congressional Budget Office.

Federal Workforce Improvement

H.R. 5005 contains a number of provisions designed to assist Federal agencies and managers in attracting, maintaining, and managing the Federal workforce. Specifically, the enrolled bill would establish a Chief Human Capital Officer in each executive agency to help select, manage, train, and develop the agency's workforce. In addition, the enrolled bill would establish a Chief Human Capital Officers Council to coordinate agency activities and require OPM to design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

The enrolled bill also would: (1) authorize agencies, subject to OPM approval, to implement an alternative personnel ranking and selection system, which would continue to provide veterans preference in hiring; (2) permanently extend and authorize Executive agencies and the Administrative Office of the U.S. Courts to use voluntary separation incentive payments (known as "buyouts") and voluntary early retirement under certain circumstances for workforce restructuring; (3) repeal recertification requirements for members of the Senior Executive Service (SES) (currently SES members must be recertified every three years); (4) set the cap on total annual compensation (including bonuses) for employees paid at rates of basic pay above the General Schedule equal to the Vice President's rate of basic pay, instead of the rate for Level I of the Executive Schedule; and (5) authorize and expand agency authority to pay or reimburse employees for certain academic degree training programs.

Law Enforcement Powers for Inspectors General

The enrolled bill would authorize the Attorney General to authorize Inspectors General and their agents to: (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant while engaged in official duties if they have reasonable grounds to believe that

a felony has been committed; and (3) seek and execute warrants for arrest, search of a premises, or seizure of evidence. The Attorney General could exercise this authority only after initially determining that: (1) the affected Office of Inspector General is significantly hampered in the performance of its responsibilities as a result of the lack of these powers; (2) available assistance from other law enforcement agencies is insufficient to meet the need for these powers; and (3) adequate internal safeguards and management procedures exist to ensure proper exercise of these powers. Several major agencies, including the Department of Homeland Security, would be exempt from the requirement of an initial determination of eligibility by the Attorney General.

Information Security Measures

Federal Information Security Management Act of 2002

H.R. 5005 contains provisions that are similar in some respects to the Federal Information Security Management Act (FISMA) provisions contained in H.R. 2458, the E-Government Act of 2002, which is also awaiting Presidential action. H.R. 2458 includes an Administration-supported provision that would make the FISMA provisions in H.R. 5005 ineffective with the enactment of H.R. 2458.

Cyber Security Enhancement Act of 2002

The enrolled bill would require the United States Sentencing Commission to review and, if appropriate, amend Federal sentencing guidelines and otherwise address crimes involving computers. The Commission would be required to ensure that the sentencing guidelines and policy statements reflect the serious nature of computer crimes, the growing incidence of such crimes, and the need for an effective deterrent and appropriate punishment to prevent such offenses. The enrolled bill would require the Commission to report to Congress on any actions taken and recommendations regarding statutory penalties.

Current law prohibits an entity providing an electronic communication or remote computing service to the public from disclosing the contents of a communication stored or maintained on that service. The enrolled bill would exempt from this prohibition emergency disclosures to a governmental entity by an electronic communication service (which must be subsequently reported to the Attorney General and Congress) and specified disclosures made in good faith. The enrolled bill would also prohibit the distribution of advertisements of illegal interception devices through the Internet as well as by other, specified media, and would increase penalties for violations where the offender knowingly causes or attempts to cause death or serious bodily injury.

H.R. 5005 would expand the legal protection for a communication provider who legally assists law enforcement with an investigation under the emergency disclosure exception under the USA PATRIOT Act to include information disclosed under statutory authorization. The bill would also add immediate threats to national security interests and ongoing attacks on protected

computers to the list of situations during which an emergency pen register, a trap and trace device, or both, may be used. The enrolled bill would broaden the offense of, and increase the penalties for, illegally intercepting cell-phone conversations or invading the privacy of another person's stored communications. The bill would state that a law enforcement officer need not be present for a warrant to be served or executed under the Electronic Communications Privacy Act.

Information Sharing Provisions

Critical Infrastructure Protection

The enrolled bill would authorize the Federal Government to issue alerts or warnings to relevant companies, sectors, other government entities, and the general public regarding potential threats to critical infrastructure as appropriate. The Secretary of Homeland Security would have to establish procedures on the use of shared information that: (1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information; (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information. The enrolled bill would also require the Under Secretary for Information Analysis and Infrastructure Protection to, as appropriate: (1) share analysis and warnings related to threats to critical infrastructure; (2) in coordination with the Under Secretary for Emergency Preparedness and Response, provide crisis management support in response to threats to, or attacks on, critical information systems; and (3) provide technical assistance with respect to emergency recovery plans to respond to major failures of critical information systems.

Homeland Security Information Sharing Act

The enrolled bill would require the President to prescribe and implement procedures under which Federal agencies determine: (1) how homeland security information may be shared with State and local personnel, how to identify and safeguard information that is sensitive but unclassified, and how to remove classified information (as appropriate); and (2) with which personnel such information may be shared.

The bill would also require all appropriate agencies, including the Intelligence Community, to share homeland security information, along with assessments of its credibility, with State and local personnel through information sharing systems, in accordance with such procedures. These procedures would have to: (1) limit the redissemination of shared information to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information to protect the rights of covered individuals; (3) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information; (4) ensure that the information sharing system used includes existing information sharing systems; and (5) ensure that appropriate State and local personnel are authorized to use such information sharing systems. Each appropriate Federal agency would be required to have access to each information sharing system and the information within it.

The enrolled bill would also require the President to prescribe procedures under which Federal agencies may share classified homeland security information with State and local personnel, including through non-disclosure agreements and increased use of information sharing partnerships. Information obtained by a State or local government from a Federal agency would remain under the control of the Federal agency and would not be subject to a State or local information disclosure law.

The President would be required to submit a report to certain committees of Congress on the implementation of these provisions of the enrolled bill, including recommendations to increase the effectiveness of information sharing. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. It would also amend the Federal Rules of Criminal Procedure to permit the sharing of grand jury information that pertains to foreign intelligence or counterintelligence with State or local law enforcement personnel, and with foreign officials, consistent with guidelines that the Attorney General and the Director of Central Intelligence would jointly issue.

H.R. 5005 would authorize the sharing of intercepted electronic, wire, and oral communications or derived information by the government with: (1) foreign investigative or law enforcement officers for the performance of official duties; and (2) Federal, State, local, or foreign government officials if such information reveals a threat of an attack or other hostile act, sabotage, terrorism, or clandestine intelligence gathering activity by a foreign power, for the purpose of preventing or responding to such a threat. The enrolled bill would also amend the USA PATRIOT Act of 2001 to authorize the disclosure to Federal, State, local, and foreign government officials of information obtained as part of a criminal investigation that reveals such a threat, for the purpose of preventing or responding to that threat. In addition, the enrolled bill would authorize Federal officers who conduct electronic surveillance or physical searches to acquire foreign intelligence information to consult with State or local officials to coordinate efforts to investigate or protect against attacks, sabotage, or clandestine intelligence activities by a foreign power.

Protection of Voluntarily Shared Critical Infrastructure Information

The enrolled bill would exempt from disclosure under the Freedom of Information Act (FOIA) critical infrastructure information that is voluntarily submitted by private entities to the Department of Homeland Security for the security of critical infrastructure. The bill would also prohibit such information from being used in any civil action arising under Federal or State law. The disclosure exemption would not prohibit an employee of the United States from disclosing the information: (1) in furtherance of an investigation or the prosecution of a criminal act; (2) to either House of Congress, including relevant committees or subcommittees of jurisdiction; and (3) to the Comptroller General. The new Department, in consultation with the National Security Council and the Office of Science and Technology Policy, would have to establish, within 90 days of enactment, uniform procedures for the receipt, care, and storage by Federal agencies of

critical infrastructure information that is voluntarily submitted to the Government. Any officer or employee who discloses any information in violation of these provisions would be subject to a fine, imprisonment for not more than one year, or both, and would be removed from office or employment.

Vaccine Liability

Administration of Countermeasures Against Smallpox. The enrolled bill would provide certain specified parties, such as non-Federal doctors, drug manufacturers, and hospitals, with medical liability protection under the Federal Torts Claims Act (FTCA) when those entities, acting on behalf of the U.S. Public Health Service, are liable for the administration of the smallpox vaccine and other countermeasures. This protection from medical liability would be effective only during such period as declared by the Secretary of HHS. (Under current law, the Federal Government is only liable when these services are provided by Federal health care providers.) Under the enrolled bill, the Federal Government would defend any lawsuit and pay any damages. Damages would be limited by State law. Punitive damages, however, are not permitted under the FTCA, and would not be allowed under H.R. 5005.

Amendment of Definitions Under the National Vaccine Injury Compensation Program. The enrolled bill would amend various definitions under the National Vaccine Injury Compensation Program, which provides compensation for vaccine-related injuries or deaths. For example, the enrolled bill would define the term "vaccine" to include all components and ingredients listed in the vaccines's product license application and product label. The enrolled bill would also amend the definition of a "vaccine-related injury or death," currently defined as an injury or death associated with certain vaccines specified in law, but not including injury or death associated with an adulterant or contaminant intentionally added to a vaccine. The enrolled bill would specify that for purposes of this definition, an adulterant or contaminant would not include any component or ingredient listed in a vaccine's product license application or product label. These definitions would apply to all actions or proceedings pending on or after the date of enactment of this bill.

Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act

H.R. 5005 would authorize the Secretary to designate anti-terrorism technologies that qualify for protection under the systems of litigation management and risk management described below in accordance with criteria that would include, but not be limited to: (1) prior U.S. Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment in public and private settings; (3) existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the seller or other provider of such anti-terrorism technology; and (4) substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

Litigation Management. The enrolled bill would create a Federal cause of action for claims arising out of or resulting from deployment of qualified anti-terrorism technologies in defense against or response to a terrorist act when those claims result or may result in a loss to the seller of the technology. This Federal cause of action could be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal Government customers. The enrolled bill would establish special rules limiting the damages that could be awarded as a result of an action.

Risk Management. The enrolled bill would specify that any person or entity that sells a qualified anti-terrorism technology to Federal and non-Federal Government customers must obtain liability insurance of the type and in the amounts established in the bill and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of or resulting from deployment of qualified anti-terrorism technologies in defense against or response to a terrorist act.

Miscellaneous Provisions

Demonstration Projects on Disciplinary Action. The enrolled bill would authorize the Attorney General and the Secretary of Homeland Security to each conduct a demonstration project to determine whether any changes in methods for disciplining employees would result in improved personnel management. The projects would have to be completed no later than five years after the date of enactment, and each Department's project could only cover the employees of that Department. The enrolled bill would require the General Accounting Office to report periodically to specified congressional committees on any project conducted. The Attorney General and the Secretary of Homeland Security would have to furnish GAO, upon request, any information it may require to prepare these reports.

Advisory Committees. The Secretary would be authorized to: (1) establish advisory committees; and (2) exempt these committees from the requirements of the Federal Advisory Committee Act (P.L. 92-463), including the requirement that advisory committee meetings must be open to the public. The Secretary would have to publish a notice in the Federal Register announcing the establishment of an exempted committee and identifying its purpose and membership.

