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DISCLAIMER

To our knowledge, this is the first publication of its kind. It is designed as a research tool for lawyers responding to weapons of mass destruction accidents or incidents of terrorism. Although this Deskbook contains a multitude of legal authorities, there are new statutes, regulations, Executive Orders, etc. being promulgated continuously in this area. Therefore, documents/authorities in this Deskbook may be superceded in whole or in part at any time. Accordingly, this Deskbook should not be used as the sole source of research, but should serve only as a research aid.

This Deskbook is not a formally coordinated United States Government document. Consequently, the contents of this Deskbook are not to be construed as official positions, policies, or decisions of the United States Government. It is solely the product of this seminar group for use by the Federal Departments and Agencies, as deemed appropriate.

INTRODUCTION

On May 31, 2001, the Defense Threat Reduction Agency (DTRA) Office of the General Counsel sponsored a one-day seminar for all Federal attorneys who respond to weapons of mass destruction (WMD) events resulting from accidents or terrorist incidents. Thirty-four Federal attorneys from 24 Federal departments and agencies participated in this initial session.

Due to the success of this first seminar, the DTRA Advanced Systems and Concepts Office (ASCO) agreed to fund and the DTRA Office of the General Counsel agreed to manage a two-year effort to produce a Domestic WMD Incident Management Legal Deskbook for distribution to Federal attorneys responsible for responding to a WMD event. To assist in the publication of this Deskbook, DTRA/ASCO awarded a two-year contract to Science Applications International Corporation (SAIC).

Although 34 Federal Department and Agency attorneys identified the need for this Deskbook prior to the terrorist acts of September 11, 2001, the urgency and importance of publishing this Deskbook took on greater emphasis following the terrorist events of September 2001.

The purpose of this Deskbook is to identify legal authorities available to Executive Branch Departments and Agencies responding to a WMD event involving terrorism or an accident. The Deskbook consists of five major sections and appendices:

- Section One: Overview of the Response Structure
- Section Two: The Federal Response in the Absence of an Emergency or Major Disaster Declaration
- Section Three: The Federal Response to a National Emergency or Major Disaster Declaration

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- Section Four: Medical and Liability Issues
- Section Five: Communications Issues
- Appendix A: List of Acronyms
- Appendix B: Complete text of all Federal references and a comprehensive list of State laws related to emergency management
- Appendix C: National Guard Status and Available Resources
- Appendix D: Looking Ahead

Organized for easy reference, each Section is prefaced by a table of contents and contains an opening table of seminal authorities and other references. The opening tables are intended to provide a snapshot of the legal authorities and other references applicable to the subject matter being addressed. Following the opening tables are analyses of the applicable authorities and references. Each of the five sections closes with excerpts of the citations found in the analysis. In addition, the electronic version of the Deskbook contains the full text of all citations referenced within each Section, as well as other relevant authorities and references collected over the two years of this project.

Nine cabinet-level Departments, numerous Federal agencies, and 121 Federal employees, who met for the last two years, have contributed to the publication of this Deskbook. Without the hard work, dedication and significant contributions of the following individuals from the indicated Departments and Agencies, this Deskbook would not have been possible:

- Department of Agriculture
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- Department of Defense
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- Department of Transportation (see Department of Homeland Security)

- Environmental Protection Agency
 - Ms. Lee Tyner

- National Guard Bureau
 - COL Gordon Schukei
 - COL Gerald Tipton

The participation of the following guest speakers added great value to the Seminars:

- White House Office of Homeland Security
 - Dr. Robert Kadlec, Director of BioDefense Programs
 - Mr. Stephen King, former Director of Investigations & Law Enforcement

- Department of Defense
 - The Honorable Paul McHale, Assistant Secretary of Defense (Homeland Defense)
 - Mr. Peter Verga, Deputy Assistant Secretary of Defense (Homeland Defense)
 - Mr. Martin Bagley, Defense Threat Reduction Agency

- Department of Justice
 - Mr. M.E. (Spike) Bowman, Deputy General Counsel (Federal Bureau of Investigation)

- Department of Health and Human Services
 - Mr. J.R. Reddig, Deputy Assistant Secretary for Emergency Preparedness

- New York Police Department
 - Mr. Michael Sheehan, Deputy Police Commissioner for Counter-Terrorism

- University of South Florida
 - Dr. George Buck, Director of Training and Education/Associate Professor

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Mr. Carlton Stoiber

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In summary, it is the hope of each of the above-named individuals that this Deskbook will serve as a valuable resource tool.

SECTION ONE – OVERVIEW OF THE RESPONSE STRUCTURE

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Table 1: Relevant Statutes and Regulations to WMD Response

Reference & Section	Affected Entity	Principal Focus
Presidential Documents		
Executive Order 12196	Federal Agencies	Relates to uniquely military operations
Executive Order 12241	Federal Agencies	Assigns responsibilities for responding to radiological emergencies
Executive Order 12580	Federal Agencies	Assigns responsibilities for responding to releases of hazardous substances
Executive Order 12656	Federal Agencies	Assigns emergency preparedness responsibilities to Federal agencies
Executive Order 12777	Federal Agencies	Assigns responsibilities for responding to discharges of oil
Executive Order 13228	White House, Federal Agencies	Establishes the Office of Homeland Security
Executive Order 13284	Various Federal Agencies	Amends various Presidential documents to reflect the responsibilities of the Secretary of Homeland Security
Executive Order 13286	Federal Agencies	Amends Executive Orders to take account of the creation of the Department of Homeland Security, among other things
PDD-39	Federal Agencies	Sets out United States counterterrorism policy and crisis and consequence management functions
PDD-62	Federal Agencies	Sets out policy and systematic approach to countering terrorism; establishes the office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism
HSPD-1	White House	Created the Office of Homeland Security
HSPD-3	Federal Agencies	Created the Homeland Security Advisory System
HSPD 5, Management of Domestic Incidents	Federal Agencies	Requires development of the National Response Plan and the National Incident Management System
U.S. Code		
10 U.S.C. §331, et seq.	President, DoD, States	Authorizes the calling into Federal service and use of the militia to, among other things, quell insurrection and enforce federal authority
10 U.S.C. §371, et seq.	Department of Defense	Allows participation of DoD personnel in law enforcement activities in specified circumstances
18 U.S.C. §831	Departments of Justice, Defense	Criminalizes certain acts involving nuclear material and authorizes the Attorney General to request DoD assistance to enforce the section
18 U.S.C. §921	Department of Treasury, DoD, individuals	Defines “destructive device”
18 U.S.C. §1385	DoD	Prohibits the use of the military to execute the laws
18 U.S.C. §2332a	Department of Justice, individuals	Criminalizes terrorism and defines “weapons of mass destruction”
Clean Water Act, 33 U.S.C. §1251, et seq.	Executive	33 U.S.C. §1321(d) and CERCLA, 42 U.S.C. 9605(a) authorize the President to develop a National Contingency Plan
		33 U.S.C. 1321(c) authorizes the President to respond to discharges of oil
42 U.S.C. §5121, et seq.	Local, State, Federal	Identifies roles, responsibilities in emergencies and major disasters requiring Federal assistance
CERCLA, 42 U.S.C. §9601 et seq.	Executive	Authorizes the President to respond to releases of hazardous substances
42 U.S.C. §10501, et seq.	State, Federal law enforcement agencies	Justice Assistance Act, authorizing Federal law enforcement assistance to States, upon written request from States
50 U.S.C. Chapter 40	State, Federal, local entities	Various measures to manage the proliferation of and the

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Reference & Section	Affected Entity	Principal Focus
		domestic threat posed by WMD
Pub. L. 107-296 , codified at 6 U.S.C. §101, <i>et seq.</i>	Department of Homeland Security, States, private sector	Creates the Department of Homeland Security; other measures for the protection of the homeland
Pub. L. 107-314	Department of Defense	Mandates creation of the Assistant Secretary of Defense for Homeland Defense
Code of Federal Regulations		
28 CFR §0.85	Department of Justice, individuals	Defines terrorism, among other things
28 CFR §65	State, Federal, Local law enforcement agencies	Implements the Justice Assistance Act
44 CFR §206	Local, State, Federal	Implementing regulations for the Stafford Act
Agency Directives/Instructions/Manuals		
DoDD 3025.1	DoD, State and Federal authorities	Sets out policy and responsibilities regarding military support to civil authorities (MSCA)
DoD 3025.1-M	DoD, State and Federal authorities	Manual of procedures to render military support to civil authorities
DoDD 3025.12	DoD, State and Federal authorities	Sets out policy and responsibilities for military assistance for civil disturbances (MACDIS)
DoDD 3025.15	DoD, State and Federal authorities	Sets out policy and procedures regarding military assistance to civil authorities (MACA)
DoDD 5525.5	DoD, State and Federal law enforcement authorities	Sets out policy and responsibilities for military cooperation with civilian law enforcement agencies (MSCLEA)
Federal Plans		
Federal Response Plan, Interim, 2003	Federal Agencies, States	Implements the Stafford Act; Federal Government structure and concept of operations for responding to major disasters and emergencies
National Contingency Plan	Federal Agencies, States	Plan to manage domestic emergencies involving hazardous substances and oil spills
FRERP	Federal Agencies, States	Plan to manage domestic radiological emergencies
WMD Incident Contingency Plan	Federal Agencies, States	FBI's plan for crisis management in the event of domestic terrorist incidents
Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism	Federal Agencies, States	HHS plan for health and medical response in the event of terrorist acts involving chemical or biological agents
GARDENPLOT	Department of Defense	Procedures for coordinating DoD and DOJ assistance in civil disturbances, under 10 U.S.C. §331-333
Initial National Response Plan	Federal Agencies	Begins process of integrating all Federal, response, recovery, and preparedness plans into one all-hazards plan

I. Overview of the Response Structure

A WMD incident or accident (collectively “WMD event”) is a man-made emergency involving chemical, biological, radiological, nuclear and/or high-yield explosive (CBRNE) weapons. Title 18 of the United States Code criminalizes the use of a certain weapons of mass destruction (WMD), defining a WMD as follows:

(A) any destructive device as defined in section 921 of this title; (B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (C) any weapon involving a disease organism; or (D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.¹

Section 921 defines a destructive device as, “any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the devices described.”

A WMD incident includes both the actual use and threat to use weapons of mass destruction by hostile persons, States, or other entities. Terrorism could be the motive for a WMD attack. While there is no universal definition of terrorism, Title 28 of the Code of Federal Regulations (CFR), §0.85(k)(1) defines terrorism as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”² The FBI defines a terrorist incident as “a violent act or an act dangerous to human life, in violation of the criminal laws of the United States, or of any state, to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”³ A WMD accident involves the unintentional release of CBRNE weapons, e.g., during securing or transporting a WMD. The potential for chaos, miscommunication, civil disturbances, and abuse of authority after a WMD event is great. Accordingly, the requirement for effective communication, cooperation, and interoperability between Federal, State, and local authorities in responding to and recovering from such an event is essential.

A. Responsibilities and Relationships between Federal, State, and Local Authorities

During the initial phases of a domestic WMD event, the response is initiated both at the local level and at the Federal level. Degrees of involvement in the initial response phases through the recovery phase will vary depending on the type of crisis and the ability of the local and State authorities to manage it. First responders at the State and local level manage the initial consequences of such an event, with the support of the State's emergency management agency.

