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Folder Title: 11/25/2002 [H.R. 5005] [771617] [3]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Views and recommendation of the Department of Justice on enrolled bill H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Daniel J. Bryant	1	11/22/2002	P5;
002	Statement	STATEMENT BY THE PRESIDENT	3	11/22/2002	P5;
003	Letter	[H.R. 5005, the Homeland Security Act] - To: Director Daniels - From: Paul V. Kelly	2	11/21/2002	P5;
004	Comments	State Department Proposed Language for Signing Statement	1	11/21/2002	P5;
005	Letter	[Responds to your request for the views of the U.S. Department of Transportation] - To: The Honorable Mitchell E. Daniels, Jr. - From: Kirk K. Van Tine	4	11/21/2002	P5;

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11/25/2002 [H.R. 5005] [771617] [3]

FRC ID:

6363

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]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
006	Letter	[Responds to the request for comments on enrolled bill H.R. 5005] - To: The Honorable Mitchell E. Daniels - From: Joe M. Albaugh	2	11/22/2002	P5;
007	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;
008	Statement	STATEMENT BY THE PRESIDENT - From: The White House	7	N.D.	P5;
009	Statement	STATEMENT BY THE PRESIDENT - From: The White House	7	11/22/2002	P5;
010	Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;

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011	Statement	STATEMENT BY THE PRESIDENT - From: White House	7	11/25/2002	P5; Transferred

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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 <i>CONCURS</i>	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	IRASTORZA	☐	☐
BARTLETT	☒	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☒	☐
BOLTEN <i>n/c</i>	☒	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☐
CALIO	☒	☐	RICE	☒	☐
CONNAUGHTON	☐	☐	RIDGE <i>n/c</i>	☒	☐
DANIELS <i>n/c</i>	☐	☒	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

Stuft to Tim Jukes

Nov 23 5pm

53458 phone

56148 phone

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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.

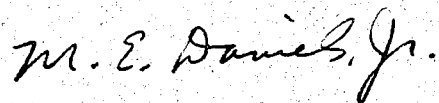
The Department of Justice recommends approval of H.R. 5005, and has recommended signing statement language (attached to its views letter) to address constitutional issues.

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

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO	1838	
CONNECTION TEL		67090
CONNECTION ID	ADMIN	
ST. TIME	11/22 09:40	
USAGE T	04'07	
PGS. SENT	8	
RESULT	OK	

SS/ RM NO. _____

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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

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CONNAUGHTON	☐	☐	RIDGE	☒	☐
DANIELS	☐	☒	ROVE	☒	☐
FLEISCHER	☐	☐	SPELLINGS	☒	☐
GERSON	☐	☐	CLERK	☐	☐
GONZALES	☒	☐	_____	☐	☐
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

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DANIELS	☐	☒	ROVE	☒	☐
FLEISCHER	☐	☐	SPELLINGS	☒	☐
GERSON	☐	☐	CLERK	☐	☐
GONZALES	☒	☐	_____	☐	☐
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REMARKS:

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(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

 *** TX REPORT ***

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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	☐	☐
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RESPONSE:

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

 *** TX REPORT ***

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WHITE HOUSE STAFFING MEMORANDUM

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RESPONSE:

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



OFFICE OF THE VICE PRESIDENT
WASHINGTON

02 NOV 23 PM 2:30

November 23, 2002

MEMORANDUM FOR JAMES JUKES
ASSISTANT DIRECTOR, OMB

FROM: **JONATHAN BURKS** 
DEPUTY STAFF SECRETARY TO THE VICE PRESIDENT

SUBJECT: **Enrolled Bill, H.R. 5005, Homeland Security Act of 2002**

The Office of the Vice President has reviewed the above-referenced draft and concurs in the recommendation to sign the enrolled bill.

cc: **Harriet Miers**
Staff Secretary

SS/ RM NO. _____

WHITE HOUSE STAFFING MEMORANDUMDate: 11-22-02 7:45 PM ACTION / CONCURRENCE / COMMENT DUE BY: 11-23-02 5:00 PM

02 NOV 23 PM 5:10

Subject: ENROLLED BILL, H.R. 5005, HOMELAND SECURITY ACT OF 2002

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NO COMMENT

RESPONSE: _____

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

02 NOV 23 PM 5:24

SS/ RM NO. _____

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-22-02 7:45 PM ACTION / CONCURRENCE / COMMENT DUE BY: 11-23-02 5:00 PM

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RESPONSE:

No comment
Tim Stett

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

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RESPONSE:

no comment

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.