Treatment of Charitable Trusts for Members of the Armed Forces. The enrolled bill would set forth requirements that a charitable corporation, fund, foundation, or trust must meet in order to designate itself as a "Johnny Micheal Spann Patriot Trust" (i.e., a charitable trust for the spouses, dependents, and relatives of military and Federal personnel who lose their lives in the battle against terrorism). Johnny Micheal Spann, a CIA officer who died on November 25, 2001, was the first American known to be killed during the war against terrorism in Afghanistan following the September 11th terrorist attacks. The enrolled bill would require at least 85 percent of each Trust corpus to be distributed to survivors and would prohibit more than 15 percent of the corpus from being used for administrative purposes. The bill would also prohibit any Trust from participating in any political campaign on behalf of a candidate for public office.

The bill would also require: (1) audits of each Trust that annually receives contributions of more than \$1 million; and (2) Trust distributions to be made at least once a year. The enrolled bill would provide for the notification of Trust beneficiaries.

Operation TIPS. The enrolled bill would prohibit any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System).

National Identification System. The enrolled bill would specify that nothing in the bill should be construed to authorize the development of a national identification system or card.

Review of Congressional Committee Structures. The enrolled bill states the sense of Congress that the House and Senate should each review its committee structure in light of the reorganization of responsibilities within the Executive Branch as a result of the establishment of the Department of Homeland Security.

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-22-02 7:45 PM ACTION / CONCURRENCE / COMMENT DUE BY: 11-23-02 5:00 PMSubject: ENROLLED BILL, H.R. 5005, HOMELAND SECURITY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	IRASTORZA	☐	☐
BARTLETT	☒	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☒	☐
BOLTEN	☒	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☐
CALIO	☒	☐	RICE	☒	☐
CONNAUGHTON	☐	☐	RIDGE	☒	☐
DANIELS	☐	☒	ROVE	☒	☐
FLEISCHER	☐	☐	SPELLINGS	☒	☐
GERSON	☐	☐	CLERK	☐	☒
GONZALES	☒	☐	_____	☐	☐
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X 5-3458, FAX 5-6148, BY 5:00 PM,
SATURDAY, NOVEMBER 23, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE.
THANK YOU.

(ATTACHMENTS "A" AND "B" TOTAL 25 PAGES - IF YOU WOULD LIKE TO REVIEW A COPY
OF THE ATTACHMENTS, PLEASE CONTACT THE STAFF SECRETARY'S OFFICE, 6-2702)

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



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

November 22, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5005 – Homeland Security Act of 2002
Sponsors - Rep. Arney (R) Texas and 118 cosponsors

Last Day for Action

We understand that a signing ceremony is being planned for Monday, November 25, 2002.

Purpose

Establishes a Department of Homeland Security.

Agency Recommendations

Office of Management and Budget (OMB)	Approval
Department of Agriculture	Approval
Department of Energy	Approval
Department of Justice	Approval
Department of State	Approval
Department of Transportation	Approval
Federal Emergency Management Agency (FEMA)	Approval
Department of Commerce	Approval (Informally)
Department of Defense	Approval (Informally)
Department of the Treasury	Approval (Informally)
Department of Labor	No objection (Informally)
General Services Administration	No objection (Informally)
Office of Government Ethics	No objection (Informally)
Office of Personnel Management (OPM)	No objection (Informally)
Department of Health and Human Services (HHS)	Defers to Justice (Informally)
Central Intelligence Agency (CIA)	No comment (Informally)

Discussion

H.R. 5005 contains the core elements of the legislative proposal to establish a Department of Homeland Security that you transmitted to Congress on June 18, 2002.

H.R. 5005 also contains provisions that would: (1) authorize flight deck officers to carry firearms and use lethal force aboard passenger aircraft; (2) transfer portions of the Bureau of Alcohol, Tobacco, and Firearms (ATF) to the Department of Justice from the Department of the Treasury; (3) modify procedures for managing the Federal workforce; and (4) provide liability protections for certain parties involved in the administration of countermeasures against smallpox.

The enrolled bill contains language that was negotiated between the Administration and Congress that would guarantee specified collective bargaining rights to certain employees of the new Department, and allow the President to waive these protections upon determining that their application would have a substantial adverse impact on the ability of the Department to protect homeland security.

The most significant provisions of H.R. 5005 are summarized below. The components of the new Department of Homeland Security are described at Attachment A and are illustrated in a table at Attachment B. Other important provisions of the enrolled bill are detailed at Attachment C.

Establishment of a Department of Homeland Security

General Mission and Organization

H.R. 5005 would establish a Department of Homeland Security. The mission of the Department would include: (1) preventing terrorist attacks within the United States; (2) reducing the vulnerability of the United States to terrorism; (3) minimizing the damage, and assisting in the recovery, from terrorist attacks that occur within the United States; and (4) carrying out all the functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning. Primary responsibility for investigating and prosecuting acts of terrorism would continue to be vested in Federal, State, and local law enforcement agencies, not in the new Department.

The Department would be headed by a Secretary of Homeland Security, to be appointed by the President and confirmed by the Senate. The bill would authorize the Secretary to attend and participate in meetings of the National Security Council, subject to the direction of the President.

H.R. 5005 would also provide for a Deputy Secretary of Homeland Security, an Under Secretary for each of four Directorates established in the Department by the enrolled bill, an Under Secretary for Management, a Director of the Bureau of Citizenship and Immigration Services, a Commissioner of Customs, a Director of the Office for Domestic Preparedness, a General Counsel, an Inspector General, a Commandant of the Coast Guard, and no more than 12 Assistant Secretaries, all to be Presidentially-appointed and Senate-confirmed. The four Directorates would be for: (1) Information Analysis and Infrastructure Protection; (2) Science and Technology; (3) Border and Transportation Security; and (4) Emergency Preparedness and Response. The duties of each Directorate are described in Attachment A.

The enrolled bill would provide for the following non-Senate-confirmed Presidentially-appointed positions: (1) a Director of the Secret Service; (2) a Chief Information Officer; (3) a Chief Human Capital Officer; (4) a Chief Financial Officer; (5) an Officer for Civil Rights and Civil Liberties; (6) an Assistant Secretary for Information Analysis; and (7) an Assistant Secretary for Infrastructure Protection.

Management

The enrolled bill is largely consistent with the "managerial flexibilities" provisions included in your proposal to establish a Department of Homeland Security, except for certain changes, including: (1) allowing employee representatives to review and comment on the human resources management system authorized to be established for the Department; (2) limiting the Secretary's authority to alter the pay of certain employees; and (3) requiring the President to uphold labor protections such as collective bargaining for certain Department employees unless the President determines that these protections would have a substantial adverse impact on the ability of the Department to protect homeland security.

Human Resources Management. The enrolled bill would authorize the Secretary of Homeland Security, in regulations prescribed jointly with the Director of OPM, to establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department. This system would have to: (1) be flexible and contemporary; (2) not waive, modify, or otherwise affect public employment principles of merit and fitness; (3) ensure that employees could organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them (subject to any exclusions from coverage or limitation on negotiability established by law); and (4) permit the use of a category rating system for evaluating applicants for positions in the competitive service. Before implementing a new system, the Secretary and the OPM Director would have to give employee representatives the opportunity to review and comment on the new system. After receiving comments, the Secretary and the Director would adopt any recommendations that they determine are advisable and would have to notify Congress of those parts of the proposal for which recommendations of employee representatives were rejected.

The enrolled bill would generally prohibit a reduction in pay or grade of Federal employees who are transferred to the new Department for at least one year after the date of the transfer. Any employee compensated in accordance with the Executive Schedule who is transferred to the Department to perform duties similar to those prior to being transferred would continue to be compensated at no less than the rate provided prior to being transferred for the duration of the employee's service in the new position.

Labor-Management Relations. No component transferred to the Department could be excluded from coverage under Federal labor-management relations laws unless: (1) the mission and responsibilities of the components materially change; and (2) a majority of the employees within the component have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation. Bargaining units that are transferred to the Department would continue to be recognized and employees within those units would remain in those units unless the responsibilities of those units or employees materially change or the primary duties of an employee or a majority of employees within a unit consists of investigative work directly related to terrorism investigation. However, if the President determines that the application of these provisions would have a substantial adverse impact on the ability of the Department to protect homeland security, the President could waive the application of these provisions ten days after submitting to Congress a written explanation of the reasons for the determination. The bill would not exempt the Department from equal employment protections and whistleblower protections that apply to Federal employees.

Transition Provisions

The enrolled bill would take effect 60 days after enactment. The bill would provide for a transition period of 12 months beginning on the effective date.

Reorganization Plan. By no later than 60 days after the date of the enactment, the President would have to transmit to the appropriate congressional committees a reorganization plan regarding the transfer of agencies, personnel, assets, and obligations to the Department and any consolidation, reorganization, or streamlining of agencies transferred to the Department. The plan must specify: (1) any functions of agencies transferred to the Department under the bill that will not be transferred to the Department under the plan; (2) the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan; (3) the funds available to each agency that will be transferred to the Department as a result of transfers under the plan; (4) the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan; (5) any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan; and (6) the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to homeland security.

The reorganization plan would become effective for an agency on the earlier of the date specified in the plan or the end of the transition period. However, the specified date would have to be no earlier than 90 days after the President transmits the reorganization plan to the appropriate congressional committees. The President could modify or revise, on the basis of consultation with the appropriate congressional committees, any part of the reorganization plan at any time until that part becomes effective.

The Secretary would be authorized to allocate or reallocate functions among the officers of the Department and establish, consolidate, alter, or discontinue organizational units within the Department, but only: (1) pursuant to the reorganization plan; or (2) sixty days after providing notice of, and a rationale for, such action to the appropriate congressional committees. This authority would not extend in either case to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

Transitional Authorities. Until the transfer of an agency to the Department, any official having authority over the agency immediately before the effective date of the bill would have to provide any assistance that the Secretary may request in preparing for the transfer to the Department. During the transition period, upon the request of the Secretary, the head of any executive agency could, on a reimbursable basis, provide services or detail personnel to assist with the transition. During the transition period, pending Senate confirmation of appointments to the Department, the President would be authorized to designate any Senate-confirmed officer who was an officer immediately before the effective date of the bill (and who continues in office) to serve as an acting officer until the appointed officer is confirmed. The bill would not require Senate confirmation of any officer appointed by the President whose agency is transferred to the Department and whose duties following the transfer are germane to those performed before the transfer.

Transfer of Appropriated Funds in the Continuing Resolution. H.J.Res. 124, the continuing resolution that funds Government operations through January 11, 2003, authorizes the Secretary (with OMB approval) to transfer up to \$500 million of funds made available to the Department of Homeland Security. This transfer authority may only be used for higher priority items, based on unforeseen homeland security requirements, than those for which the funds were originally appropriated, and the funds cannot be used for an item that has been denied by the Congress. During FY 2003, OMB may transfer up to \$140 million from unobligated balances of appropriations enacted prior to October 1, 2002, for organizations and entities that will be transferred to the new Department, to be used for the salaries and expenses associated with the initiation of the Department. Of amounts authorized for transfer, except as otherwise specifically authorized by law, no more than two percent of any appropriation available to the Secretary may be transferred between appropriations. At least 15 days notice has to be given to the Senate and House Appropriations Committees before any transfer is made. Under H.R. 5005, the OMB Director, in consultation with the Secretary, would be directed to make any additional incidental dispositions of personnel, assets, and liabilities necessary to accomplish the purposes of the bill.