¹ 18 U.S.C. §2332a (2002), as amended by the Public Health and Bioterrorism Preparedness and Response Act of 2002, §231(d).

² Federal Bureau of Investigation, *Terrorism in the United States*, p. ii, 1999.

³ *Id.*

Each State also is primarily responsible for law enforcement activities during an emergency or disaster. Where law and order is threatened and additional support is required, the Governor would likely activate National Guard forces, acting under State authority. If State and local resources are inadequate to manage the law enforcement aspects of a disaster or emergency, to include protecting lives and property, the State Governor has the option, under the Justice Assistance Act, of requesting emergency assistance from the United States Attorney General. Federal law enforcement assistance that may be provided includes equipment, intelligence, personnel, and training.⁴ However, the Federal Government has primary law enforcement responsibility for preventing and responding to terrorist acts, with State and local governments providing assistance as necessary. When terrorism is likely the cause of the emergency or disaster, the Federal Bureau of Investigation (FBI) will have the lead.

1. The Stafford Act

Federal assistance may also be provided when the State Governor requests support because State personnel and resources are inadequate to mount an effective response. The Stafford Act provides for assistance by the Federal Government to the States in the event of natural and other disasters in such cases. It defines major disasters and emergencies, and addresses disaster relief programs, disaster preparedness and assistance, hazard mitigation, and Federal assistance for losses sustained in disasters. Should the Governor ask the President to declare a disaster or emergency under the Stafford Act, a Preliminary Damage Assessment is conducted by Federal, State, and local authorities to determine whether the damages are sufficiently severe and great to warrant Federal assistance. If so, the President may declare an emergency or major disaster, thereby activating a more coordinated Federal response under the Federal Response Plan.⁵

2. The Defense Against Weapons of Mass Destruction Act

Title 50 Chapter 40 of the U.S. Code deals with the Federal Government's response to the proliferation of and use or threat to use nuclear, chemical, or biological WMD or related materials and technologies. Title 50 U.S.C. §2313 directs the Secretary of Defense to designate an official within the DoD as Executive Agent to coordinate DoD assistance with Federal, State, and local entities. The Secretary of Defense has appointed the Assistant Secretary of Defense for Homeland Defense as Executive Agent. The Department of Energy (DOE) is directed to designate an Executive Agent for its nuclear, chemical, and biological response. The DoD and DOE Executive Agents are responsible for coordinating assistance with Federal, State, and local officials in responding to threats involving nuclear, chemical, and biological weapons.⁶ The Federal Bureau of Investigation, the Departments of Homeland Security and Commerce, the Environmental Protection Agency (EPA) and other Federal entities, to include the intelligence agencies, all have specified roles and responsibilities in domestic emergencies involving weapons of mass destruction.

3. The Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

Section 311 of the Clean Water Act and Section 105 of the Comprehensive Emergency Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, required the

⁴ Justice Assistant Act of 1984, 42 U.S.C. §10501, *et seq.* (2002). The Act is implemented by 28 CFR §65.

⁵ The implementing regulations of the Stafford Act may be found at 44 CFR Part 206 (2002).

⁶ 50 U.S.C. §2301 *et seq.*, Defense Against Weapons of Mass Destruction Act of 1996, (2002).

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development of the National Contingency Plan (NCP).⁷ The NCP reflects efforts to develop a national response capability and promote overall coordination among responders and to set forth a framework for response to discharges of oil and releases of hazardous substances. The CWA provides authority to respond to discharges of oil and hazardous substances into navigable waters, and CERCLA gives the President authority to respond to releases of hazardous substances and of pollutants and contaminants, which may present an imminent and substantial danger to the public health or welfare. Section 106 of CERCLA authorizes the President to issue such orders as may be necessary to protect public health and welfare and the environment.

4. Nuclear Regulatory Commission Authorization

The Nuclear Regulatory Commission Authorization Act authorized the President to develop a National Contingency Plan.⁸ This plan, subsequently titled the Federal Radiological Emergency Response Plan (FRERP), provides for coordinated actions by specified Federal agencies in the event of accidents at commercial nuclear power plants. The FRERP is discussed in further detail later in this Section.

5. The Homeland Security Act of 2002

The Bush Administration initiated and Congress endorsed a major restructuring effort of the Federal Government's organization for identifying, preventing, and responding to domestic terrorist incidents and other emergencies. Public Law 107-296, The Homeland Security Act of 2002, was signed by President Bush on November 25, 2002, and marks an extensive Federal Government reorganization effort for the protection of the homeland. The Act creates the Department of Homeland Security (DHS), which is a combination of new organizations and the consolidation of 22 existing Federal entities with responsibilities related to security of the American homeland. Section 101 of the Act defines the primary mission to include preventing terrorist attacks within the United States, reducing U.S. vulnerability to terrorism, mitigating damage and assisting in recovery from terrorist attacks on the homeland. In order to successfully achieve its mission, the Department consolidates several different organizations and agencies with the purpose of creating one voice within one department to meet the following goals:

- Protect the American homeland
- Protect borders, transportation and ports
- Synthesize and analyze homeland security intelligence
- Coordinate communication with state and local government, industry, and the American people
- Protect Americans at home against bio-terrorism.

The Homeland Security Act designates DHS as the lead agency for coordinating disaster and emergency response and recovery assistance with State and local authorities. The Act specifies, however, that the responsibility for investigating and prosecuting terrorism remains vested in the law enforcement agencies with jurisdiction over terrorist acts, except to the extent those entities and functions have been transferred to DHS.

⁷ 42 U.S.C. §9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9662 *et seq.* and by section 311(d) of the Clean Water Act, (CWA), as amended.

⁸ Pub. L. 96-295, §304, Nuclear Regulatory Commission Authorization, 1980.

Coordination at All Levels of Government and with the Private Sector

A major theme in the Homeland Security Act is increased cooperation among Federal, State, and local governments, and other public and private entities. For instance, the Directorate for Information Analysis and Infrastructure Protection, in Section 201, is directed to coordinate with private entities in a variety of ways. This includes analyzing information obtained from the private sector and disseminating, as appropriate, information to the private sector related to detecting, deterring, and responding to terrorist threats or attacks. Section 508 requires the Secretary of DHS to use, to the maximum extent practicable, national private sector networks and infrastructure to respond to WMD and other major disasters. Section 509 expresses the sense of Congress that the Secretary should use, to the extent possible, commercial, off-the-shelf information technology systems and avoid competing with commercial goods and services. Section 801 establishes the Office for State and Local Coordination within the Office of the Secretary to coordinate the Department's programs for and relationships with State and local governments. Responsibilities include assessing and advocating for the resources needed by States and localities to implement the national plan for combating terrorism and providing State and local governments with the information, technical support, and other resources they need for homeland security efforts.

The Department is organized according to its major functions, with each major functional office headed by an Under Secretary appointed by the President with the advice and consent of Congress. The four directorates are as follows: Border and Transportation Security; Emergency Preparedness and Response; Science and Technology; and Information Analysis and Infrastructure Protection. The White House Office of Homeland Security remains in existence and serves as the policy-making body.

Information Analysis and Infrastructure Protection

The Directorate for Information Analysis and Infrastructure Protection is responsible for accessing, analyzing, and appropriately disseminating law enforcement, intelligence, and other information from Federal, State, and local agencies and the private sector regarding terrorist threats to the homeland. Its mandate also includes developing a national plan to address vulnerabilities of critical infrastructures and integrating information analyses and assessments to identify priorities for protective and supportive measures. This Directorate also administers the Homeland Security Advisory System providing, among other things, specific warning information and countermeasures and protective measures advice.⁹

In exchanging information with State and local governments and the private sector, the Directorate must ensure that the material is protected from unauthorized disclosure and that sharing the information protects intelligence sources and methods in accordance with the National Security Act of 1947 (Section 201). Section 202 authorizes the Secretary of DHS to access from any Federal agency all information necessary to perform his duties. Section 221 requires the Secretary to establish appropriate procedures for the sharing of information, including procedures to ensure the security and confidentiality and to protect the constitutional and statutory rights of those who are subjects of such information.

⁹ Pub. L. 107-296, §201(d)(7) (codified at 6 U.S.C. §121).

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In the Homeland Security Information Sharing Act (Homeland Security Act, Sections 891, *et seq.*), Congress requires the President to devise and implement procedures for the sharing and safeguarding of homeland security information of all classification levels. Homeland security information is broadly defined as any information (excluding individually identifiable information collected solely for statistical purposes) possessed by a Federal, State, or local agency that "relates to the threat of terrorist activity; relates to the ability to prevent, interdict, or disrupt terrorist activity; would improve the identification or investigation of a suspected terrorist or terrorist organization; or would improve the response to a terrorist act."¹⁰ The procedures prescribed by the President must apply to all Federal agencies and must not alter the current requirements and authorities for classification and for protecting sources and methods. The information systems for sharing homeland security information must be capable of transmitting, and restricting or filtering, as necessary, both classified and unclassified information.¹¹

Science and Technology

Section 302 provides that the Directorate of Science and Technology is responsible for research, development, test, and evaluation efforts in support of DHS missions. A major component of its mission is identifying and developing chemical, biological, radiological, nuclear, and other countermeasures and devising, with other Federal agencies, a national plan for the Federal Government's civilian countermeasures development efforts. Additionally, the Directorate must facilitate the procurement of technologies to prevent the importation of and to detect, prevent, and protect against the use of weapons of mass destruction. It must also devise a system for the transfer of such technologies and other developments to Federal, State, and local governments, and to private entities.

Border and Transportation Security

Section 402 of the Homeland Security Act gives to the Directorate of Border and Transportation Security responsibility securing the borders and the transportation infrastructure of the United States from terrorist attack. Its responsibilities include: preventing terrorists and terrorist instruments from entering the U.S.; securing the borders, territorial waters, places of entry, and air, sea, and land transportation systems of the homeland; carrying out the immigration and specified customs functions of the U.S.; and administering the animal and plant import and entry inspection functions of the Department of Agriculture, excluding related quarantine activities. To facilitate the execution of the specified functions, Section 411 transfers to the Directorate, among others, the U.S. Customs Service, the Transportation Security Administration, the Office of Domestic Preparedness, and Section 441 transfers the functions and authorities of the Immigration and Naturalization Service, which will be abolished after such transfer.¹² Section 888 transfers the Coast Guard to the Secretary of DHS from the Secretary of Transportation; however, the Coast Guard must remain a distinct entity within the Department and its transfer does not affect its roles and mission when operating as a service in the Navy.¹³

Emergency Preparedness and Response

¹⁰ Pub. L. 107-296, §892(f) (codified at 6 U.S.C. §482).

¹¹ 6 U.S.C. §161-193. The National Intelligence Authorization Act for fiscal year 2003 also contains many of the provisions of the Homeland Security Information Sharing Act.

¹² 6 U.S.C. §291.

¹³ 6 U.S.C. §§201-298.

Title V of the Homeland Security Act establishes the Directorate of Emergency Preparedness and Response. The responsibilities of the Directorate include coordinating and providing the Federal Government's response to terrorist attacks and major disasters. This function requires, among other things:

- Consolidating Federal emergency response plans into a single national plan
- Building a comprehensive national incident management system
- Managing the response, to include:
 - Directing the Strategic National Stockpile, the National Disaster Medical System (NDMS), the Nuclear Incident Response Team (NIRT), and the Domestic Emergency Support Team
 - Overseeing the Metropolitan Medical Response System (MMRS)
- Coordinating other Federal Government resources
- Ensuring the effectiveness of emergency response providers in the event of terrorist attacks and other emergencies
- Designing programs for the development and provision of inter-operative communications technology to emergency response providers
- Aiding in the recovery from terrorist attacks and major disasters.