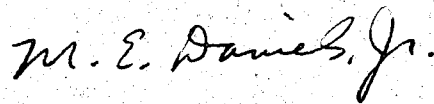
The Department of Justice recommends approval of H.R. 5005, and has recommended signing statement language (attached to its views letter) to address constitutional issues.

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

Bills Received at the White House

Date received and
notification to OMB: 11/22/2002

Last day for action: 12/4/2002

H.R.5005

Official Title

An Act to establish the Department of Homeland Security,
and for other purposes.

518814

Staff to Jim Tukey
Nov 23 5pm

534 58 phone

56148 fax



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 black 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



Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Views and recommendation of the Department of Justice on enrolled bill H.R. 5005] - To: The Honorable Mitchell E. Daniels, Jr. - From: Daniel J. Bryant	1	11/22/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
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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] [3]

FRC ID:

6363

OA Num.:

9470

NARA Num.:

9361

FOIA IDs and Segments:

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

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

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Responds to your request for the views of the U.S. Department of Transportation] - 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 - From: Joe M. Albaugh	2	11/22/2002	P5;

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WHITE HOUSE STAFFING MEMORANDUMDate: 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	☐	☐
BRIDGELAND	☒	☐	MIERS	☐	☐
CALIO	☒	☐	RICE	☒	☐
CONNAUGHTON	☐	☐	RIDGE	☒	☐
DANIELS	☒	☐	ROVE	☒	☐
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:

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

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	STATEMENT BY THE PRESIDENT - From: The White House	5	11/25/2002	P5;

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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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.

OFFICE OF THE EXECUTIVE CLERK
TRACKING SHEET FOR PRESIDENTIAL DOCUMENTS

TITLE: Signing Statement - H.R. 5005 - Homeland Security Act

TYPE DOCUMENT:

PROCLAMATION

LETTER(S)

EXECUTIVE ORDER

MESSAGE TO THE CONGRESS/SENATE

MEMORANDUM

STATEMENT BY THE PRESIDENT

DECISION MEMORANDUM

SIGNING STATEMENT

DETERMINATION (numbered)

TREATY/CONVENTION/AGREEMENT, etc.

OTHER: _____

RECEIVED: (Advance: 11/22/02 Time: 10:15 a.m./p.m.)
In final: / /02 Time: a.m./p.m.

SENT TO CORRESPONDENCE FOR TYPING IN FINAL:

(Advance: 11/22/02 Time: 10:30 a.m./p.m.)
In final: / /02 Time: a.m./p.m.

TO HARRIET MIERS' OFFICE:

(For staffing: 11/22/02 Time: 7:12 a.m./p.m.)
In final: 11/22/02 Time: 7:12 a.m./p.m.

*INFO, INCLUDING STENCIL AND DISC, TO PRESS OFFICE:

Date: / /02 Time: a.m./p.m.
POSTED: / /02 Time: a.m./p.m.

NOTIFICATIONS:

_____ (Person/time)	NSC (#____), when appropriate -- Desk Officer; W.H. Situation Room -- x6-9425.
_____ (Person/time)	Ginger Gregory, x6-2230, Legislative Affairs (for messages to the Congress)
_____ (Person/time)	_____ (Other)
_____ (Person/time)	_____ (Other)

OTHER INFORMATION:

To be signed 11/25/02 (Monday) 1:00pm.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	STATEMENT BY THE PRESIDENT - From: White House	7	11/25/2002	P5; Transferred

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [H.R. 5005] [771617] [3]

FRC ID:

6363

OA Num.:

9470

NARA Num.:

9361

FOIA IDs and Segments:

RESTRICTION CODES

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

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