Consolidation and Co-location of Offices. Within one year of the date of enactment of this bill, the Secretary would have to develop and submit to Congress a plan for consolidating and co-locating: (1) any regional offices or field offices of agencies that are transferred to the Department, if these offices are located in the same municipality; and (2) portions of regional and field offices of other Federal agencies, to the extent that such offices perform functions that are transferred to the Secretary.

Review of Pay and Benefits. The enrolled bill would require the Secretary, in consultation with the Director of OPM, to review the pay and benefit plans of each agency whose functions are transferred to the Department and, within 90 days after the date of enactment, submit a plan to Congress for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles.

Homeland Security Council

The enrolled bill would establish within the Executive Office of the President a Homeland Security Council to advise the President on homeland security matters. Members of the Council would include the President, the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and any other individuals designated by the President. The enrolled bill would provide for a staff for the Council, to be headed by an Executive Secretary appointed by the President. The enrolled bill would authorize the President to convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct. These provisions are generally consistent with your October 8, 2001, Executive Order that established the Homeland Security Council.

Other Provisions

Other major provisions of the enrolled bill are described at Attachment C. These include:

- authority for certain airline pilots to carry firearms and use lethal force aboard passenger aircraft;
- the transfer of portions of the ATF to the Department of Justice from the Department of the Treasury;
- Government-wide personnel management provisions, including the establishment of a Chief Human Capital Officer in each executive agency;
- Government-wide information security provisions;

- liability protection for certain doctors, drug manufacturers, and hospitals that are involved in the administration of the smallpox vaccine; and
- a requirement that your FY 2004 Budget include a separate budget request for the new Department.

Agency Views

The Department of Transportation recommends approval of H.R. 5005. The Department advises that it will work aggressively to meet the December 31, 2002, deadline in current law for the deployment of explosive detection systems to screen baggage at airports. The Department does not expect that a large number of airports will need the additional flexibility provided by the enrolled bill with respect to this deadline. (These provisions are described in Attachment C.)

FEMA recommends approval of the enrolled bill, but identifies several provisions that "require clarification or need to be addressed in subsequent technical corrections to the Act." For example, FEMA recommends administrative or legislative action to transfer the new Department's Office of Domestic Preparedness from the Border and Transportation Security Directorate to the Emergency Preparedness and Response Directorate.

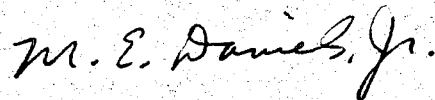
The Department of Justice recommends approval of H.R. 5005, and has recommended signing statement language (attached to its views letter) to address constitutional issues.

The Department of State recommends approval, and has submitted signing statement language (attached to its views letter) containing proposed interpretations of three provisions.

Conclusion and Recommendations

We join the Departments of Agriculture, Commerce, Defense, Energy, Justice, State, Transportation, and the Treasury, and FEMA in recommending approval of H.R. 5005, which passed the Senate by a vote of 90-9 and the House by unanimous consent after an earlier vote on a nearly identical bill of 299-121.

We understand that the White House Counsel's Office is preparing a signing statement for your consideration.



Mitchell E. Daniels, Jr.
Director

Enclosures

Slightly
updated
with a 4/28/2
very few
technical changes

Document Originally
Attached to
Following Page

ENROLLED BILL MEMORANDUM FOR THE PRESIDENT

DATE: 11/22/02

TO: (1)
(2)
(3) Director (for signature)

OVP - OK

FROM:

Jim Jones
Legislative Reference Division

Records
1

Enrolled Bill/Resolution -

H.R. 5005 - Homeland Security Act of 2002

Policy Officer -

Sent in draft to all OMB policy officers.

DUE AT WHITE HOUSE -

ASAP - Bill is to be signed on Monday, 11/25.

After memorandum has been signed, please send memorandum and accompanying material to the White House.



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

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5005 – Homeland Security Act of 2002
Sponsors - Rep. Arney (R) Texas and 118 cosponsors

Last Day for Action

We understand that a signing ceremony is being planned for Monday, November 25, 2002.

Purpose

Establishes a Department of Homeland Security.

Agency Recommendations

Office of Management and Budget (OMB)	Approval
Department of Agriculture	Approval
Department of Energy	Approval
Department of Justice	Approval
Department of State	Approval
Department of Transportation	Approval
Federal Emergency Management Agency (FEMA)	Approval
Department of Commerce	Approval (Informally)
Department of Defense	Approval (Informally)
Department of the Treasury	Approval (Informally)
Department of Labor	No objection (Informally)
General Services Administration	No objection (Informally)
Office of Government Ethics	No objection (Informally)
Office of Personnel Management (OPM)	No objection (Informally)
Department of Health and Human Services (HHS)	Defers to Justice (Informally)
Central Intelligence Agency (CIA)	No comment (Informally)

Discussion

H.R. 5005 contains the core elements of the legislative proposal to establish a Department of Homeland Security that you transmitted to Congress on June 18, 2002.

H.R. 5005 also contains provisions that would: (1) authorize flight deck officers to carry firearms and use lethal force aboard passenger aircraft; (2) transfer portions of the Bureau of Alcohol, Tobacco, and Firearms (ATF) to the Department of Justice from the Department of the Treasury; (3) modify procedures for managing the Federal workforce; and (4) provide liability protections for certain parties involved in the administration of countermeasures against smallpox.

the development of anti-terrorism technologies and deployment

The enrolled bill contains language that was negotiated between the Administration and Congress that would guarantee specified collective bargaining rights to certain employees of the new Department, and allow the President to waive these protections upon determining that their application would have a substantial adverse impact on the ability of the Department to protect homeland security.

The most significant provisions of H.R. 5005 are summarized below. The components of the new Department of Homeland Security are described at Attachment A and are illustrated in a table at Attachment B. Other important provisions of the enrolled bill are detailed at Attachment C.

Establishment of a Department of Homeland Security

General Mission and Organization

H.R. 5005 would establish a Department of Homeland Security. The mission of the Department would include: (1) preventing terrorist attacks within the United States; (2) reducing the vulnerability of the United States to terrorism; (3) minimizing the damage, and assisting in the recovery, from terrorist attacks that occur within the United States; and (4) carrying out all the functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning. Primary responsibility for investigating and prosecuting acts of terrorism would continue to be vested in Federal, State, and local law enforcement agencies, not in the new Department.

The Department would be headed by a Secretary of Homeland Security, to be appointed by the President and confirmed by the Senate. The bill would authorize the Secretary to attend and participate in meetings of the National Security Council, subject to the direction of the President.

H.R. 5005 would also provide for a Deputy Secretary of Homeland Security, an Under Secretary for each of four Directorates established in the Department by the enrolled bill, an Under Secretary for Management, a Director of the Bureau of Citizenship and Immigration Services, a Commissioner of Customs, a Director of the Office for Domestic Preparedness, a General Counsel, an Inspector General, a Commandant of the Coast Guard, and no more than 12 Assistant Secretaries, all to be Presidentially-appointed and Senate-confirmed. The four Directorates would be for: (1) Information Analysis and Infrastructure Protection; (2) Science and Technology; (3) Border and Transportation Security; and (4) Emergency Preparedness and Response. The duties of each Directorate are described in Attachment A.

The enrolled bill would provide for the following non-Senate-confirmed Presidentially-appointed positions: (1) a Director of the Secret Service; (2) a Chief Information Officer; (3) a Chief Human Capital Officer; (4) a Chief Financial Officer; (5) an Officer for Civil Rights and Civil Liberties; (6) an Assistant Secretary for Information Analysis; and (7) an Assistant Secretary for Infrastructure Protection.

Management

The enrolled bill is largely consistent with the "managerial flexibilities" provisions included in your proposal to establish a Department of Homeland Security, except for certain changes, including: (1) allowing employee representatives to review and comment on the human resources management system authorized to be established for the Department; (2) limiting the Secretary's authority to alter the pay of certain employees; and (3) requiring the President to uphold labor protections such as collective bargaining for certain Department employees unless the President determines that these protections would have a substantial adverse impact on the ability of the Department to protect homeland security.

Human Resources Management. The enrolled bill would authorize the Secretary of Homeland Security, in regulations prescribed jointly with the Director of OPM, to establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department. This system would have to: (1) be flexible and contemporary; (2) not waive, modify, or otherwise affect public employment principles of merit and fitness; (3) ensure that employees could organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them (subject to any exclusions from coverage or limitation on negotiability established by law); and (4) permit the use of a category rating system for evaluating applicants for positions in the competitive service. Before implementing a new system, the Secretary and the OPM Director would have to give employee representatives the opportunity to review and comment on the new system. After receiving comments, the Secretary and the Director would adopt any recommendations that they determine are advisable and would have to notify Congress of those parts of the proposal for which recommendations of employee representatives were rejected.

The enrolled bill would generally prohibit a reduction in pay or grade of Federal employees who are transferred to the new Department for at least one year after the date of the transfer. Any employee compensated in accordance with the Executive Schedule who is transferred to the Department to perform duties similar to those prior to being transferred would continue to be compensated at no less than the rate provided prior to being transferred for the duration of the employee's service in the new position.

Labor-Management Relations. No component transferred to the Department could be excluded from coverage under Federal labor-management relations laws unless: (1) the mission and responsibilities of the components materially change; and (2) a majority of the employees within the component have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation. Bargaining units that are transferred to the Department would continue to be recognized and employees within those units would remain in those units unless the responsibilities of those units or employees materially change or the primary duties of an employee or a majority of employees within a unit consists of investigative work directly related to terrorism investigation. However, if the President determines that the application of these provisions would have a substantial adverse impact on the ability of the Department to protect homeland security, the President could waive the application of these provisions ten days after submitting to Congress a written explanation of the reasons for the determination. The bill would not exempt the Department from equal employment protections and whistleblower protections that apply to Federal employees.

Transition Provisions

The enrolled bill would take effect 60 days after enactment. The bill would provide for a transition period of 12 months beginning on the effective date.

Reorganization Plan. By no later than 60 days after the date of the enactment, the President would have to transmit to the appropriate congressional committees a reorganization plan regarding the transfer of agencies, personnel, assets, and obligations to the Department and any consolidation, reorganization, or streamlining of agencies transferred to the Department. The plan must specify: (1) any functions of agencies transferred to the Department under the bill that will not be transferred to the Department under the plan; (2) the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan; (3) the funds available to each agency that will be transferred to the Department as a result of transfers under the plan; (4) the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan; (5) any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan; and (6) the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to homeland security.

The reorganization plan would become effective for an agency on the earlier of the date specified in the plan or the end of the transition period. However, the specified date would have to be no earlier than 90 days after the President transmits the reorganization plan to the appropriate congressional committees. The President could modify or revise, on the basis of consultation with the appropriate congressional committees, any part of the reorganization plan at any time until that part becomes effective.

: (1) the e.s., in the case of the reorg plan; or
(2) by statute, in the case of subsequent actions.