Section 503 transfers to DHS the Federal Emergency Management Agency (FEMA), the Domestic Emergency Support Teams, and the HHS Office of Emergency Preparedness, Strategic National Stockpile, National Disaster Medical System (NDMS), and MMRS. Section 504 specifies that the NIRT operates as an organizational unit of DHS in an actual or threatened terrorist attack or other emergency in the United States. The Department of Energy and the EPA maintain responsibility for organizing, training, equipping, and otherwise utilizing the components of the NIRT.

Section 507 specifies the functions of FEMA within DHS, reaffirms the FEMA as the lead agency for the Federal Response Plan (FRP), and directs FEMA to revise the FRP within 60 days of the Act's enactment to reflect the establishment of and to incorporate the Department.¹⁴

B. Implementation of Federal Emergency Response Authorities

The President has delegated the authority to DHS to direct Federal agencies to employ their resources and expertise in support of State and local agencies, if such assistance would not interfere with the agencies' primary mission. DHS processes a State's request for a disaster emergency and designates the Federal Coordinating Officer for the affected State. In addition, DHS determines whether and when to activate the Federal Response Plan. The FRP details the types of support and the organizational structure of support provided by the Federal Government to States and localities.

1. White House Organization for Preparedness and Response

Office of Homeland Security

Executive Order 13228 established the Office of Homeland Security (OHS), with the mission to “develop and coordinate the implementation of a comprehensive national strategy to secure the

¹⁴ 6 U.S.C. §§311-319.

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United States from terrorist threats or attacks.”¹⁵ The following are the long-term goals for the Office:

- Moving information from the Federal to the State and local levels, i.e., to all governmental organizations and agencies that need it
- Creating an effective system of communicating within the government at large, and on a smaller scale, within individual departments and agencies
- Disseminating intelligence and classified information from the national to the state and local levels in order to assist in the prevention of a terrorist- or WMD-related incident.

OHS aims at a more efficient government. The system created within OHS is designed to work quickly and effectively in assembling agencies to produce desired results. The Office of Homeland Security and the interagency members have worked with the Department of Justice and OHS Council to ensure that issues of privacy and other Constitutional rights are not impinged upon by security measures under consideration.

Homeland Security Council

Also established by Executive Order 13228, and further detailed in Homeland Security Presidential Directive (HSPD-1),¹⁶ the Homeland Security Council (HSC), is a policy-making body, not an operational one. Operational requirements are the province of the Department of Homeland Security. The structure of the Council loosely follows that of the National Security Council. The President's Advisor for Homeland Security chairs the Principals Committee consisting of the Chiefs of Staff to the President and Vice President and representatives from the Departments of Agriculture, Treasury, Defense, Justice, Homeland Security, Health and Human Services, Transportation, and the Central Intelligence Agency and Office of Management and Budget. Representatives of additional organizations are invited to participate as necessary for specific issues.

HSC is designed to: a) identify issues relating to terrorism and the security of the homeland; and b) ensure that an interagency body coordinates the development of policies to address issues of concern. The Principals Committee is the senior interagency forum in HSC for homeland security issues. The Deputies Committee is an interagency forum for considering homeland security policy issues, while the Policy Coordinating Committees (PCC) coordinate interagency development and implementation of homeland security policies. The 11 PCC committees are:

- Detection, Surveillance and Intelligence
- Weapons of Mass Destruction (WMD) Consequence Management
- Research and Development
- Plans, Training, Exercises and Evaluation
- Key Asset, Border, Territorial Waters and Airspace Security
- Medical and Public Health Preparedness
- Law Enforcement and Investigation
- Domestic Transportation Security
- Domestic Threat Response and Incident Management

¹⁵ Executive Order 13228, “Establishing the Office of Homeland Security,” October 8, 2001, White House Press Release.

¹⁶ Homeland Security Presidential Directive 1, “Organization and Operation of the Homeland Security Council,” October 29, 2001.

- Economic Consequences
- Public Affairs

The committees vary in size and composition, and each committee acts as a policy body, exploring issues, finding challenges and developing policies. From these committees, issues and policies move up through the Deputies and Principals Committees before moving to the Office of the President for consideration and action. The structure of the HSC is designed to facilitate coordination and efficiency in prevention, preparedness and response.

The Homeland Security Council monitors threats to the United States homeland and coordinates with the National Security Council. The Office of Homeland Security Coordination Center (HSCC) which operates 24 hours a day, seven days a week, monitors and responds to information from intelligence, law enforcement and open source materials relating to possible terrorist threats and/or future domestic incidents. The HSCC reports information to the Threat Countermeasures and Incident Management (TCIM) Directorate. TCIM then coordinates interagency countermeasures, to include alerting a high-level interagency group that then will meet immediately to assess the situation. The OHS Incident Support Group (ISG) will support the high level group when activated.

2. Homeland Security Advisory System

The terrorist threat warning system emerged from the recognition that there was a need for establishing a baseline for alerting the public to the risk of terrorist attacks. Many localities and agencies had their own alert systems, but there was a need for one comprehensive guide to facilitate a common understanding of a heightened state of alert. The Homeland Security Advisory System (HSAS), mandated by HSPD-3, is the result of a survey of alert systems around the nation.¹⁷ It provides a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to Federal, State, and local authorities and to the public. The terminology of the HSAS is not binding on the Department of Defense or the State Department overseas posts.

3. Emergency Preparedness and Response Responsibilities: Executive Order 12656

Executive Order 12656 assigns national security emergency preparedness responsibilities to Federal departments and agencies, delegating to the Department of Homeland Security primary responsibility for coordinating the efforts of, among other things, federal emergency assistance.¹⁸ This Executive Order identifies several departments/agencies, e.g., Defense, Energy, Health and Human Services, that have an active, and potentially overlapping, role regarding nuclear, biological, and chemical (NBC) assessment and response. This Executive Order identifies primary and support functions to be performed during any national security emergency of the United States; development of plans for performing these functions; and development of the capability to execute those plans. As part of preparedness, the Executive Order mandates that the heads of Federal Agencies plan for continuity of government in the event of a national security emergency and plan for the mobilization of agency alternative resources. In assigning areas of responsibility for domestic preparedness, the Executive Order provides the foundation

¹⁷ Homeland Security Presidential Directive 3, "Homeland Security Advisory System," March 12, 2002.

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for the Federal Response Plan, which translates the preparedness activities into operational guidelines.

The Executive Order establishing the Office of Homeland Security¹⁹ amended Executive Order 12656 to take into account the responsibilities of the new office within the functional and legal structure of emergency preparedness. The amended language states that “the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States.” It complements the function of the National Security Council as the principal forum for the consideration of national security emergency preparedness policy. **Table 2** highlights the major areas of responsibilities for several of the agencies identified in E.O. 12656, as amended by Executive Order 13286.²⁰

¹⁸ Executive Order 12656, “Assignment of Emergency Preparedness Responsibilities,” November 18, 1988, as amended. See also Executive Order 12148, “Federal Emergency Management,” July 20, 1979, which transferred to FEMA responsibility for coordinating Federal response to civil emergencies at the regional and national level.

¹⁹ Executive Order 13228, *supra* note 15.

²⁰ Executive Order 13286, “Executive Order Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security,” February 28, 2003, transferred key functions of FEMA to the Department of Homeland Security.

Table 2: Executive Order 12656 Establishes Roles and Responsibilities during a National Security Emergency

This Executive Order identifies primary and support functions to be performed during any national security emergency of the United States, development of plans for performing these functions, and development of the capability to execute those plans. Some of the roles and responsibilities of the affected departments/agencies are listed below.	
Departments & Agencies	Roles and Responsibilities
Department of Agriculture	Continuation of agricultural production, food processing, storage, and distribution; forest products; fires in rural areas; forestry and agricultural services, including control of diagnosis and control of diseases, pests, or biological, chemical, or radiological agents; livestock and poultry or their products; agricultural commodities and land exposed to or affected by hazardous agents. Support: Assist Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical agricultural materials.
Department of Defense	Military response; national mobilization; damage assessment; support to civil and private sector, including law enforcement within authority; respond to all hazards related to nuclear weapons, materials, and devices; through the Secretary of the Army, manage and allocate all usable waters within U.S. jurisdiction; stockpile of storage and critical materials. Support: civil and military national mobilization.
Department of Energy	Identify, analyze, assess, and mitigate hazards from nuclear weapons, materials, and devices; all emergency response activities pertaining to DOE nuclear facilities. Support: advise, assist, and assess the radiological impact associated with national security emergencies.
Department of Health and Human Services	Mobilize health industry and resources to provide health, mental health, and medical services; allocate health, mental health, and medical services' resources among civilian and military claimants; reduce or eliminate adverse health and mental health effects produced by hazardous agents (biological, chemical, or radiological); minimize property and environmental damage; emergency human services, e.g., feeding, registration and inquiry, social services, family reunification, mortuary services and interment. Support: agricultural health services.
Department of Homeland Security	Primary: Advise National Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Coordinate with the other Federal departments and agencies and with State and local government to implement national security emergency preparedness policy. Support: preparing plans and programs, to include plans and capabilities for related to nuclear emergencies; promote programs for Federal buildings and installations.
Department of Justice	Interdict and respond to terrorism incidents in the United States; advise the President and departments/agencies regarding national security emergency powers, plans, and authorities; Coordinate Federal Government domestic law enforcement activities related to national security emergency preparedness, respond to civil disturbances that may result in a national security emergency. Support: the intelligence community in the planning of its counter-intelligence and counter-terrorism programs.
Department of Transportation	Meet essential transportation needs; provide direction to all modes of civil transportation; control civil transportation resources and systems; coordinate with State and local highway agencies in the management of all publicly owned or other highways, roads, streets, bridges, tunnels; maritime and port control, safety, law enforcement and security. Support: Energy to manage transportation resources involved in the bulk movement of energy materials; Federal departments/agencies, State and local governments, the private sector in developing plans to protect essential resources and facilities.