The Secretary would be authorized to allocate or reallocate functions among the officers of the Department and establish, consolidate, alter, or discontinue organizational units within the Department, but only: (1) pursuant to the reorganization plan; or (2) sixty days after providing notice of, and a rationale for, such action to the appropriate congressional committees. This authority would not extend ~~in either case~~ to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

~~of the reorg plan,~~ ~~The reorg plan will~~ ~~of the reorg plan~~

Transitional Authorities. Until the transfer of an agency to the Department, any official having authority over the agency immediately before the effective date of the bill would have to provide any assistance that the Secretary may request in preparing for the transfer to the Department. During the transition period, upon the request of the Secretary, the head of any executive agency could, on a reimbursable basis, provide services or detail personnel to assist with the transition. During the transition period, pending Senate confirmation of appointments to the Department, the President would be authorized to designate any Senate-confirmed officer who was an officer immediately before the effective date of the bill (and who continues in office) to serve as an acting officer until the appointed officer is confirmed. The bill would not require ~~Senate~~ confirmation of any officer appointed by the President whose agency is transferred to the Department and whose duties following the transfer are germane to those performed before the transfer.

Senate - confirmed

from
Subcommittee
plans,
to the
Chairman
of the
House

Transfer of Appropriated Funds in the Continuing Resolution. H.J.Res. 124, the continuing resolution that funds Government operations through January 11, 2003, authorizes the Secretary (with OMB approval) to transfer up to \$500 million of funds made available to the Department of Homeland Security. This transfer authority may only be used for higher priority items, based on unforeseen homeland security requirements, than those for which the funds were originally appropriated, and the funds cannot be used for an item that has been denied by the Congress. During FY 2003, OMB may transfer up to \$140 million from unobligated balances of appropriations enacted prior to October 1, 2002, for organizations and entities that will be transferred to the new Department, to be used for the salaries and expenses associated with the initiation of the Department. Of amounts authorized for transfer, except as otherwise specifically authorized by law, no more than two percent of any appropriation available to the Secretary may be transferred between appropriations. At least 15 days notice has to be given to the Senate and House Appropriations Committees before any transfer is made. Under H.R. 5005, the OMB Director, in consultation with the Secretary, would be directed to make any additional incidental dispositions of personnel, assets, and liabilities necessary to accomplish the purposes of the bill.

Consolidation and Co-location of Offices. Within one year of the date of enactment of this bill, the Secretary would have to develop and submit to Congress a plan for consolidating and co-locating: (1) any regional offices or field offices of agencies that are transferred to the Department, if these offices are located in the same municipality; and (2) portions of regional and field offices of other Federal agencies, to the extent that such offices perform functions that are transferred to the Secretary.

Review of Pay and Benefits. The enrolled bill would require the Secretary, in consultation with the Director of OPM, to review the pay and benefit plans of each agency whose functions are transferred to the Department and, within 90 days after the date of enactment, submit a plan to Congress for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles.

Homeland Security Council

The enrolled bill would establish within the Executive Office of the President a Homeland Security Council to advise the President on homeland security matters. Members of the Council would include the President, the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and any other individuals designated by the President. The enrolled bill would provide for a staff for the Council, to be headed by an Executive Secretary appointed by the President. The enrolled bill would authorize the President to convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct. These provisions are generally consistent with your October 8, 2001, Executive Order that established the Homeland Security Council.

Other Provisions

Other major provisions of the enrolled bill are described at Attachment C. These include:

- authority for certain airline pilots to carry firearms and use lethal force aboard passenger aircraft;
- the transfer of portions of the ATF to the Department of Justice from the Department of the Treasury;
- Government-wide personnel management provisions, including the establishment of a Chief Human Capital Officer in each executive agency;
- Government-wide information security provisions;

providers of anti-terrorism technology and certain

- liability protection for certain doctors, drug manufacturers, and hospitals that are involved in the administration of the smallpox vaccine; and
- a requirement that your FY 2004 Budget include a separate budget request for the new Department.

Agency Views

The Department of Transportation recommends approval of H.R. 5005. The Department advises that it will work aggressively to meet the December 31, 2002, deadline in current law for the deployment of explosive detection systems to screen baggage at airports. The Department does not expect that a large number of airports will need the additional flexibility provided by the enrolled bill with respect to this deadline. (These provisions are described in Attachment C.)

FEMA recommends approval of the enrolled bill, but identifies several provisions that "require clarification or need to be addressed in subsequent technical corrections to the Act." For example, FEMA recommends administrative or legislative action to transfer the new Department's Office of Domestic Preparedness from the Border and Transportation Security Directorate to the Emergency Preparedness and Response Directorate.

The Department of Justice recommends approval of H.R. 5005, and has recommended signing statement language (attached to its views letter) to address constitutional issues.

The Department of State recommends approval, and has submitted signing statement language (attached to its views letter) containing proposed interpretations of three provisions.

Conclusion and Recommendations

We join the Departments of Agriculture, Commerce, Defense, Energy, Justice, State, Transportation, and the Treasury, and FEMA in recommending approval of H.R. 5005, which passed the Senate by a vote of 90-9 and the House by unanimous consent after an earlier vote on a nearly identical bill of 299-121.

We understand that the White House Counsel's Office is preparing a signing statement for your consideration.

Mitchell E. Daniels, Jr.
Director

Enclosures

Components of the Department of Homeland Security

Below is a description of the components that would be transferred to or created within the new Department of Homeland Security, beginning with the four major Directorates established in the bill: (1) an Information Analysis and Infrastructure Protection Directorate; (2) a Science and Technology Directorate; (3) a Border and Transportation Security Directorate; and (4) an Emergency Preparedness and Response Directorate.

Information Analysis and Infrastructure Protection Directorate

The Under Secretary for Information Analysis and Infrastructure Protection would be responsible for, among other things: (1) accessing, receiving, and analyzing law enforcement and intelligence information from Federal, State, and local government agencies and private sector entities and integrating this information in order to detect and identify threats of terrorism against the United States; (2) carrying out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States; (3) developing a comprehensive national plan for securing the key resources and critical infrastructure of the United States; and (4) administering the Homeland Security Advisory System.

The functions of the following agencies would be transferred to the Secretary for assignment to the Under Secretary: (1) the Federal Bureau of Investigation's (FBI) National Infrastructure Protection Center (except for its Computer Investigations and Operations Section); (2) the Defense Department's National Communications System; (3) the Commerce Department's Critical Infrastructure Assurance Office; (4) the Energy Department's National Infrastructure Simulation and Analysis Center and its energy security and assurance program and activities; and (5) the General Services Administration's Federal Computer Incident Response Center. The enrolled bill would also designate the elements of the new Department involved in analyzing foreign intelligence information as elements of the Intelligence Community.

The enrolled bill would also allow personnel of the following agencies to be detailed to the Department to perform analytic functions and related duties – the State Department, the Central Intelligence Agency (CIA), the FBI, the National Security Agency, the National Imagery and Mapping Agency, the Defense Intelligence Agency, and any other Federal agency that the President considers appropriate.

Access to Information. Except as otherwise directed by the President, the enrolled bill would provide the Secretary such access as he or she considers necessary to all information (including unevaluated intelligence) relating to threats of terrorism against the United States and all information concerning infrastructure or other vulnerabilities of the United States to terrorism that may be collected, possessed, or prepared by any other Federal agency. The Secretary could obtain this material upon request and would be authorized to enter into cooperative arrangements with other agencies to provide this material or access to it. In addition, the enrolled bill would require Federal agencies to promptly provide certain types of information to the Secretary, regardless of whether he or she has made any request or entered into any cooperative arrangement.

The enrolled bill would deem the Secretary to be a Federal law enforcement, intelligence, protective, national defense, immigration, and national security official. The Secretary would have to be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence (DCI) under the USA PATRIOT Act and certain other laws. The Secretary, in consultation with the DCI, would have to work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the Intelligence Community or other elements of the Federal Government responsible for analyzing terrorist threat information.

NET Guard. The enrolled bill would authorize the Under Secretary to establish a national technology guard, to be known as "NET Guard," comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond to and recover from attacks on information systems and communications networks.

Science and Technology Directorate

The Under Secretary for Science and Technology would be responsible for, among other things: (1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions; (2) developing, in consultation with other executive agencies, a national policy and strategic plan for developing countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats; (3) conducting basic and applied research, development, demonstration, testing, and evaluation activities (except for human health-related research and development activities); and (4) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material and for detecting, preventing, protecting against, and responding to terrorist attacks.

The functions of the following agencies would be transferred to the Secretary: (1) the Department of Energy's chemical and biological national security programs and activities of the nonproliferation and verification research and development program; (2) Energy's nuclear smuggling programs within the proliferation detection program of the nonproliferation and verification research and development program (except that the President would be required to designate whether such programs will be transferred to the Department or will be operated jointly by the Homeland Security Secretary and the Secretary of Energy); (3) Energy's nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program; (4) life sciences activities of Energy's biological and environmental research program related to microbial pathogens, if and to the extent designated for transfer by the President; (5) Energy's Environmental Measurements Laboratory; (6) Energy's advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; (7) the National Bio-Weapons Defense Analysis Center of the Department of Defense; and (8) the Plum Island Animal Disease Center of the Department of Agriculture. At least 60 days before transferring the Department of Energy's life

sciences activities, the President would be required to notify the appropriate congressional committees of the proposed transfer, including the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

Conduct of Certain Public Health-Related Activities. With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by HHS, the Secretary of HHS would be required to set priorities, goals, objectives, and policies and develop a coordinated strategy in collaboration with the Secretary of Homeland Security. The strategy would include developing specific benchmarks and outcome measurements for evaluating progress toward achieving goals and priorities.

Homeland Security Advanced Research Projects Agency. The bill would establish within the Directorate a Homeland Security Advanced Research Projects Agency (HSARPA) to support research to promote revolutionary changes in technologies that would promote homeland security. HSARPA would be headed by a Director appointed by the Secretary. The bill would establish an Acceleration Fund for Research and Development of Homeland Security Technologies. The Fund would be administered by the Director to award competitive, merit-reviewed grants, cooperative agreements, and contracts to public or private entities, to: (1) support basic and applied homeland security research; (2) advance the development, testing, evaluation, and deployment of critical homeland security technologies; and (3) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities. The bill would authorize appropriations to the Fund of \$500 million for FY 2003 and such sums as may be necessary in subsequent years. At least ten percent of the funds authorized for each year through FY 2005 would be only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved port, waterway, and coastal security surveillance and perimeter protection capabilities.

Extramural Programs. The Under Secretary would be required to carry out extramural research programs to distribute funds through grants, cooperative agreements, and contracts in a manner that ensures that: (1) colleges and universities from as many parts of the country as possible participate; and (2) the research funded is of high quality. The enrolled bill would also require the Under Secretary to establish, within one year of enactment, a university-based center or centers for homeland security. Universities would be selected according to detailed criteria established in the bill. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out this program.

Federal Labs. The Under Secretary would be authorized to draw upon the expertise of any laboratory of the Federal Government (whether operated by a contractor or the Government), establish a headquarters laboratory for the Department at any laboratory or site, and establish additional laboratory units at other laboratories or sites.

The enrolled bill would authorize the Secretary to utilize Department of Energy laboratories and sites through various agreements that the Secretary of Homeland Security may consider appropriate. These laboratories would be authorized to perform work for the Secretary on an equal basis to other missions at the laboratory. The Department would be authorized to become a joint sponsor of one or more Department of Energy laboratories or sites, but the Department of Energy would remain the primary sponsor and lead agent of any facility. The bill would establish within the Directorate an Office of National Laboratories responsible for the coordination and utilization of the Department of Energy national laboratories and sites to support the missions of the Department of Homeland Security.