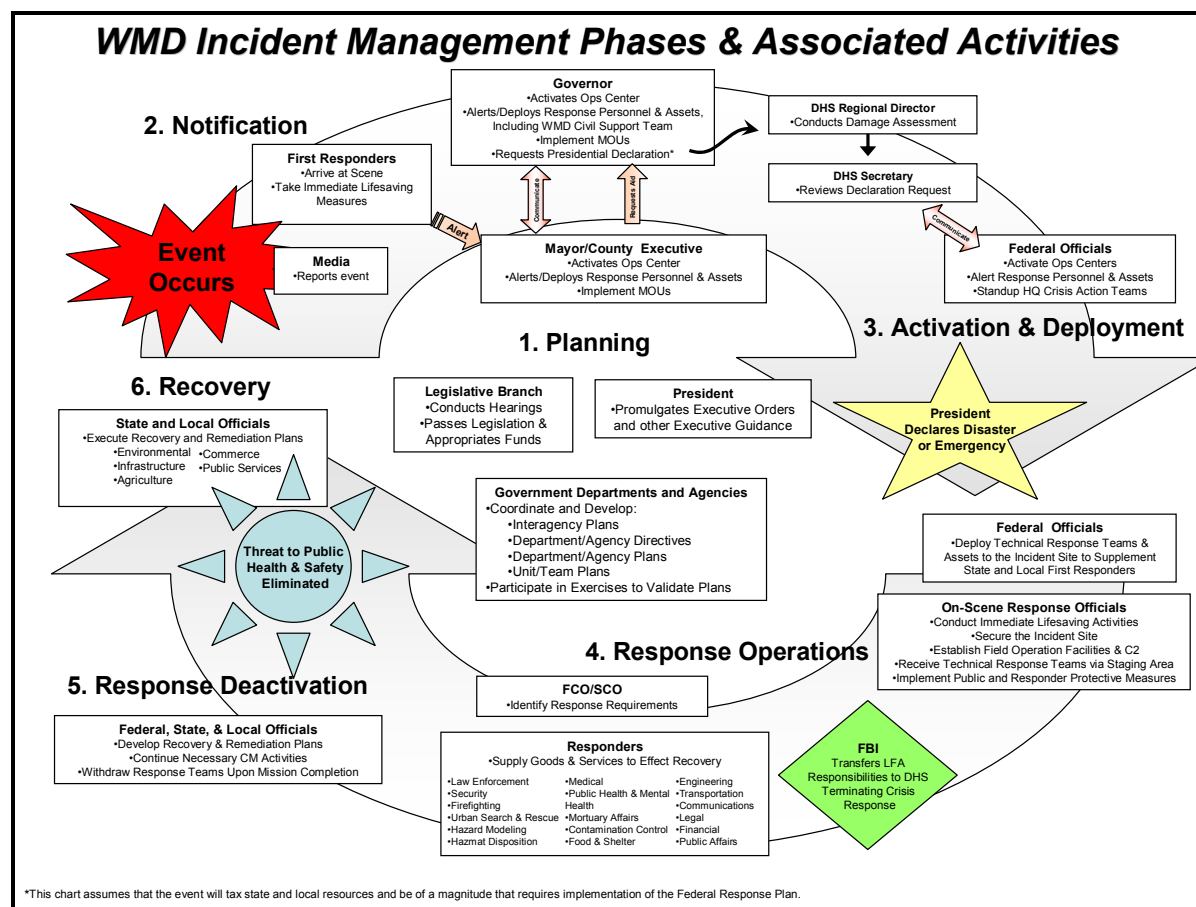
Federal Response Plan

The delegation of roles and responsibilities in Executive Order 12656 serves as one of the bases for the Federal Response Plan (FRP), for which FEMA led the development. The FRP translates legal requirements into operational principles and procedures. The FRP elucidates incident management primary and support roles and responsibilities by way of the following “emergency support functions”: transportation, communication, public works and engineering, firefighting,

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information and planning, mass care, resource support, health and medical services, urban search and rescue, hazardous materials, food, and energy. Other guidelines relevant to the operation of the FRP include the provisions on roles and authorities in the Code of Federal Regulations (CFR), such as Title 42, the Interagency Domestic Terrorism CONPLAN, and the National Contingency Plan, discussed below. The Federal Response Plan was reissued in January 2003 to reflect the passage of the Homeland Security Act of 2002 and the creation of the Department of Homeland Security. The FRP has served as the overarching plan for response and is inclusive of all Federal plans discussed below. **Figure 1** graphically depicts the FRP procedure for responding domestic emergencies involving WMD.

Figure 1: Graphic Depiction of Incident Management under the FRP



4. Responsibilities for Combating Terrorism: PDD-39 and PDD-62

Presidential Decision Directive 39 (PDD-39) details the policy of the United States in combating terrorism and reaffirms the lead agencies for the management of various aspects of the counterterrorism effort.²¹ It recognizes that States have primary responsibility in responding to terrorist incidents, including WMD events, and the Federal Government provides assistance as required. PDD-39 distinguishes between crisis and consequence management, and establishes the Federal Government's primacy when responding to crisis management. PDD-39 defines crisis

²¹ Presidential Decision Directive 39, "United States Policy on Counterterrorism," June 21, 1995.

management as “predominantly a law enforcement response” involving “measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism.” PDD-39 defines consequence management as inclusive of “measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism.” States have primary authority for managing the consequences of terrorism, with the Federal Government providing assistance as required.

Table 3: PDD-39 Assigns Crisis Management Roles and Responsibilities

This Presidential Decision Directive identifies primary and support functions for crisis and consequence management in a domestic terrorist incident. Roles and responsibilities of the key Departments/Agencies are listed below.	
Departments & Agencies	Roles and Responsibilities
Department of Defense	Support: Activates specialized response capabilities to support the civil response; coordinates military mobilization with the appropriate civil agencies
Department of Energy	Support: Activates specialized response capabilities to support the civil response; interfaces, coordinates, and provides technical assistance per agreements signed pursuant to the FRERP.
FEMA / Department of Homeland Security	Lead agency for consequence management; Determine in consultation with Governor and the White House if a Federal consequence management response is required. Support: Support DOJ until the Attorney General transfers lead federal agency role to DHS
Health and Human Services	Support: Activates specialized response capabilities to support the civil response; use the structure, relationships, and capabilities described in the HHS Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological (C/B) Terrorism to support response operations of individual agencies.
Department of Justice Federal Bureau of Investigation	Lead agency for response to threats or acts of terrorism within U.S. territory Lead for crisis management operational response to threats or acts of terrorism within the United States and in international waters when a foreign-flagged vessel is not involved; law enforcement lead in overseas incidents involving U.S. persons or property; on-scene manager until delegated to DHS. Support: to the lead federal agency by operating as the lead for crisis management
Environmental Protection Agency	Support: Activates specialized response capabilities to support the response. Coordinate with other agencies to use the structure, relationships, and capabilities of the National Response System described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to support response operations.
Department of State	Lead: International terrorist incidents that take place outside U.S. territory, and not on U.S. flag vessels or in international water; Leads and manages the Foreign Emergency Support Team

Presidential Decision Directive 62 established the Office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism within the National Security Council.²² The National Coordinator oversees policies and programs relevant to areas such as counter-terrorism, critical infrastructure protection, emergency preparedness and weapons of mass destruction consequence management. The National Coordinator reports to the President, through the Assistant to the President for National Security Affairs, and produces an annual Security Preparedness Report. The National Coordinator also provides advice regarding budgets for counter-terrorism programs and guides the development of crisis management guidelines.

The Interim Federal Response Plan, issued by the Department of Homeland Security, moves away from the distinction between crisis and consequence management in accordance with

²² Presidential Directive 62, “Combating Terrorism,” May 22, 1998.

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Homeland Security Presidential Directive 5. Rather, the Plan articulates closer integration of immediate response activities to save lives and property with recovery and mitigation actions. Nevertheless, the distinction between immediate response functions, to include law enforcement functions of the FBI and subsequent, longer-term response and recovery efforts remains useful.

The United States Government Interagency Domestic Terrorism CONPLAN

The United States Government Interagency Domestic Terrorism Concept of Operations Plan provides overall guidance to Federal, State and local agencies regarding the response of the government to a potential or actual terrorist threat or incident that occurs in the United States, particularly one involving WMD.²³ The Federal Bureau of Investigation led the development of the CONPLAN, which describes the responsibilities of the departments and agencies that agree to support the plan in furtherance of the requirements of PDD-62 and PDD-63. Counter-terrorism responsibilities of the participating Federal agencies are as follows:

- The Attorney General ensures the development and implementation of policies directed at preventing terrorist attacks domestically and prosecutes terrorist acts that violate U.S. law. The Federal Bureau of Investigation executes the Lead Federal Agency (LFA) responsibilities of the Department of Justice for managing the Federal response to terrorist incidents. In this role, the FBI designates a Federal on-scene commander (OSC) to coordinate the overall United States Government response with Federal, State and local authorities until the Attorney General transfers the LFA role to the Department of Homeland Security (DHS).
- DHS, as the lead agency for consequence management, implements the Federal Response Plan (FRP) to manage and coordinate the Federal consequence management response in support of State and local authorities.
- Upon request by the appropriate authority and approval by the Secretary of Defense, the Department of Defense provides military assistance to the LFA and/or the CONPLAN primary agencies during a terrorist incident.
- The Department of Energy provides scientific and technical personnel and equipment in support of the LFA during a nuclear/radiological WMD terrorist incident.
- The EPA provides technical personnel and supporting equipment to the LFA during a WMD terrorist incident.
- The Department of Health and Human Services has primary responsibility for planning for and preparing the national response to medical emergencies arising from the terrorist use of WMD.²⁴

The CONPLAN may be activated in conjunction with the Federal Response Plan if a domestic incident is believed to result from terrorism. The Terrorism Annex of the Federal Response Plan provides for the coordination of activities in such an event.

²³ The United States Government Interagency Domestic Terrorism Concept of Operations Plan, January 2001.

²⁴ *Id.*, p. iv.

5. Responding to Oil Spills and Releases of Hazardous Substances

Executive Order 12580 delegated to various Federal officials responsibilities for implementing the CERCLA as amended by SARA.²⁵ Executive Orders 12580 and 12777 delegated to EPA the responsibility for the amendment of the NCP.

The National Contingency Plan (NCP)

The National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP) details the Federal Government's procedures for responding to discharges of oil, releases of hazardous substances into the environment and releases into the environment of pollutants and contaminants which may present an imminent and substantial danger to public health or welfare of the United States.²⁶ The NCP establishes national and regional response teams and provides a comprehensive system of reporting, containment, and clean up of oil spills and hazardous substances, to include radiological hazards. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the Clean Water Act (CWA), as amended.²⁷

The National Response Team (NRT), an interagency group co-chaired by the EPA and the United States Coast Guard, plans and coordinates the Federal response to oil spills and hazardous substances releases. Among other things, the U.S. Coast Guard manages the National Response Center and maintains a National Strike Force, specially trained and equipped to respond to major marine pollution incidents. It also co-chairs with the EPA all regional response teams (RRTs) and provides on-scene coordinators (OSCs) for coastal zones. Other Federal agencies support the EPA and Coast Guard and act as lead agencies when hazardous substances affect life, property, and other materials within their jurisdiction and/or areas of responsibility. RRTs are responsible for regional response, planning, training and coordination. RRTs are co-chaired by the EPA and the U.S. Coast Guard. State representatives as well as representatives from the Federal agencies that comprise the NRT participate in the RRTs. Each of the 13 RRTs represents a particular geographic region (including the Caribbean and the Pacific Basin). RRTs provide technical advice, equipment and personnel to aid in the response to a spill or release; they develop and maintain regional contingency plans; they train Federal agency RRT members to coordinate emergency response activities with State and local agencies; and they ensure available Federal and State resources exist within their regions.

6. Responding to Radiological Emergencies

Executive Order 12241 delegated to FEMA, now in the Department of Homeland Security, responsibility for publishing the Federal Radiological Emergency Response Plan (FRERP) for accidents at nuclear power facilities.²⁸ The FRERP was required by the Nuclear Regulatory Commission Authorization Act.²⁹

²⁵ Executive Order 12580, "Superfund Implementation," January 23, 1987, as amended by Executive Order 12777, Implementation of section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990, October 18, 1991.

²⁶ The National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (2002).

²⁷ Clean Water Act, 33 U.S.C. 1321, as amended by the Oil Pollution Act of 1990 (OPA), Pub. L. 101-380.

²⁸ Executive Order 12241, "National Contingency Plan," September 29, 1980, as amended by Executive Order 12657, FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants.

²⁹ See text accompanying *supra* note 8.

Federal Radiological Emergency Response Plan

The FRERP sets out the concept of operations for responding to peacetime radiological emergencies that have potential, perceived, or actual consequences within the United States that could require a Federal response.³⁰ FEMA led the development of the FRERP, which sets out the integrated capability of the Federal Government for timely, coordinated response to peacetime radiological emergencies. The FRERP specifies its application with and without a Stafford Act declaration. In the absence of a Stafford Act declaration, each Federal agency will respond to a radiological emergency in accordance with its statutory authorities. The LFA will coordinate the overall Federal response according to the FRERP, and the Department of Homeland Security will coordinate non-radiological support in accordance with the FRP. Pursuant to the FRP, if there is a Stafford Act declaration and a radiological emergency is involved, the Lead Federal Agency will direct the Federal radiological response in accordance with the FRERP, coordinating with the Federal Coordinating Officer (FCO). The FCO will have overall responsibility for coordinating the Federal assistance using the FRP. **Table 4** identifies the LFA for different radiological emergencies.³¹

Table 4: Lead Federal Agencies for Radiological Emergencies

Type of Emergency	Lead Federal Agency
Nuclear Facility	
Licensed by NRC or an Agreement State	Nuclear Regulatory Commission
Owned or operated by DOD or DOE	Department of Defense or Department of Energy
Not licensed, owned, or operated by a Federal Agency or an Agreement State	Environmental Protection Agency
Transportation of Radioactive Materials	
Shipment of materials licensed by NRC or an NRC Agreement State	Nuclear Regulatory Commission
Materials Shipped by or for DOD or DOE	Department of Defense or Department of Energy
Shipment of materials not licensed or owned by a Federal agency or an agreement State	Environmental Protection Agency
Satellites Containing Radioactive Materials	National Aeronautics and Space Administration or Department of Defense
Impact from Foreign or Unknown Source	Environmental Protection Agency
Other Types of Emergencies	Lead Federal Agencies consult

7. HSPD-5: Integration of Federal Plans for Major Disaster and Emergency Response

Homeland Security Presidential Directive 5 emerged from the reconsideration of the structure of the Federal organization for the protection of the homeland and related policies. A primary purpose of the directive is to "enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system." In furtherance of this purpose, the Secretary of Homeland Security is designated as the Federal official in charge of and directed to manage the establishment of a single Federal approach to

³⁰ Authorities for the FRERP are discussed in the text accompanying notes: "Nuclear Regulatory Commission Authorization," Pub. L. 96-295, §304, June 30, 1980; Executive Order 12241, National Contingency Plan, September 29, 1980, as amended by Executive Order 12657, "FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants," Nov. 18, 1988.

³¹ The source for this table is Table II-1 of the FRERP.

domestic incident management. In addition, HSPD-5 states, "In these efforts, with regard to domestic incidents, the United States Government treats crisis management and consequence management as a single, integrated function, rather than as two separate functions." The consolidation of the responsibility and efforts of the Federal Government takes into account that State and local officials are primarily responsible for managing the consequences of terrorist attacks, major disasters and emergencies. It does not change the role of the Attorney General, acting through the FBI, as lead official responsible for criminal investigations of terrorist attacks within the United States. It also does not alter the roles of the DoD in homeland defense and homeland security.

The directive provides for the National Incident Management System as follows:

The Secretary [of Homeland Security] shall develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS). This system will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

It also provides for the establishment of a single "all-discipline, all-hazards" National Response Plan (NRP), to consolidate all Federal Government prevention, preparedness, response and recovery plans currently in use.³² HSPD-5 represents a potential paradigm shift for crisis management operations in that it directs agencies to treat crisis management and consequence management as single, integrated functions. This directive is also significant because the future status of the various federal response plans³³ are "to be determined" pending completion of the NRP.

The Initial National Response Plan

The Initial National Response Plan (NRP) has been released. The Initial NRP and the draft National Incident Management System are discussed in detail in **Section 3**.

8. Department of Defense Support

The Department of Defense can contribute substantial resources to disaster and emergency recovery and response, provided other resources are unavailable and such contribution will not interfere with the DoD's ability to perform its primary mission or adversely affect military preparedness of the United States. The DoD has immediate response authority³⁴ and independent authority to provide assistance to civil authorities. The role of the military services in support of civil authorities has not changed significantly with the recent developments in the law and in

³² Homeland Security Presidential Directive 5, "Management of Domestic Incidents," February 28, 2003.

³³ These plans include the United States Government Interagency Domestic Terrorism Concept of Operations Plan (CONOPS), the Federal Response Plan (FRP), the Federal Radiological Emergency Response Plan (FRERP), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

³⁴ Department of Defense Directive (DoDD) 3025.1, Military Support to Civil Authorities, January 15, 1993; DoDD 3025.15, Military Assistance to Civil Authorities, February 18, 1997

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relevant plans and systems. **Section 2** contains a detailed discussion of the military's role in incident management

A recent organizational change in the DoD is the transfer of civil support responsibilities from the Secretary of the Army to the newly-created position of Assistant Secretary of Defense Homeland Defense (ASD(HD)).³⁵ The ASD(HD), located within the office of the Under Secretary of Defense for Policy, is responsible for overall supervision of DoD's homeland defense activities. The Under Secretary of Defense for Policy is responsible for the "overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for combating terrorism."³⁶ The responsibilities of the DoD Executive Agent for homeland security were transferred from the Secretary of the Army to the ASD(HD) in March, 2003.³⁷ Adjusting to this change, the Army created the position of Domestic Strategy and Support Directorate (DAMO-DS) to plan and coordinate Army activities in the homeland defense and civil support spheres.³⁸

Another major change is the creation of United States Northern Command (NORTHCOM). NORTHCOM has responsibility for providing military forces to assist civil authorities in domestic consequence management operations as well as to defend the homeland. Prior to September 11, 2001, the continental United States (CONUS) was not the responsibility of any combatant commander. The standup of NORTHCOM represents the first time that the U.S. has been designated an area of responsibility (AOR). The new combatant command attained full operational capability on October 1, 2003. The AOR currently includes air, land, and sea approaches, and encompasses CONUS, Alaska, Canada, Mexico, and the surrounding water out to approximately 500 nautical miles. It also includes the Gulf of Mexico, Puerto Rico and the U.S. Virgin Islands. The defense of Hawaii and our territories and possessions in the Pacific remain the responsibility of U.S. Pacific Command.

Strictly a supported command, NORTHCOM has no assigned military forces other than its headquarters personnel. All troops deployed by NORTHCOM will be provided by other commands. NORTHCOM's homeland support and civil defense mission is to:

Conduct operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the assigned area of responsibility; and as directed by the President or the Secretary of Defense, provide military assistance to civil authorities including consequence management operations.³⁹

NORTHCOM will "consolidate under a single unified command existing missions that were previously executed by other military organizations,"⁴⁰ and will perform the command and control function for DoD assets in their homeland defense and civil support roles. NORTHCOM will support other agencies in times of crises and will draw forces from other Commands in order

³⁵ Pub. L. 107-314, Bob Stump National Defense Authorization Act of Fiscal Year 2003 (NDAA 2003), December 2, 2002.

³⁶ NDAA 2003, §902.

³⁷ See Secretary of Defense Memorandum, *Implementation Guidance Regarding the Office of the Assistant Secretary of Defense for Homeland Defense*, March 25, 2003.

³⁸ Report to Congress, *The Role of the Department of Defense in Homeland Security*, September 2003, p. 6

³⁹ This information was taken from U.S. Northern Command's website, www.northcom.mil, on October 2, 2003.

⁴⁰ *Id.*

to meet those requests. NORTHCOM has responsibility for the nation's land and sea defenses, while responsibility for its air defense remains with NORAD.

Historically, the consequence management role of the military has been delegated to the Army Forces Command (FORSCOM) because that command has the preponderance of forces able to respond domestically. FORSCOM, assigned to the force provider Joint Forces Command, likely will provide NORTHCOM with the bulk of forces required for response to a WMD event. NAVNORTH, the Navy's homeland defense component, reports to NORTHCOM. The Commander of Air Combat Command is the Air Force component commander to NORTHCOM. The Marine Corps component of NORTHCOM is Marine Forces Atlantic, which includes the 4th Marine Expeditionary Brigade and the Chemical, Biological Incident Response Force (CBIRF). The Marine Corps also provides Rapid Reaction Forces to support homeland defense.⁴¹

Recognizing the need to ensure all States will be prepared to respond to WMD emergencies, the NDAA 2003, Section 1403 requires the establishment of 23 additional Weapons of Mass Destruction Civil Support Teams, to bring the total of such teams to 55. The Act requires that every U.S. State, the District of Columbia, and territory have at least one team. Congress required, in section 1404, a comprehensive assessment and report by the Secretary of Defense on the responsibilities, mission, and plans for military support of homeland security. The Department of Defense released that report in September 2003.⁴²

Reaffirming the Posse Comitatus Act

Congress, in Section 886 of the Homeland Security Act, "reaffirms the continued importance of the section 1385 of title 18, United States Code" and emphasizes that the Homeland Security Act does not alter in any way the applicability of the Posse Comitatus Act to any uses of the Armed Forces to execute the laws except as expressly authorized by the Constitution or Act of Congress. Some of the Congressional findings on this issue include:

The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law. Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

Existing laws, including chapter 15 of title 10, United States Code (commonly known as the 'Insurrection Act'), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

⁴¹ *The Role of the Department of Defense in Homeland Security*, supra note 38.

⁴² *Id.*, pp. 6-8.

II. Appendix: Citation Excerpts

Executive Order 12196, February 26, 1980

Occupational Safety and Health Programs for Federal Employees

This Document is included in its entirety on the Deskbook CD-ROM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7905 of Title 5 of the United States Code and in accord with Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. 668), it is ordered:

1-1. *Scope of this Order.*

1-101. This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

1-102. For the purposes of this order, the term "agency" means an Executive department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches. Since section 19 of the Occupational Safety and Health Act ("the Act") covers all Federal employees, however, the Secretary of Labor ("the Secretary") shall cooperate and consult with the heads of agencies in the legislative and judicial branches of the government to help them adopt safety and health programs.

1-2. *Heads of Agencies.*

1-201. The head of each agency shall:

(a)Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b)Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary

(c)Designate an agency official with sufficient authority to represent the interest and support of the agency head to be responsible for the management and administration of the agency occupational safety and health program.

(d)Comply with all standards issued under section 6 of the Act, except where the Secretary approves compliance with alternative standards. When an agency head determines it necessary to apply a different standard, that agency head shall, after consultation with appropriate occupational safety and health committees where established, notify the Secretary and provide justification that equivalent or greater protection will be assured by the alternate standard.

(e)Assure prompt abatement of unsafe or unhealthy working condition. Whenever an agency cannot promptly abate such conditions, it shall develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to the conditions shall be informed of the provisions of the plan. When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, an agency shall act with the lessor agency to secure abatement.

(f)Establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities.

(g)Assure that periodic inspections of all agency workplaces are performed by personnel with equipment and competence to recognize hazards.

(h)Assure response to employee reports of hazardous conditions and require inspections within twenty-four hours for imminent dangers, three working days for potential serious conditions, and twenty working days for other conditions. Assure the fight to anonymity of those making the reports.

(i)Assure that employee representatives accompany inspections of agency workplaces.