The enrolled bill would authorize the Under Secretary to establish or contract with one or more existing federally-funded research and development centers to provide independent analysis of homeland security issues. The enrolled bill would also require that, to the greatest extent practicable, research conducted or supported by the Department be unclassified. The enrolled bill would authorize the Secretary, acting through the Under Secretary, to issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department.

Homeland Security Science and Technology Advisory Committee. The enrolled bill would establish within the Department, a Homeland Security Science and Technology Advisory Committee made up of 20 members appointed by the Under Secretary to make recommendations with respect to the activities of the Under Secretary, including identifying research areas of potential importance to the security of the Nation. The Committee would have to submit annual reports to the Under Secretary for transmittal to Congress and would terminate three years after the effective date of the enrolled bill.

Technology Clearinghouse. The enrolled bill would also require the Under Secretary to establish and promote a program to encourage technological innovation in facilitating the mission of the Department. The program would include: (1) the establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination to Federal, State, and local government and private sector entities for additional review, purchase, or use; and (2) the issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

Border and Transportation Security Directorate

The Under Secretary for Border and Transportation Security would be responsible for: (1) preventing the entry of terrorists and the instruments of terrorism into the United States; (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States; (3) carrying out the immigration enforcement functions of the Immigration and Naturalization Service (INS); (4) establishing and administering rules governing the granting of visas and other entry documents to individuals who are not either U.S. citizens or permanent resident aliens; (5) establishing national immigration

enforcement policies and priorities; (6) administering the customs laws of the United States (although authority for certain customs revenue and trade act enforcement functions would remain vested in the Secretary of the Treasury); (7) conducting certain agricultural import and entry inspection activities; and (8) ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

The functions of the following agencies would be transferred to the Secretary: (1) the Treasury Department's United States Customs Service (except certain revenue and trade act enforcement functions); (2) the Department of Transportation's Transportation Security Administration (TSA); (3) the General Services Administration's Federal Protective Service; (4) Treasury's Federal Law Enforcement Training Center; (5) the Department of Justice's Office of Domestic Preparedness; (6) the Department of Agriculture's agricultural import and entry inspection activities (excluding quarantine activities); and (7) the immigration enforcement functions of Justice's INS. (As explained below, most other INS functions would be transferred to a new bureau that would report directly to the Deputy Secretary.)

Immigration Enforcement Functions. The enrolled bill would transfer to the Under Secretary from INS all of the functions performed by: (1) the Border Patrol program; (2) the detention and removal program; (3) the intelligence program; (4) the investigations program; and (5) the inspections program. These functions would be carried out by a Bureau of Border Security within the Directorate, to be headed by an Assistant Secretary who would report directly to the Under Secretary. The Assistant Secretary would be responsible for administering the program to collect information relating to nonimmigrant foreign students, including the Student and Exchange Visitor Information System. The bill would establish the positions of a Chief of Policy and Strategy for the Bureau and a principal legal advisor to the Assistant Secretary.

The Under Secretary would be responsible for, among other things, conducting investigations of noncriminal allegations of misconduct involving any employee of the Bureau that are not subject to investigation by the Department's Inspector General. The Under Secretary would also be authorized to impose disciplinary action, including termination of employment pursuant to procedures applicable to FBI employees, on any employee of the Bureau who willfully deceives Congress or agency leadership on any matter.

Customs Service. After the effective date of the enrolled bill, the Secretary of the Treasury would be authorized to delegate authority to the Secretary of Homeland Security for certain customs revenue and trade act enforcement functions. The enrolled bill would prohibit the Homeland Security Secretary from consolidating, discontinuing, or diminishing these functions or reducing staff levels or resources attributable to these functions. The Treasury Secretary would be authorized to appoint up to 20 new personnel to work with personnel of the Homeland Security Department in performing customs revenue functions.

The enrolled bill would prohibit the transfer of funds made available to the Customs Service for use by any other agency or office in the new Department. The enrolled bill would also require the President to include a separate budget request for the Customs Service in each budget transmitted to Congress. The General Accounting Office would be required to submit a report to Congress within three months of the effective date of the enrolled bill that sets forth all the trade functions performed by the Executive Branch, specifying each agency that performs each function.

The Homeland Security Secretary would be required to ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of the bill will continue to be provided. The Secretary would have to notify the House Ways and Means Committee and the Senate Finance Committee at least 90 days prior to taking any action that would: (1) result in any significant reduction in customs services; (2) eliminate or relocate any office of the Department that provides customs revenue services; or (3) eliminate any port of entry.

The enrolled bill would create a separate account within the general fund of the Treasury to be known as the "Customs Commercial and Homeland Security Automation Account." For each of FYs 2003 through 2005, the enrolled bill would require the deposit of \$350 million into the Account from Customs user fees for the processing of merchandise that is entered or released. The enrolled bill would authorize appropriations from the Account in each of FYs 2003 through 2005 of any amounts available in the Account for the development of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released.

Transportation Security. The enrolled bill would require TSA to be maintained as a distinct entity within the Homeland Security Department under the Border and Transportation Directorate until two years after the date of enactment. The enrolled bill would require the Secretary and other officials of the new Department to consult with the Administrator of the Federal Aviation Administration (FAA) before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Homeland Security Secretary would have to establish a liaison office for consulting with the FAA Administrator. The enrolled bill would transfer the Transportation Security Oversight Board from the Department of Transportation to the Department of Homeland Security.

Emergency Preparedness and Response Directorate

The Under Secretary for Emergency Preparedness and Response would be responsible for, among other things: (1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies; (2) with respect to the Nuclear Incident Response Team, establishing standards and certifying when those standards have been met, conducting exercises and training and evaluating performance, and providing funds to the Department of Energy and the Environmental Protection Agency (EPA), as appropriate, for

homeland security planning, exercises and training, and equipment; (3) providing the Federal Government's response to terrorist attacks and major disasters; (4) aiding the recovery from terrorist attacks and major disasters; (5) building a comprehensive national incident management system; (6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and (7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

The functions of the following agencies would be transferred to the Secretary: (1) all of the Federal Emergency Management Agency (FEMA); (2) the Integrated Hazard Information System of the Commerce Department's National Oceanic and Atmospheric Administration; (3) the FBI's National Domestic Preparedness Office; (4) the Justice Department's Domestic Emergency Support Teams; and (5) HHS's Office of Emergency Preparedness, National Disaster Medical System, Metropolitan Medical Response System, and Strategic National Stockpile.

Nuclear Incident Response Team. At the direction of the Secretary, the Nuclear Incident Response Team would be required to operate as an organizational unit of the Department. While so operating, the Team would be subject to the direction, authority, and control of the Secretary. These requirements would not limit the ordinary responsibility of the Secretary of Energy and the EPA Administrator for organizing, training, and utilizing their respective entities in the Team, or from exercising control over them when they are not operating as a unit of the Homeland Security Department.

Public Health-Related Activities. With respect to all public health-related activities carried out by HHS to improve State, local, and hospital preparedness and response to terrorist threats, the Secretary of HHS would be required to set priorities and preparedness goals and further develop a coordinated strategy for these activities in collaboration with the Secretary of Homeland Security.

Other Entities Established Within the Department

Under Secretary for Management. The Under Secretary for Management would be responsible for the management and administration of the Department, including: (1) the budget, appropriations, expenditures of funds, accounting, and finance; (2) procurement; (3) human resources and personnel; (4) information technology and communications systems; (5) facilities, property, equipment, and other material resources; (6) security for personnel, information technology and communications systems and other material resources; (7) identification and tracking of performance measures relating to the responsibilities of the Department; (8) grants and other assistance programs; (9) the transition and reorganization process, including the development of a transition plan; and (10) the conduct of internal audits and management analyses of the Department's programs and activities.

The Under Secretary would also be responsible for the maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. The enrolled bill would require the transfer to the Under Secretary for Management of all functions performed by the Statistics Branch of the Office of Policy and Planning of the INS with respect to both enforcement and service functions.

Coast Guard. The enrolled bill would transfer from the Department of Transportation to the Department of Homeland Security all of the authorities, functions, personnel, and assets of the Coast Guard, to be maintained as a distinct entity within the new Department. The bill would require that the Commandant of the Coast Guard report directly to the Secretary. The enrolled bill would require that the authorities, functions, and capabilities of the Coast Guard be maintained intact and without significant reduction after the transfer. The Secretary of Homeland Security would be prohibited from substantially or significantly reducing the missions of the Coast Guard or its capability to perform those missions, except for any period of up to 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for a waiver to these restrictions. As under current law, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.

United States Secret Service. The enrolled bill would transfer to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service of the Department of the Treasury, to be maintained as a distinct entity within the Department.

Federal Law Enforcement Training Center (FLETC). The enrolled bill would transfer FLETC from the Department of the Treasury to the Department of Homeland Security. The bill would require that all activities of FLETC transferred to the Department of Homeland Security continue to be carried out at the locations where they were carried out prior to the transfer. The transfer of an authority or an agency to the Department of Homeland Security would not affect training agreements already entered into by those agencies with FLETC.

Citizenship and Immigration Services. The enrolled bill would establish a Bureau of Citizenship and Immigration Services to be headed by a Director who would report directly to the Deputy Secretary. The Director would be responsible for carrying out the functions transferred from the INS relating to adjudication of immigrant visa petitions, naturalization petitions, and asylum and refugee applications, and all other adjudications performed by the INS. The bill would establish the following positions in the Bureau: (1) a Chief of Policy and Strategy; (2) a principal legal advisor to the Director; (3) a Budget Officer; and (4) a Chief of the Office of Citizenship. In addition, a Citizenship and Immigration Services Ombudsman would report directly to the Deputy Secretary.

The Director would also be responsible for, among other things, conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau that are not subject to investigation by the Department's Inspector

General. The Director would also be authorized to impose disciplinary action, including termination of employment pursuant to procedures applicable to FBI employees, against any employee of the Bureau who willfully deceives Congress or agency leadership on any matter.

After completing a feasibility study, the Secretary would be required to establish, within one year of the effective date of the bill, an Internet-based system that will permit any individual who has filings with the Secretary for any benefit under the Immigration and Nationality Act to access online information about the processing status of the filing.

The enrolled bill would transfer to the Director of the Office of Refugee Resettlement of HHS all of the functions carried out by the INS relating to the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status.

Abolishment of the INS. The INS would be abolished upon completion of all transfers of its components. The enrolled bill would also prohibit the Secretary of Homeland Security from using the enrolled bill's reorganization authority to recombine the Bureaus of Border Security and Citizenship and Immigration Services or combine, join, or consolidate functions or organizational units of the two Bureaus with each other.

The enrolled bill would authorize the INS and its two successor Bureaus to use voluntary separation incentive payments, or "buyouts," for workforce restructuring. The agency must pay to the Civil Service Retirement and Disability Fund the greater of: (1) the amount necessary to offset additional costs to retirement systems; or (2) 45 percent of the total of the final basic pay of employees accepting buyouts. This payment would not be required for other agencies under the Government-wide buyout authority provided under Federal workforce improvement provisions elsewhere in the bill.

The enrolled bill would establish, within the Office of the Deputy Secretary, the position of Director of Shared Services to be responsible for the coordination of certain resources for the two Bureaus, including information resources management, records and file management, and forms management. The enrolled bill would also require that the two Bureaus be funded through separate accounts in the Treasury and that the Director of OMB separate the budget requests for each Bureau.