(j)Operate an occupational safety and health management information system, which shall include the maintenance of such records as the Secretary may require.

(k)Provide safety and health training for supervisory employees, employees responsible for conducting occupational safety and health inspections, all members of occupational safety and health committees where established, and other employees.

Executive Order 12196, February 26, 1980

(I) Submit to the Secretary an annual report on the agency occupational safety and health program that includes information the Secretary prescribes.

1-3. Occupational Safety and Health Committees.

1-301. Agency heads may establish occupational safety and health committees. If committees are established, they shall be established at both the national level and, for agencies with field or regional offices, other appropriate levels. The committees shall be composed of representatives of management and an equal number of nonmanagement employees or their representatives. Where there are exclusive bargaining representatives for employees at the national or other level in an agency, such representatives shall select the appropriate nonmanagement members of the committee.

1-302. The committees shall, except where prohibited by law,

(a) Have access to agency information relevant to their duties, including information on the nature and hazardousness of substances in agency workplaces.

(b) Monitor performance, including agency inspections, of the agency safety and health programs at the level they are established.

(c) Consult and advise the agency on the operation of the program.

1-303. A Committee may request the Secretary of Labor to conduct an evaluation or inspection pursuant to this order if half of a Committee is not substantially satisfied with an agency's response to a report of hazardous working conditions.

....

1-7. General Provisions.

1-701. Employees shall be authorized official time to participate in the activities provided for by this order.

1-702. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or heads of other Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970, Chapter 71 of Title 5 of the United States Code, Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to alter any other provisions of law or Executive Order providing for collective bargaining agreements and related procedures, or affect the responsibilities of the Director of Central Intelligence to protect intelligence sources and methods (50 U.S.C. 403(d) (3)).

1-703. Executive Order No. 11807 of September 28, 1974, is revoked.

1-704. This order is effective July 1, 1980.

THE WHITE HOUSE,
February 26, 1980.

UPDATE

Various Executive Orders

Amended by: EO 12223, June 30, 1980; EO 12258, December 31, 1980; EO 12399, December 12, 1982; EO 12489, September 28, 1984; EO 12534, September 30, 1985; EO 12610, September 30, 1987; EO 12692, September 29, 1989; EO 12774, September 27, 1991; EO 12869, September 30, 1993; EO 12974, September 29, 1995; EO 13062, September 29, 1997; EO 12608, September 9, 1987; EO 13138, September 30, 1999; EO 13225, September 28, 2001; EO 13316, September 17, 2003

Executive Order 12241, November 18, 1988

National Contingency Plan

This Document is included in its entirety on the Deskbook CD-ROM

Source: The provisions of Executive Order 12241 of Sept. 29, 1980, appear at 45 FR 64879, 3 CFR, 1980 Comp., p. 282, unless otherwise noted.

By the authority vested in me as President of the United States of America under Section 304 of Public Law 96-295 (94 Stat. 790) and Section 301 of Title 3 of the United States Code, and in order to provide for the publication of a plan to protect the public health and safety in case of accidents at nuclear power facilities, it is hereby ordered as follows:

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Executive Order 12241, November 18, 1988
1-101. The functions vested in the President by Section 304 of Public Law 96-295 (94 Stat. 790) are delegated to the Director, Federal Emergency Management Agency.
1-102. A copy of the National Contingency Plan shall, from time to time, be published in the Federal Register.
UPDATE
Executive Order 12657, Federal Emergency Management Agency assistance in emergency preparedness planning at commercial nuclear power plants, November 18, 1988 , as amended by E.O. 13286
SEC. 7. Amendments. This Executive Order amends Executive Order Nos. 11490 (34 Fed. Reg. 17567 (October 28, 1969)), 12148 (44 Fed. Reg. 43239 (July 20, 1979)), and 12241 (45 Fed. Reg. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

Executive Order 12580, January 23, 1987
Superfund Implementation
<p><i>This Document is included in its entirety on the Deskbook CD-ROM</i></p> <p>Section 1. National Contingency Plan.</p> <p>(a)</p> <p>(1) The National Contingency Plan ('the NCP') shall provide for a National Response Team ('the NRT') composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and regional response teams as the regional counterpart to the NRT for planning and coordination of regional preparedness and response actions.</p> <p>(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.</p> <p>(3) Except for periods of activation because of a response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman and the representative of the United States Coast Guard shall be the vice chairman of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ('the RRTs'). When the NRT or an RRT is activated for a response action, the chairman shall be the EPA or United States Coast Guard representative, based on whether the release or threatened release occurs in the inland or coastal zone, unless otherwise agreed upon by the EPA and United States Coast Guard representatives.</p> <p>(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this Order, the NRT shall provide policy and program direction to the RRTs.</p> <p>(b)</p> <p>(1) The responsibility for the revision of the NCP and all of the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act is delegated to the Administrator of the Environmental Protection Agency ('the Administrator').</p> <p>(2) The function vested in the President by Section. II 8(p) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) ('SARA') is delegated to the Administrator.</p>
UPDATE
Executive Order 12777 (1991) Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990
<p>Section 1. National Contingency Plan, Area Committees, and Area Contingency Plans. (a) Section 1 of Executive Order No. 12580 of January 23, 1987, is amended to read as follows:</p> <p>``Section 1. National Contingency Plan. (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.</p> <p>``(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.</p> <p>``(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).</p> <p>``(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.</p> <p>``(b) (1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105 (a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil</p>

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Executive Order 12580, January 23, 1987
<p>Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").</p> <p>"(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99 - 499) ("SARA") is delegated to the Administrator.</p> <p>"(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b) (1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:</p> <ol style="list-style-type: none">(1) Secretary of Defense;(2) Secretary of the Interior;(3) Secretary of Agriculture;(4) Secretary of Commerce;(5) Secretary of Energy. <p>In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.</p> <p>"(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.</p> <p>"(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB")."</p> <p>"(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA, respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency ("Administrator") for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).</p>
Executive Order 13016 (1996) Amendment to Executive Order No. 12580, Superfund Implementation
<p>Section 1. A new subsection (c)(3) is added to read as follows:</p> <p>"(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."</p> <p>Section 2. A new subsection (d) (3) is added to section 4 to read as follows:</p> <p>"(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."</p>
Executive Order 13286 (2003) Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security
<p>Sec. 43. Executive Order 12580 of January 23, 1987 ("Superfund Implementation"), as amended, is further amended by:</p> <p>(a) inserting "Department of Homeland Security," after Department of Energy," in section 1(a)(2); and (b) striking "Federal Emergency</p>

Executive Order 12580, January 23, 1987
Management Agency” in section 1(a)(2).

Executive Order 12656, November 18, 1988
Assignment of Emergency Preparedness Responsibilities
<i>This Document is included in its entirety on the Deskbook CD-ROM</i>
Source: The provisions of Executive Order 12656 of Nov. 18, 1988, appear at 53 FR 47491, 3 CFR, 1988 Comp., p. 585, unless otherwise noted.
WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof; NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:
Part 1--Preamble Section 101. National Security Emergency Preparedness Policy.
(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy. All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States. (b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.
Sec. 102. Purpose. (a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies. (b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.
Sec. 103. Scope. (a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency. (b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency. (c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness. (d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are

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Executive Order 12656, November 18, 1988
otherwise assigned by Executive Order 12472.
UPDATE
Executive Order 13074 (1998), Amendment to Executive Order 12656
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reflect the appropriate allocation of funding responsibilities for Noncombatant Evacuation Operations, it is hereby ordered that Executive Order 12656 is amended by adding a new section 501(16) to read as follows: "Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas."
Executive Order 13228 (2001), Establishing the Office of Homeland Security and the Homeland Security Council, October 8, 2001
Sec. 9. Amendments to Executive Order 12656. Executive Order 12656 of November 18, 1988, as amended, is hereby further amended as follows: (a) Section 101(a) is amended by adding at the end of the fourth sentence: ", except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States." (b) Section 104(a) is amended by adding at the end: ", except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States." (c) Section 104(b) is amended by inserting the words "and the Homeland Security Council" after the words "National Security Council." (d) The first sentence of section 104(c) is amended by inserting the words "and the Homeland Security Council" after the words "National Security Council." (e) The second sentence of section 104(c) is replaced with the following two sentences: "Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of and management of those processes as the President may establish. The Director of the Federal Emergency Management Agency also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy." (f) Section 201(7) is amended by inserting the words "and the Homeland Security Council" after the words "National Security Council." (g) Section 206 is amended by inserting the words "and the Homeland Security Council" after the words "National Security Council." (h) Section 208 is amended by inserting the words "or the Homeland Security Council" after the words "National Security Council."
Executive Order 13286 (2003), Executive Order Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security February 28, 2003
Sec. 42. Executive Order 12656 of November 18, 1988 ("Assignment of Emergency Preparedness Responsibilities"), as amended, is further amended by: (a) striking "The Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c) and 1702 and inserting "The Secretary of Homeland Security" in lieu thereof; (b) striking "the Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c), 201(15), 301(9), 401(10), 501(4), 501(7), 502(7), 601(3), 701(5), 801(9), 1302(4), 1401(4), 1701, and 1801(b), and inserting "the Secretary of Homeland Security" in lieu thereof; (c) striking "consistent with current National Security Council guidelines and policies" in section 201(15) and inserting "consistent with current Presidential guidelines and policies" in lieu thereof; (d) striking "Secretary" in section 501(9) and inserting "Secretaries" in lieu thereof; (e) inserting "and Homeland Security" after "Labor" in section 501(9); (f) striking "and" after "State" in section 701(6) and inserting a comma in lieu thereof; (g) inserting ", and Homeland Security" after "Defense" in section 701(6); (h) striking "the Director of the Federal Emergency Management Agency," in section 701(6); and (i) striking "Federal Emergency Management Agency" in the title of Part 17 and inserting "Department of Homeland Security" in lieu thereof. Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

Executive Order 12777
Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990
<p>Section 1. National Contingency Plan, Area Committees, and Area Contingency Plans. (a) Section 1 of Executive Order No. 12580 of January 23, 1987, is amended to read as follows:</p> <p>“Section 1. National Contingency Plan. (a)(1) The National Contingency Plan (“the NCP”), shall provide for a National Response Team (“the NRT”) composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.</p> <p>“(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.</p> <p>“(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency (“EPA”) shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies’ representatives shall be co-chairs of the Regional Response Teams (“the RRTs”). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).</p> <p>“(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.</p> <p>“(b) (1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105 (a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency (“the Administrator”).</p> <p>“(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99 - 499) (“SARA”) is delegated to the Administrator.</p> <p>“(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b) (1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:</p> <ol style="list-style-type: none"> (1) Secretary of Defense; (2) Secretary of the Interior; (3) Secretary of Agriculture; (4) Secretary of Commerce; (5) Secretary of Energy. <p>In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.</p> <p>“(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.</p> <p>“(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget (“OMB”).”</p> <p>“(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA, respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (“Administrator”) for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).</p>
UPDATE
Executive Order 13286 (2003) Executive Order Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security
<p>Sec. 34. Executive Order 12777 of October 18, 1991 (“Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990”), is amended by:</p>

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Executive Order 12777
(a) inserting "and the Secretary of the Department in which the Coast Guard is operating" after "the Secretary of Transportation" in sections 2(b)(2) and 2(d)(2); (b) striking "the Secretary of Transportation" in section 2(e)(2) and wherever it appears in sections 5 and 8 and inserting "the Secretary of the Department in which the Coast Guard is operating" in lieu thereof; and (c) inserting "the Secretary of the Department in which the Coast Guard is operating," after "Agriculture," in section 10(c).

Executive Order 13228, October 8, 2001
Establishing the Office of Homeland Security and the Homeland Security Council
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows: Section 1. Establishment. I hereby establish within the Executive Office of the President an Office of Homeland Security (the "Office") to be headed by the Assistant to the President for Homeland Security. Sec. 2. Mission. The mission of the Office shall be to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The Office shall perform the functions necessary to carry out this mission, including the functions specified in section 3 of this order. Sec. 3. Functions. The functions of the Office shall be to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States. (a) National Strategy. The Office shall work with executive departments and agencies, State and local governments, and private entities to ensure the adequacy of the national strategy for detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist threats or attacks within the United States and shall periodically review and coordinate revisions to that strategy as necessary. (b) Detection. The Office shall identify priorities and coordinate efforts for collection and analysis of information within the United States regarding threats of terrorism against the United States and activities of terrorists or terrorist groups within the United States. The Office also shall identify, in coordination with the Assistant to the President for National Security Affairs, priorities for collection of intelligence outside the United States regarding threats of terrorism within the United States. ... (c) Preparedness. The Office of Homeland Security shall coordinate national efforts to prepare for and mitigate the consequences of terrorist threats or attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to: (i) review and assess the adequacy of the portions of all Federal emergency response plans that pertain to terrorist threats or attacks within the United States; (ii) coordinate domestic exercises and simulations designed to assess and practice systems that would be called upon to respond to a terrorist threat or attack within the United States and coordinate programs and activities for training Federal, State, and local employees who would be called upon to respond to such a threat or attack; (iii) coordinate national efforts to ensure public health preparedness for a terrorist attack, including reviewing vaccination policies and reviewing the adequacy of and, if necessary, increasing vaccine and pharmaceutical stockpiles and hospital capacity; (iv) coordinate Federal assistance to State and local authorities and nongovernmental organizations to prepare for and respond to terrorist threats or attacks within the United States; (v) ensure that national preparedness programs and activities for terrorist threats or attacks are developed and are regularly evaluated under appropriate standards and that resources are allocated to improving and sustaining preparedness based on such evaluations; and (vi) ensure the readiness and coordinated deployment of Federal response teams to respond to terrorist threats or attacks, working with the Assistant to the President for National Security Affairs, when appropriate. (d) Prevention. The Office shall coordinate efforts to prevent terrorist attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to: (i) facilitate the exchange of information among such agencies relating to immigration and visa matters and shipments of cargo; and, working with the Assistant to the President for National Security Affairs, ensure coordination among such agencies to prevent

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the entry of terrorists and terrorist materials and supplies into the United States and facilitate removal of such terrorists from the United States, when appropriate;

(ii) coordinate efforts to investigate terrorist threats and attacks within the United States; and

(iii) coordinate efforts to improve the security of United States borders, territorial waters, and airspace in order to prevent acts of terrorism within the United States, working with the Assistant to the President for National Security Affairs, when appropriate.

(e) Protection. The Office shall coordinate efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) strengthen measures for protecting energy production, transmission, and distribution services and critical facilities; other utilities; telecommunications; facilities that produce, use, store, or dispose of nuclear material; and other critical infrastructure services and critical facilities within the United States from terrorist attack;

(ii) coordinate efforts to protect critical public and privately owned information systems within the United States from terrorist attack;

(iii) develop criteria for reviewing whether appropriate security measures are in place at major public and privately owned facilities within the United States;

(iv) coordinate domestic efforts to ensure that special events determined by appropriate senior officials to have national significance are protected from terrorist attack;

(v) coordinate efforts to protect transportation systems within the United States, including railways, highways, shipping, ports and waterways, and airports and civilian aircraft, from terrorist attack;

(vi) coordinate efforts to protect United States livestock, agriculture, and systems for the provision of water and food for human use and consumption from terrorist attack; and

(vii) coordinate efforts to prevent unauthorized access to, development of, and unlawful importation into the United States of, chemical, biological, radiological, nuclear, explosive, or other related materials that have the potential to be used in terrorist attacks.

(f) Response and Recovery. The Office shall coordinate efforts to respond to and promote recovery from terrorist threats or attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) coordinate efforts to ensure rapid restoration of transportation systems, energy production, transmission, and distribution systems; telecommunications; other utilities; and other critical infrastructure facilities after disruption by a terrorist threat or attack;

(ii) coordinate efforts to ensure rapid restoration of public and private critical information systems after disruption by a terrorist threat or attack;

(iii) work with the National Economic Council to coordinate efforts to stabilize United States financial markets after a terrorist threat or attack and manage the immediate economic and financial consequences of the incident;

(iv) coordinate Federal plans and programs to provide medical, financial, and other assistance to victims of terrorist attacks and their families; and

(v) coordinate containment and removal of biological, chemical, radiological, explosive, or other hazardous materials in the event of a terrorist threat or attack involving such hazards and coordinate efforts to mitigate the effects of such an attack.

(g) Incident Management. The Assistant to the President for Homeland Security shall be the individual primarily responsible for coordinating the domestic response efforts of all departments and agencies in the event of an imminent terrorist threat and during and in the immediate aftermath of a terrorist attack within the United States and shall be the principal point of contact for and to the President with respect to coordination of such efforts. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate.

(h) Continuity of Government. The Assistant to the President for Homeland Security, in coordination with the Assistant to the President for National Security Affairs, shall review plans and preparations for ensuring the continuity of the Federal Government in the event of a terrorist attack that threatens the safety and security of the United States Government or its leadership.

(i) Public Affairs. The Office, subject to the direction of the White House Office of Communications, shall coordinate the strategy of the executive branch for communicating with the public in the event of a terrorist threat or attack within the United States. The Office also shall coordinate the development of programs for educating the public about the nature of terrorist threats and appropriate precautions and responses.

(j) Cooperation with State and Local Governments and Private Entities. The Office shall encourage and invite the participation of State and local governments and private entities, as appropriate, in carrying out the Office's functions.

(k) Review of Legal Authorities and Development of Legislative Proposals. The Office shall coordinate a periodic review and assessment of the legal authorities available to executive departments and agencies to permit them to perform the functions described in this order. When the Office determines that such legal authorities are inadequate, the Office shall develop, in consultation with executive departments and agencies, proposals for presidential action and legislative proposals for submission to the Office of Management and

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<p>Executive Order 13228, October 8, 2001</p> <p>Budget to enhance the ability of executive departments and agencies to perform those functions. The Office shall work with State and local governments in assessing the adequacy of their legal authorities to permit them to detect, prepare for, prevent, protect against, and recover from terrorist threats and attacks.</p> <p>Sec. 4. Administration.</p> <p>(a) The Office of Homeland Security shall be directed by the Assistant to the President for Homeland Security.</p> <p>(b) The Office of Administration within the Executive Office of the President shall provide the Office of Homeland Security with such personnel, funding, and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to carry out the provisions of this order.</p> <p>(c) Heads of executive departments and agencies are authorized, to the extent permitted by law, to detail or assign personnel of such departments and agencies to the Office of Homeland Security upon request of the Assistant to the President for Homeland Security, subject to the approval of the Chief of Staff.</p> <p>Sec. 5. Establishment of Homeland Security Council.</p> <p>(a) I hereby establish a Homeland Security Council (the "Council"), which shall be responsible for advising and assisting the President with respect to all aspects of homeland security. The Council shall serve as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development and implementation of homeland security policies.</p> <p>(b) The Council shall have as its members the President, the Vice President, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Health and Human Services, the Secretary of Transportation, the Director of the Federal Emergency Management Agency, the Director of the Federal Bureau of Investigation, the Director of Central Intelligence, the Assistant to the President for Homeland Security, and such other officers of the executive branch as the President may from time to time designate. The Chief of Staff, the Chief of Staff to the Vice President, the Assistant to the President for National Security Affairs, the Counsel to the President, and the Director of the Office of Management and Budget also are invited to attend any Council meeting. The Secretary of State, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Energy, the Secretary of Labor, the Secretary of Commerce, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, the Assistant to the President for Economic Policy, and the Assistant to the President for Domestic Policy shall be invited to attend meetings pertaining to their responsibilities. The heads of other executive departments and agencies and other senior officials shall be invited to attend Council meetings when appropriate. . . .</p> <p>Source: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr10oc01-144.pdf</p>
<p>UPDATE</p>
<p>Executive Order 13284, Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security, January 23, 2003</p> <p>Sec. 3. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), is amended by inserting "the Secretary of Homeland Security," after "the Secretary of Transportation," in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.</p>
<p>Executive Order 13286, Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security, February 28, 2003</p> <p>Sec. 8. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), as amended, is further amended by:</p> <p>(a) amending section 3(g) to read "(g) <i>Incident Management</i>. Consistent with applicable law, including the statutory functions of the Secretary of Homeland Security, the Assistant to the President for Homeland Security shall be the official primarily responsible for advising and assisting the President in the coordination of domestic incident management activities of all departments and agencies in the event of a terrorist threat, and during and in the aftermath of terrorist attacks, major disasters, or other emergencies, within the United States. Generally, the Assistant to the President for Homeland Security shall serve as the principal point of contact for and to the President with respect to the coordination of such activities. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate."; and</p> <p>(b) inserting ", including the Department of Homeland Security" after "Government departments and agencies" in section 7.</p>

Executive Order 13284, February 28, 2003

Executive Order Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security

Executive Order 13284 of January 23, 2003 Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107–296), and the National Security Act of 1947, as amended (50 U.S.C. 401 et seq.), and in order to reflect responsibilities vested in the Secretary of Homeland Security and take other actions in connection with the establishment of the Department of Homeland Security, it is hereby ordered as follows:

Section 1. Executive Order 13234 of November 9, 2001 (“Presidential Task Force on Citizen Preparedness in the War on Terrorism”), is amended by inserting “the Department of Homeland Security,” after “the Office of Management and Budget,” in section 2(a).

Sec. 2. Executive Order 13231 of October 16, 2001 (“Critical Infrastructure Protection in the Information Age”), is amended by:
(a) inserting “(i) Secretary of Homeland Security;” after “or their designees;” in section 6(a); and
(b) renumbering the subsequent subsections in section 6(a) appropriately.

Sec. 3. Executive Order 13228 of October 8, 2001 (“Establishing the Office of Homeland Security and the Homeland Security Council”), is amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Transportation,” in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

Sec. 4. Executive Order 13224 of September 23, 2001 (“Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), as amended, is further amended by:
(a) inserting “, the Secretary of Homeland Security,” after “the Secretary of the Treasury” in sections 1(b) and 1(d) (the first time it appears); and
(b) inserting “, the Secretary of Homeland Security,” after “the Secretary of State” in sections 1(c) and 1(d) (the second time it appears), 5 (wherever it appears), and 7.

Sec. 5. Executive Order 13151 of April 27, 2000 (“Global Disaster Information Network”), is amended by:
(a) inserting “(8) Department of Homeland Security;” after “(7) Department of Energy;” in section 2(a); and
(b) renumbering the subsequent subsections in section 2(a) appropriately.

Sec. 6. Executive Order 13122 of May 25, 1999 (“Interagency Task Force on the Economic Development of the Southwest Border”), is amended by inserting “Secretary of Homeland Security,” after “Secretary of the Treasury,” in section 1(b).