Visa Issuance. The enrolled bill would vest exclusive authority in the Secretary of Homeland Security to administer all immigration and nationality laws relating to the functions of consular officers in connection with the granting or refusal of visas. These authorities would be exercised through the Secretary of State, and the Secretary of Homeland Security would not have the authority to alter or reverse the decision of a consular officer to refuse a visa to an alien. The Secretary of State would be authorized to direct a consular official to refuse a visa if he or she deems that doing so would be necessary or advisable in the foreign policy or security interests of the United States. Consular officers would remain employees of the Department of State. After the effective date of the bill, all third party screening programs in Saudi Arabia would be terminated; on-site personnel of the Department of Homeland Security would have to review all visa applications prior to adjudication.

Whenever a consular officer denies a visa to an applicant, the officer would be required to enter the basis of the denial and the name of the applicant into the interoperable electronic data system established under the Border Security and Visa Entry Reform Act of 2002. Any alien who is denied a visa would be prohibited from being issued a subsequent visa unless the consular officer certifies that he or she has reviewed the information concerning the alien in the electronic data system and has stated for the record why the visa is being issued. The alien could not be admitted into the United States unless a visa has been issued in accordance with these procedures.

Inspector General. The Inspector General (IG) of the Department would be under the authority, direction, and control of the Secretary of Homeland Security with respect to audits or investigations, or issuances of subpoenas, that require access to sensitive information. In such instances, the Secretary could prohibit the IG from carrying out or completing any audit or investigation, or issuing any subpoena, if the Secretary determines that the prohibition is necessary to preserve the national security or prevent a significant impairment to the interests of the United States. In exercising this authority, the Secretary would be required to notify the IG in writing stating the reasons for the prohibition. Within 30 days after receipt of this notice, the IG would be required to transmit a copy of the notice, and a written response that states whether the IG agrees or disagrees with the Secretary's action, to appropriate members and committees of Congress.

Office for State and Local Government Coordination. The enrolled bill would establish, within the Office of the Secretary, an Office for State and Local Government Coordination to oversee and coordinate departmental programs for and relationships with State and local governments.

Counternarcotics Officer. The Secretary would be required to appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

Office of International Affairs. The enrolled bill would establish within the Office of the Secretary an Office of International Affairs to be headed by a Director, who would have to be a senior official appointed by the Secretary. The Director would be responsible for promoting information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security.

Office of National Capital Region Coordination. The enrolled bill would establish, within the Office of the Secretary, an Office of National Capital Region Coordination to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region. The Office would be headed by a Director to be appointed by the Secretary.

Joint Interagency Task Force. The enrolled bill would authorize the Secretary to establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the U.S. Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

Homeland Security Institute. The enrolled bill would establish a Federally-funded research and development center to be known as the "Homeland Security Institute," to be administered as a separate entity by the Secretary. The Institute's duties would be determined by the Secretary but could include systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures. The Institute would have to submit annual reports to the Department for transmittal to Congress and would terminate three years after the effective date of the enrolled bill.

Other Officers. The enrolled bill would require the Secretary to appoint: (1) a Special Assistant to the Secretary who would be responsible for communications and partnerships with the private sector; and (2) a senior official in the Department to assume primary responsibility for privacy policy.

Department of Homeland Security
Organizational Structure

Major Components (<i>and Current Law Agency</i>)
Border and Transportation Security Directorate Transportation Security Administration (<i>Transportation</i>) Bureau of Border Security (<i>Justice/INS</i>) United States Customs Service – excluding revenue functions (<i>Treasury</i>) Federal Protective Service (<i>GSA</i>) Agricultural Import and Entry Inspection Activities (<i>Agriculture</i>) Federal Law Enforcement Training Center (<i>Treasury</i>) Office of Domestic Preparedness (<i>Justice</i>)
Emergency Preparedness and Response Directorate Federal Emergency Management Agency (<i>FEMA</i>) Strategic National Stockpile (<i>Health and Human Services</i>) Nuclear Incident Response (<i>Energy</i>) Domestic Emergency Support Teams (<i>Justice</i>) National Domestic Preparedness Office (<i>Justice/FBI</i>) Integrated Hazard Information System – renamed FIRESAT (<i>Commerce/NOAA</i>)
Science and Technology Directorate National Bio-weapons Defense Analysis Center (<i>Defense</i>) Chemical, Biological, Radiological, and Nuclear Countermeasures (<i>Energy</i>) Plum Island Animal Disease Center (<i>Agriculture</i>)
Information Analysis and Infrastructure Protection Directorate National Communications System (<i>Defense</i>) National Infrastructure Protection Center – excluding the Computer Investigations and Operations Section (<i>Justice/FBI</i>) National Infrastructure Simulation and Analysis Center/Energy Assurance (<i>Energy</i>) Critical Infrastructure Assurance Office (<i>Commerce</i>) Federal Computer Incident Response Center (<i>GSA</i>)
Components Reporting Directly to the Secretary or the Deputy Secretary Coast Guard – reporting to the Secretary (<i>Transportation</i>) Bureau of Citizenship and Immigration Services – reporting to the Deputy Secretary (<i>Justice/INS</i>) United States Secret Service (<i>Treasury</i>)

Other Provisions of H.R. 5005

Transportation Security Provisions

Arming Pilots Against Terrorism Act

The enrolled bill would require the Under Secretary of Transportation for Security to establish a two-year pilot program to deputize airline pilots who volunteer for duty as Federal law enforcement officers (to be called "Federal flight deck officers"). These pilots would defend the flight decks of aircraft against acts of criminal violence or air piracy. The enrolled bill would require the Under Secretary, no later than three months after enactment, to begin the process of training and deputizing qualified pilots to be Federal flight deck officers under the program. The Under Secretary would be responsible for providing the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer at no cost to the pilot or airline.

The bill would direct the Under Secretary to authorize flight deck officers to carry firearms and to use force, including lethal force, according to standards and circumstances the Under Secretary prescribes. The bill would also shield: (1) air carriers from liability for damages in Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm; and (2) flight deck officers from liability for acts or omissions in defending the flight deck of an aircraft against acts of criminal violence or air piracy, except in cases of gross negligence or willful misconduct. The enrolled bill would specify that if an accidental discharge of a firearm results in the injury or death of a passenger or crew member on the aircraft, the Under Secretary: (1) would have to revoke the deputization of the responsible Federal flight deck officer if the discharge was attributable to the officer's negligence; and (2) could temporarily suspend the pilot program if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge. An air carrier could not prohibit a pilot from, or threaten any retaliatory action against a pilot for, becoming a Federal flight deck officer.

The enrolled bill would require the Under Secretary, in updating the guidance for training flight and cabin crews, to issue a rule to: (1) require both classroom and effective hands-on situational training in specified elements of self-defense; (2) require training in the proper conduct of a cabin search, including the duty time required to conduct it; (3) establish the required number of hours of training and the qualifications for training instructors; (4) establish the intervals, number of hours, and elements of recurrent training; and (5) ensure that air carriers provide the initial training within 24 months of the enactment of this Act. The bill would also require the Under Secretary to designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program.

H.R. 5005 would also authorize the Under Secretary to take certain enhanced security measures, including requiring that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilot of an aircraft. The bill would require the Under Secretary to study and report to Congress on the benefits and risks of providing flight attendants with nonlethal weapons to aid in combating air piracy and criminal violence on commercial airlines. The enrolled bill would also require the Under Secretary to respond within 90 days of receiving a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons.

The enrolled bill would direct the Secretary of Transportation to study and report within six months to Congress on: (1) the number of armed Federal law enforcement officers (other than Federal air marshals) who travel on commercial airliners annually, and the frequency of their travel; (2) the cost and resources necessary to provide such officers with supplemental aircraft anti-terrorism training comparable to the training that Federal air marshals receive; (3) the cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to Federal air marshal training; (4) the feasibility of implementing a certification program designed to ensure Federal law enforcement officers have completed aircraft anti-terrorism training, and track their travel over a six-month period; and (5) the feasibility of staggering the flights of such officers to ensure that the maximum number of flights have a certified trained Federal officer on board.

Baggage Screening

If the Under Secretary of Transportation for Security determines that TSA is not able to deploy explosive detection systems required to be deployed under current law by December 31, 2002, then, with respect to each airport, the Under Secretary would have to: (1) submit to designated congressional committees a detailed plan for the deployment of these systems as soon as practicable, but no later than December 31, 2003; and (2) take all necessary steps to ensure that alternate means of screening all checked baggage are implemented until the systems are deployed. The enrolled bill would also allow U.S. nationals, in addition to U.S. citizens, to serve as baggage screeners.

Airline War Risk Insurance

The enrolled bill would extend the Secretary of Transportation's authority to issue war-risk insurance to airlines until December 31, 2003. The bill would also require the Secretary to extend airlines' existing war-risk insurance policies through August 31, 2003, and authorize the Secretary to extend these policies until December 31, 2003. The enrolled bill would require policy coverage to be amended to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for these losses and injuries as of the date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage. The Secretary of Transportation would be required to submit a report to

specified committees of Congress within 90 days of enactment that: (1) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties; (2) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and (3) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

Airline Transportation Security

Privacy Issues. The Under Secretary of Transportation for Security would be required to prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out aviation security functions under specified laws if the Under Secretary decides that disclosing the information would: (1) be an unwarranted invasion of personal privacy; (2) reveal a trade secret or privileged or confidential commercial or financial information; or (3) be detrimental to the security of transportation.

Civil Penalties. The enrolled bill would establish that the maximum civil penalty for violating aviation security laws or other transportation laws administered by the Under Secretary of Transportation for Security would be \$10,000, except that the maximum civil penalty would be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation.

Liability Protections. The enrolled bill would amend current law establishing the September 11th Victim Compensation Fund, which: (1) provides compensation to any individual who was physically injured or killed as a result of the September 11th attacks; and (2) limits air carrier liability arising from claims related to these attacks to no more than the amount of liability coverage maintained by the air carrier. The enrolled bill would amend the definition of an air carrier, which includes agents of an airline, by specifying that the term agent includes entities engaged in providing transportation security, but only if they have contracted directly with the Federal Aviation Administration to provide security services on or after February 17, 2002. This provision is intended to provide liability protection for certain security companies responsible for security on September 11, 2001.

Department of Justice Provisions

Bureau of Alcohol, Tobacco, Firearms, and Explosives

The enrolled bill would establish a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE) within the Department of Justice and transfer certain authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury to the new Bureau. The new Bureau would be headed by a Director to be appointed by the Attorney General and would be responsible for: (1) investigating criminal and regulatory

violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws; (2) the functions transferred from the Department of the Treasury; and (3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General. The Department of the Treasury would retain the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of the Bureau's revenue collection functions. These authorities would be executed by a newly established Tax and Trade Bureau within the Department of the Treasury.

Special agents of the ATFE would be authorized to: (1) carry firearms; (2) serve warrants and subpoenas issued under the authority of the United States; (3) make arrests without warrant for any offense against the United States committed in their presence, or for any felony if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and (4) make seizures of property subject to forfeiture to the United States.

The enrolled bill would establish within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia. The facility would be used to train Federal, State, and local law enforcement officers to: (1) investigate bombings and explosions; (2) properly handle, utilize, and dispose of explosive materials and devices; (3) train canines on explosive detection; and (4) conduct research on explosives. The enrolled bill would authorize appropriations of such sums as may be necessary to establish and maintain this facility.

Safe Explosives Act

The enrolled bill would amend Federal criminal code provisions regarding the purchase of explosives to create a new "limited permit" category. The bill would prohibit a holder of a limited permit: (1) from transporting, shipping, causing to be transported, or receiving in interstate or foreign commerce explosive materials; (2) from receiving explosive materials from a licensee or permittee whose premises are located outside the holder's State of residence; or (3) on more than six separate occasions during the period of the permit, from receiving explosive materials from one or more licensees or permittees whose premises are located within the holder's State of residence.

The enrolled bill would also require license, user permit, and limited permit applicants to include the names of and identifying information (including fingerprints and a photograph of each responsible person) regarding all employees who will be authorized by the applicant to possess explosive materials. Limited permits would be valid for no longer than one year. The Secretary would be required to approve or deny an application within 45 days for limited permits and 90 days for licenses and user permits.

The enrolled bill would include among aliens who may lawfully receive or possess explosive materials any alien who is in lawful non-immigrant status, is a refugee admitted under the Immigration and Nationality Act (INA), or is in asylum status under the INA and who is:

(1) a foreign law enforcement officer of a friendly government; (2) a person having the power to direct the management and policies of a corporation; (3) a member of a North Atlantic Treaty Organization or other friendly foreign military force; or (4) lawfully present in the United States in cooperation with the Director of the Central Intelligence Agency. The bill would expand the category of persons who are prohibited from receiving or possessing explosives to include any individual who: (1) is subject to a court restraining order (that meets specified requirements); or (2) has been convicted in any court of a misdemeanor crime of domestic violence.

H.R. 5005 would require licensed manufacturers, licensed importers, and those who manufacture or import explosive materials or ammonium nitrate to furnish samples and relevant information when required by the Secretary. The enrolled bill would also create penalties for the destruction of property of institutions receiving Federal financial assistance.

The enrolled bill would allow a person who is prohibited from engaging in activity with respect to explosive materials to apply to the Secretary for relief from the disabilities imposed by Federal law with respect to violations, and the Secretary to grant that relief, if specified conditions are met. Under the enrolled bill, a holder of a license, user permit, or limited user permit would be required to report to the Secretary not later than 24 hours after discovering the theft of any explosive materials. A holder of a license or permit who does not report a theft would be subject to a fine of not more than \$10,000, imprisonment of not more than five years, or both.

The enrolled bill would authorize appropriations of such sums as necessary to carry out these provisions.

Executive Office for Immigration Review

The enrolled bill would establish in statute the Department of Justice's Executive Office for Immigration Review and make it subject to the regulation and direction of the Attorney General. This office administers and interprets Federal immigration laws and regulations through the conduct of immigration court proceedings, appellate reviews, and administrative hearings.

Office of Science and Technology

The enrolled bill would establish in statute an Office of Science and Technology within the Department of Justice's National Institute of Justice under the general authority of the Assistant Attorney General for Justice Programs. The Office would serve as the national focal point for work on law enforcement technology. The bill would require the Director of the Office to operate and support National Law Enforcement and Corrections Technology Centers.

Other Management Issues Within the Department

Procurement. The enrolled bill would authorize the Secretary to: (1) establish employer-employee relationships with consultants and experts through temporary "personal services contracts" in situations where direct hiring under civil service laws may not be sufficiently flexible; and (2) during the five-year period following the effective date of the enrolled bill, engage in transactions for research and development and prototype efforts with certain contractors that are exempt from most laws applicable to contracts, grants, and cooperative agreements. These authorities were requested by the Administration, the latter on a permanent basis.

The enrolled bill would further authorize a series of flexibilities that could be exercised through FY 2007 if the Secretary (or another Presidentally-appointed, Senate-confirmed official) determines that the Department's mission would be seriously impaired without their use and Congress is notified within seven days of the determination. First, the Secretary would be authorized to increase, for a limited number of employees, the maximum size of individual purchases that may be acquired using purchase cards from \$2,500 to \$7,500. Second, the Secretary would be authorized to increase the current \$100,000 limitation on use of simplified acquisition procedures to \$200,000 for contracts awarded and performed, or purchases made, within the United States, and \$300,000 for contracts awarded and performed, or purchases made, outside the United States. Finally, the Secretary could waive certain accounting and other compliance requirements by deeming a purchase to be a "commercial item" for purposes of Federal procurement law.

Generally similar flexibilities for use of purchase cards, simplified acquisition procedures, and waivers of accounting and compliance requirements would apply to any procurements by or for an executive agency to be used to facilitate defense against or recovery from terrorist attacks. However, these flexibilities would only apply if a solicitation of offers for the procurement is issued during the one-year period beginning on the date of enactment.

The enrolled bill would prohibit the Secretary from entering into any contract with a foreign corporation which is deemed to be an inverted domestic corporation (i.e., a corporation that, after the date of enactment, completes the acquisition of substantially all of the properties held by a domestic corporation and does not have substantial business activities in the foreign country in which the acquisition is executed). However, the Secretary would have to waive this prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, to prevent the loss of any jobs in the United States, or to prevent the Government from incurring any additional costs that otherwise would not occur.

The President's Budget. The enrolled bill would require the President to submit to Congress a detailed budget request for the Department for FY 2004, and for each subsequent fiscal year. Starting in FY 2005, each budget request submitted to Congress for the Department would have to be accompanied, at or about the same time, by a "Future Years Homeland Security

Program," which would have to be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense.

In addition, in the annual budget submitted to Congress, the President would be required to include a detailed, separate analysis identifying amounts that contribute to homeland security, including: (1) summaries of the total amount of appropriations requested for homeland security; (2) an estimate of the current service levels of homeland security spending; (3) the most recent risk assessment and summary of homeland security needs in each initiative area; and (4) an estimate of user fees collected by the Federal Government on behalf of homeland security activities. The President's Budget would also have to include an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year. In implementing these provisions, OMB would have to consult periodically, but at least annually, with the House and Senate Budget and Appropriations Committees and with the Congressional Budget Office.

Federal Workforce Improvement

H.R. 5005 contains a number of provisions designed to assist Federal agencies and managers in attracting, maintaining, and managing the Federal workforce. Specifically, the enrolled bill would establish a Chief Human Capital Officer in each executive agency to help select, manage, train, and develop the agency's workforce. In addition, the enrolled bill would establish a Chief Human Capital Officers Council to coordinate agency activities and require OPM to design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

The enrolled bill also would: (1) authorize agencies, subject to OPM approval, to implement an alternative personnel ranking and selection system, which would continue to provide veterans preference in hiring; (2) permanently extend and authorize Executive agencies and the Administrative Office of the U.S. Courts to use voluntary separation incentive payments (known as "buyouts") and voluntary early retirement under certain circumstances for workforce restructuring; (3) repeal recertification requirements for members of the Senior Executive Service (SES) (currently SES members must be recertified every three years); (4) set the cap on total annual compensation (including bonuses) for employees paid at rates of basic pay above the General Schedule equal to the Vice President's rate of basic pay, instead of the rate for Level I of the Executive Schedule; and (5) authorize and expand agency authority to pay or reimburse employees for certain academic degree training programs.

Law Enforcement Powers for Inspectors General

The enrolled bill would authorize the Attorney General to authorize Inspectors General and their agents to: (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant while engaged in official duties if they have reasonable grounds to believe that

a felony has been committed; and (3) seek and execute warrants for arrest, search of a premises, or seizure of evidence. The Attorney General could exercise this authority only after initially determining that: (1) the affected Office of Inspector General is significantly hampered in the performance of its responsibilities as a result of the lack of these powers; (2) available assistance from other law enforcement agencies is insufficient to meet the need for these powers; and (3) adequate internal safeguards and management procedures exist to ensure proper exercise of these powers. Several major agencies, including the Department of Homeland Security, would be exempt from the requirement of an initial determination of eligibility by the Attorney General.

Information Security Measures

Federal Information Security Management Act of 2002

H.R. 5005 contains provisions that are similar in some respects to the Federal Information Security Management Act (FISMA) provisions contained in H.R. 2458, the E-Government Act of 2002, which is also awaiting Presidential action. H.R. 2458 includes an Administration-supported provision that would make the FISMA provisions in H.R. 5005 ineffective with the enactment of H.R. 2458.

Cyber Security Enhancement Act of 2002

The enrolled bill would require the United States Sentencing Commission to review and, if appropriate, amend Federal sentencing guidelines and otherwise address crimes involving computers. The Commission would be required to ensure that the sentencing guidelines and policy statements reflect the serious nature of computer crimes, the growing incidence of such crimes, and the need for an effective deterrent and appropriate punishment to prevent such offenses. The enrolled bill would require the Commission to report to Congress on any actions taken and recommendations regarding statutory penalties.

Current law prohibits an entity providing an electronic communication or remote computing service to the public from disclosing the contents of a communication stored or maintained on that service. The enrolled bill would exempt from this prohibition emergency disclosures to a governmental entity by an electronic communication service (which must be subsequently reported to the Attorney General and Congress) and specified disclosures made in good faith. The enrolled bill would also prohibit the distribution of advertisements of illegal interception devices through the Internet as well as by other, specified media, and would increase penalties for violations where the offender knowingly causes or attempts to cause death or serious bodily injury.

H.R. 5005 would expand the legal protection for a communication provider who legally assists law enforcement with an investigation under the emergency disclosure exception under the USA PATRIOT Act to include information disclosed under statutory authorization. The bill would also add immediate threats to national security interests and ongoing attacks on protected

computers to the list of situations during which an emergency pen register, a trap and trace device, or both, may be used. The enrolled bill would broaden the offense of, and increase the penalties for, illegally intercepting cell-phone conversations or invading the privacy of another person's stored communications. The bill would state that a law enforcement officer need not be present for a warrant to be served or executed under the Electronic Communications Privacy Act.

Information Sharing Provisions

Critical Infrastructure Protection

The enrolled bill would authorize the Federal Government to issue alerts or warnings to relevant companies, sectors, other government entities, and the general public regarding potential threats to critical infrastructure as appropriate. The Secretary of Homeland Security would have to establish procedures on the use of shared information that: (1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information; (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information. The enrolled bill would also require the Under Secretary for Information Analysis and Infrastructure Protection to, as appropriate: (1) share analysis and warnings related to threats to critical infrastructure; (2) in coordination with the Under Secretary for Emergency Preparedness and Response, provide crisis management support in response to threats to, or attacks on, critical information systems; and (3) provide technical assistance with respect to emergency recovery plans to respond to major failures of critical information systems.

Homeland Security Information Sharing Act

The enrolled bill would require the President to prescribe and implement procedures under which Federal agencies determine: (1) how homeland security information may be shared with State and local personnel, how to identify and safeguard information that is sensitive but unclassified, and how to remove classified information (as appropriate); and (2) with which personnel such information may be shared.

The bill would also require all appropriate agencies, including the Intelligence Community, to share homeland security information, along with assessments of its credibility, with State and local personnel through information sharing systems, in accordance with such procedures. These procedures would have to: (1) limit the redissemination of shared information to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information to protect the rights of covered individuals; (3) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information; (4) ensure that the information sharing system used includes existing information sharing systems; and (5) ensure that appropriate State and local personnel are authorized to use such information sharing systems. Each appropriate Federal agency would be required to have access to each information sharing system and the information within it.

The enrolled bill would also require the President to prescribe procedures under which Federal agencies may share classified homeland security information with State and local personnel, including through non-disclosure agreements and increased use of information sharing partnerships. Information obtained by a State or local government from a Federal agency would remain under the control of the Federal agency and would not be subject to a State or local information disclosure law.

The President would be required to submit a report to certain committees of Congress on the implementation of these provisions of the enrolled bill, including recommendations to increase the effectiveness of information sharing. The enrolled bill would authorize appropriations of such sums as may be necessary to carry out these provisions. It would also amend the Federal Rules of Criminal Procedure to permit the sharing of grand jury information that pertains to foreign intelligence or counterintelligence with State or local law enforcement personnel, and with foreign officials, consistent with guidelines that the Attorney General and the Director of Central Intelligence would jointly issue.

H.R. 5005 would authorize the sharing of intercepted electronic, wire, and oral communications or derived information by the government with: (1) foreign investigative or law enforcement officers for the performance of official duties; and (2) Federal, State, local, or foreign government officials if such information reveals a threat of an attack or other hostile act, sabotage, terrorism, or clandestine intelligence gathering activity by a foreign power, for the purpose of preventing or responding to such a threat. The enrolled bill would also amend the USA PATRIOT Act of 2001 to authorize the disclosure to Federal, State, local, and foreign government officials of information obtained as part of a criminal investigation that reveals such a threat, for the purpose of preventing or responding to that threat. In addition, the enrolled bill would authorize Federal officers who conduct electronic surveillance or physical searches to acquire foreign intelligence information to consult with State or local officials to coordinate efforts to investigate or protect against attacks, sabotage, or clandestine intelligence activities by a foreign power.

Protection of Voluntarily Shared Critical Infrastructure Information

The enrolled bill would exempt from disclosure under the Freedom of Information Act (FOIA) critical infrastructure information that is voluntarily submitted by private entities to the Department of Homeland Security for the security of critical infrastructure. The bill would also prohibit such information from being used in any civil action arising under Federal or State law. The disclosure exemption would not prohibit an employee of the United States from disclosing the information: (1) in furtherance of an investigation or the prosecution of a criminal act; (2) to either House of Congress, including relevant committees or subcommittees of jurisdiction; and (3) to the Comptroller General. The new Department, in consultation with the National Security Council and the Office of Science and Technology Policy, would have to establish, within 90 days of enactment, uniform procedures for the receipt, care, and storage by Federal agencies of

critical infrastructure information that is voluntarily submitted to the Government. Any officer or employee who discloses any information in violation of these provisions would be subject to a fine, imprisonment for not more than one year, or both, and would be removed from office or employment.

Vaccine Liability

Administration of Countermeasures Against Smallpox. The enrolled bill would provide certain specified parties, such as non-Federal doctors, drug manufacturers, and hospitals, with medical liability protection under the Federal Torts Claims Act (FTCA) when those entities, acting on behalf of the U.S. Public Health Service, are liable for the administration of the smallpox vaccine and other countermeasures. This protection from medical liability would be effective only during such period as declared by the Secretary of HHS. (Under current law, the Federal Government is only liable when these services are provided by Federal health care providers.) Under the enrolled bill, the Federal Government would defend any lawsuit and pay any damages. Damages would be limited by State law. Punitive damages, however, are not permitted under the FTCA, and would not be allowed under H.R. 5005.

Amendment of Definitions Under the National Vaccine Injury Compensation Program. The enrolled bill would amend various definitions under the National Vaccine Injury Compensation Program, which provides compensation for vaccine-related injuries or deaths. For example, the enrolled bill would define the term "vaccine" to include all components and ingredients listed in the vaccine's product license application and product label. The enrolled bill would also amend the definition of a "vaccine-related injury or death," currently defined as an injury or death associated with certain vaccines specified in law, but not including injury or death associated with an adulterant or contaminant intentionally added to a vaccine. The enrolled bill would specify that for purposes of this definition, an adulterant or contaminant would not include any component or ingredient listed in a vaccine's product license application or product label. These definitions would apply to all actions or proceedings pending on or after the date of enactment of this bill.

Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act

H.R. 5005 would authorize the Secretary to designate anti-terrorism technologies that qualify for protection under the systems of litigation management and risk management described below in accordance with criteria that would include, but not be limited to: (1) prior U.S. Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment in public and private settings; (3) existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the seller or other provider of such anti-terrorism technology; and (4) substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

Litigation Management. The enrolled bill would create a Federal cause of action for claims arising out of or resulting from deployment of qualified anti-terrorism technologies in defense against or response to a terrorist act when those claims result or may result in a loss to the seller of the technology. This Federal cause of action could be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal Government customers. The enrolled bill would establish special rules limiting the damages that could be awarded as a result of an action.

Risk Management. The enrolled bill would specify that any person or entity that sells a qualified anti-terrorism technology to Federal and non-Federal Government customers must obtain liability insurance of the type and in the amounts established in the bill and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of or resulting from deployment of qualified anti-terrorism technologies in defense against or response to a terrorist act.

Miscellaneous Provisions

Demonstration Projects on Disciplinary Action. The enrolled bill would authorize the Attorney General and the Secretary of Homeland Security to each conduct a demonstration project to determine whether any changes in methods for disciplining employees would result in improved personnel management. The projects would have to be completed no later than five years after the date of enactment, and each Department's project could only cover the employees of that Department. The enrolled bill would require the General Accounting Office to report periodically to specified congressional committees on any project conducted. The Attorney General and the Secretary of Homeland Security would have to furnish GAO, upon request, any information it may require to prepare these reports.

Advisory Committees. The Secretary would be authorized to: (1) establish advisory committees; and (2) exempt these committees from the requirements of the Federal Advisory Committee Act (P.L. 92-463), including the requirement that advisory committee meetings must be open to the public. The Secretary would have to publish a notice in the Federal Register announcing the establishment of an exempted committee and identifying its purpose and membership.

Treatment of Charitable Trusts for Members of the Armed Forces. The enrolled bill would set forth requirements that a charitable corporation, fund, foundation, or trust must meet in order to designate itself as a "Johnny Micheal Spann Patriot Trust" (i.e., a charitable trust for the spouses, dependents, and relatives of military and Federal personnel who lose their lives in the battle against terrorism). Johnny Micheal Spann, a CIA officer who died on November 25, 2001, was the first American known to be killed during the war against terrorism in Afghanistan following the September 11th terrorist attacks. The enrolled bill would require at least 85 percent of each Trust corpus to be distributed to survivors and would prohibit more than 15 percent of the corpus from being used for administrative purposes. The bill would also prohibit any Trust from participating in any political campaign on behalf of a candidate for public office.

The bill would also require: (1) audits of each Trust that annually receives contributions of more than \$1 million; and (2) Trust distributions to be made at least once a year. The enrolled bill would provide for the notification of Trust beneficiaries.

Operation TIPS. The enrolled bill would prohibit any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System).

National Identification System. The enrolled bill would specify that nothing in the bill should be construed to authorize the development of a national identification system or card.

Review of Congressional Committee Structures. The enrolled bill states the sense of Congress that the House and Senate should each review its committee structure in light of the reorganization of responsibilities within the Executive Branch as a result of the establishment of the Department of Homeland Security.



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

The Honorable Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, DC 20503

NOV 22 2002

Dear Director Daniels:

Thank you for your request for the Department of Agriculture's (USDA) comments on H.R. 5005, the "Homeland Security Act of 2002."

USDA recommends that the President sign the enrolled bill.

The "Homeland Security Act of 2002" establishes the Department of Homeland Security, incorporating 22 Federal agencies into a single institution designed to better defend against and respond to future terrorist attacks directed at the United States. The implications for USDA are located principally in Titles III and IV, "Science and Technology in Support of Homeland Security" and the newly established "Directorate of Border and Transportation Security," respectively. The remaining fifteen Titles will increase the security of the United States in other areas such as information infrastructure, emergency preparedness, and coordination among Federal, State, and local agencies. These areas represent the most critical elements in the defense of our Nation.

When the President proposed this bold and visionary plan earlier this year he understood clearly the importance of agriculture to America's homeland security. This new agency will bring together Federal resources, including USDA's Agricultural Quarantine Inspection Program services at the border, an element of the Animal and Plant Health Inspection Service (APHIS), and the Plum Island Animal Disease Center to ensure the safety and security of food, livestock and agricultural production through USDA research into exotic pests.

USDA will work very closely with the new Department of Homeland Security to ensure a swift, efficient and responsible transition including cooperation on APHIS efforts to control and eradicate agricultural pests and diseases. Together, we must continue to strengthen our homeland security protection systems, and USDA will be an active partner in helping ensure the safety of America's food and agriculture sector from bioterrorism.

Thank you again for the opportunity to provide our comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ann M. Veneman", is written over a horizontal line.

Ann M. Veneman
Secretary



The Secretary of Energy
Washington, DC 20585

November 21, 2002

The Honorable Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Daniels:

This responds to your request for Department of Energy views on H.R. 5005, the Homeland Security Act of 2002.

H.R. 5005 is an important step toward securing our country against terrorism. It will bring together agencies and parts of agencies with valuable expertise in countering threats to the safety of our people, our businesses, and our institutions.

The Department of Energy is proud to contribute to this new enterprise. H.R. 5005 provides for the Department to play a key role in helping the new Department fulfill its vital mission. I look forward to working with the Secretary of the new Department of Homeland Security to help ensure the security of the United States.

Accordingly, I recommend approval of H.R. 5005.

Sincerely,

A handwritten signature in black ink, reading "Spencer Abraham", is written over the typed name.

Spencer Abraham





U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 22, 2002

The Honorable Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Daniels:

This presents the views and recommendation of the Department of Justice on enrolled bill H.R. 5005, the "Homeland Security Act of 2002." We support enactment of this legislation and recommend that the President approve it. As the Attorney General stated on November 19, 2002, "[t]he creation of the Department of Homeland Security begins a new era of cooperation and coordination in the nation's homeland defense. The President's plan will allow us to improve our efforts to work together to identify and assess threats to our homeland, match these threats to our vulnerabilities, and act to insure the safety and security of the American people."

We do wish, however, to direct your attention to several provisions of the enrolled bill that present constitutional and other concerns. We recommend that these provisions be addressed in the President's signing statement, should he elect to approve the legislation. We have enclosed a draft signing statement for your consideration.

Thank you for the opportunity to comment on this important matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel J. Bryant", is located below the word "Sincerely,".

Daniel J. Bryant
Assistant Attorney General

Enclosure

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	STATEMENT BY THE PRESIDENT	3	11/22/2002	P5;

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COLLECTION:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [H.R. 5005] [771617] [2]

FRC ID:

6363

FOIA IDs and Segments:

OA Num.:

9470

NARA Num.:

9361

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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Freedom of Information Act - [5 U.S.C. 552(b)]

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[H.R. 5005, Homeland Security Act] - To: Mitchell E. Daniels - From: Paul V. Kelly	2	11/21/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	State Department Proposed Language for Signing Statement	1	11/21/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	[Response to your request for the views of the U.S. Department of Transportation on H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Kirk K. Van Tine	4	11/21/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Responds to the request for comments on enrolled bill H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Joe M. Albaugh	2	11/22/2002	P5;

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