Sec. 7. Executive Order 13048 of June 10, 1997 (“Improving Administrative Management in the Executive Branch”), is amended by:
(a) inserting “15. Department of Homeland Security;” after “14. Department of Veterans Affairs;” in section 1(a); and
(b) renumbering all subsequent subsections in section 1(a) appropriately.

Sec. 8. Executive Order 12992 of March 15, 1996 (“President’s Council on Counter-Narcotics”), as amended, is further amended by:
(a) inserting “(n) Secretary of Homeland Security;” after “(m) Secretary of Veterans Affairs;” in section 2; and
(b) relettering all subsequent subsections in section 2 appropriately.

Sec. 9. Executive Order 12881 of November 23, 1993 (“Establishment of the National Science and Technology Council”), is amended by:
(a) inserting “(i) Secretary of Homeland Security;” after “(h) Secretary of the Interior;” in section 2; and
(b) relettering all subsequent subsections in section 2 appropriately.

Sec. 10. Executive Order 12859 of August 16, 1993 (“Establishment of the Domestic Policy Council”), is amended by:
(a) inserting “(o) Secretary of Homeland Security;” after “(n) Secretary of the Treasury;” in section 2; and
(b) relettering all subsequent subsections in section 2 appropriately.

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Sec. 11. Executive Order 12590 of March 26, 1987 (“National Drug Policy Board”), is amended by:

- (a) inserting “(13) the Secretary of Homeland Security;” after “(12) the Secretary of Education;” in section 1(b); and
- (b) renumbering all subsequent subsections in section 1(b) appropriately.

Sec. 12. Executive Order 12260 of December 31, 1980 (“Agreement on Government Procurement”), as amended, is further amended by:

- (a) inserting “14. Department of Homeland Security” after “13. Department of Health and Human Services” in the Annex; and
- (b) renumbering all subsequent subsections in the Annex appropriately.

Sec. 13. Executive Order 11958 of January 18, 1977 (“Administration of Arms Export Controls”), as amended, is further amended by:

- (a) striking “Secretary of the Treasury” wherever it appears in section 1(l)(2) and inserting “Attorney General” in lieu thereof; and
- (b) inserting “the Attorney General,” after “the Secretary of the Treasury,” in section 2(a).

Sec. 14. Executive Order 11423 of August 16, 1968 (“Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Certain Facilities Constructed and Maintained on the Borders of the United States”), as amended, is further amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Transportation,” in section 1(b).

Sec. 15. Executive Order 10865 of February 20, 1960 (“Safeguarding Classified Information Within Industry”), as amended, is further amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Energy,” in section 1.

Sec. 16. Executive Order 13011 of July 16, 1996 (“Federal Information Technology”), is amended by:

- (a) inserting “15. Department of Homeland Security;” after “14. Department of Veterans Affairs;” in section 3(b); and
- (b) renumbering all subsequent subsections in section 3(b) appropriately.

Sec. 17. Those elements of the Department of Homeland Security that are supervised by the Department’s Under Secretary for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information, are designated as elements of the Intelligence Community under section 201(h) of the Homeland Security Act of 2002 and section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a).

Sec. 18. Executive Order 12333 of December 4, 1981 (“United States Intelligence Activities”), is amended in Part 3.4(f) by:

- (a) striking “and” at the end of subpart 3.4(f)(6);
- (b) striking the period and inserting “; and” at the end of subpart 3.4(f)(7); and
- (c) adding a new subpart 3.4(f)(8) to read as follows: “(8) Those elements of the Department of Homeland Security that are supervised by the Department’s Under Secretary for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information.”

Sec. 19. Functions of Certain Officials in the Department of Homeland Security.

The Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, and the Assistant Secretary for Information Analysis, Department of Homeland Security, each shall be considered a “Senior Official of the Intelligence Community” for purposes of Executive Order 12333, and all other relevant authorities, and shall: (a) recognize and give effect to all current clearances for access to classified information held by those who become employees of the Department of Homeland Security by operation of law pursuant to the Homeland Security Act of 2002 or by Presidential appointment;

(b) recognize and give effect to all current clearances for access to classified information held by those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities;

(c) make all clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995, or any successor Executive Order, as to employees of, and applicants for employment in, the Department of Homeland Security who do not then hold a current clearance for access to classified information; and

(d) ensure all clearance and access determinations for those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities are made in accordance with Executive Order 12829 of January 6, 1993.

Sec. 20. Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 (“Classified National Security Information”),

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I hereby authorize the Secretary of Homeland Security to classify information originally as "Top Secret." Any delegation of this authority shall be in accordance with section 1.4 of that order or any successor Executive Orders.

Sec. 21. This order shall become effective on January 24, 2003.

Sec. 22. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

THE WHITE HOUSE,
January 23, 2003.

Source: <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-2069.pdf>

UPDATE: None

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Executive Order 13286, February 28, 2003

Executive Order Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security

This Document is included in its entirety on the Deskbook CD-ROM

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107-296) and section 301 of title 3, United States Code, and in order to reflect the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, the transfer of certain agencies and agency components to the Department of Homeland Security, and the delegation of appropriate responsibilities to the Secretary of Homeland Security, it is hereby ordered as follows:

Section 1. Executive Order 13276 of November 15, 2002 ("Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region"), is amended by:

- (a) striking "The Attorney General" wherever it appears in section 1 and inserting "The Secretary of Homeland Security" in lieu thereof; and
- (b) striking "the Attorney General" wherever it appears in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 2. Executive Order 13274 of September 18, 2002 ("Environmental Stewardship and Transportation Infrastructure Project Reviews"), is amended by inserting "Secretary of Homeland Security," after "Secretary of Defense," in section 3(b).

....

Sec. 4. Executive Order 13260 of March 19, 2002 ("Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security"), is amended by:

- (a) striking "the Assistant to the President for Homeland Security (Assistant)" in section 1(c) and inserting "the Secretary of Homeland Security (Secretary)" in lieu thereof;
- (b) striking "the Assistant" wherever it appears in sections 2 and 3 and inserting "the Secretary" in lieu thereof;
- (c) striking "the Office of Administration" in section 3(d) and inserting "the Department of Homeland Security" in lieu thereof;
- (d) striking "the Administrator of General Services" in section 4(a) and inserting "the Secretary of Homeland Security" in lieu thereof; and
- (e) inserting "of General Services" after "Administrator" in section 4(a).

Executive Order 13260 of March 19, 2002, is hereby revoked effective as of March 31, 2003.

....

Sec. 7. Executive Order 13231 of October 16, 2001 ("Critical Infrastructure Protection in the Information Age"), as amended, is further amended to read in its entirety as follows:

"Critical Infrastructure Protection in the Information Age

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

Section 1. Policy. The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

Sec. 2. Continuing Authorities. This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) Executive Branch Information Systems Security. The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 2(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency.

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other

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executive branch departments and agencies with national security information.

- (i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with section 2(a) of this order.
- (ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency when there is a critical deficiency in the security practices of a department or agency within the purview of this section.
- (iii) National Security Systems. The National Security Telecommunications and Information Systems Security Committee, as established by and consistent with NSD-42 and chaired by the Department of Defense, shall be designated as the "Committee on National Security Systems."
- (c) Additional Responsibilities. The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

Sec. 3. The National Infrastructure Advisory Council. The National Infrastructure Advisory Council (NIAC), established on October 16, 2001, shall provide the President through the Secretary of Homeland Security with advice on the security of information systems for critical infrastructure supporting other sectors of the economy: banking and finance, transportation, energy, manufacturing, and emergency government services.

(a) Membership. The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, academia, and State and local government. Members of the NIAC shall have expertise relevant to the functions of the NIAC and generally shall be selected from industry Chief Executive Officers (and equivalently ranked leaders of other organizations) with responsibilities for security of information infrastructure supporting the critical sectors of the economy, including banking and finance, transportation, energy, communications, and emergency government services. Members shall not be full-time officials or employees of the executive branch of the Federal Government. The President shall designate a Chair and Vice Chair from among the members of the NIAC.

(b) Functions of the NIAC. The NIAC will meet periodically to:

- (i) enhance the partnership of the public and private sectors in protecting information systems for critical infrastructures and provide reports on this issue to the Secretary of Homeland Security, as appropriate;
 - (ii) propose and develop ways to encourage private industry to perform periodic risk assessments of critical information and telecommunications systems;
 - (iii) monitor the development of private sector Information Sharing and Analysis Centers (ISACs) and provide recommendations to the President through the Secretary of Homeland Security on how these organizations can best foster improved cooperation among the ISACs, the Department of Homeland Security, and other Federal Government entities;
 - (iv) report to the President through the Secretary of Homeland Security, who shall ensure appropriate coordination with the Assistant to the President for Homeland Security, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs under the terms of this order; and
 - (v) advise lead agencies with critical infrastructure responsibilities, sector coordinators, the Department of Homeland Security, and the ISACs.
- (c) Administration of the NIAC.
- (i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.
 - (ii) Upon request of the Chair, and to the extent permitted by law, the heads of the executive departments and agencies shall provide the NIAC with information and advice relating to its functions.
 - (iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.
 - (iv) Members shall serve without compensation for their work on the NIAC. However, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701-5707).
 - (v) To the extent permitted by law and subject to the availability of appropriations, the Department of Homeland Security shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of the NIAC's functions.

(d) General Provisions.

(i) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the NIAC, the functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Department of Homeland Security in accordance with the guidelines and procedures established by the Administrator of General Services.

(ii) The NIAC shall terminate on October 15, 2003, unless extended by the President.

(iii) Executive Order 13130 of July 14, 1999, was revoked on October 16, 2001.

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(iv) Nothing in this order shall supersede any requirement made by or under law.

Sec. 4. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person."

Sec. 8. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), as amended, is further amended by:

(a) amending section 3(g) to read "(g) Incident Management. Consistent with applicable law, including the statutory functions of the Secretary of Homeland Security, the Assistant to the President for Homeland Security shall be the official primarily responsible for advising and assisting the President in the coordination of domestic incident management activities of all departments and agencies in the event of a terrorist threat, and during and in the aftermath of terrorist attacks, major disasters, or other emergencies, within the United States. Generally, the Assistant to the President for Homeland Security shall serve as the principal point of contact for and to the President with respect to the coordination of such activities. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate."; and

(b) inserting ", including the Department of Homeland Security" after "Government departments and agencies" in section 7.

....

Sec. 10. Executive Order 13212 of May 18, 2001 ("Actions to Expedite Energy-Related Projects"), is amended by inserting "Homeland Security," after "Veterans Affairs," in section 3.

....

Sec. 15. Executive Order 13112 of February 3, 1999 ("Invasive Species"), is amended by inserting "the Secretary of Homeland Security," after "Secretary of Transportation," in section 3(a).

....

Sec. 20. Executive Order 12985 of January 11, 1996 ("Establishing the Armed Forces Service Medal"), is amended by striking "the Secretary of Transportation" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

....

Sec. 24. Executive Order 12919 of June 3, 1994 ("National Defense Industrial Resources Preparedness"), is amended by:

(a) striking "The Director, Federal Emergency Management Agency ("Director, FEMA")" in section 104(b) and inserting "The Secretary of Homeland Security ("the Secretary")" in lieu thereof;

(b) striking "The Director, FEMA," in sections 201(c) and 601(f) and inserting "The Secretary" in lieu thereof;

(c) striking "the Director, FEMA," wherever it appears in sections 201(e), 202(c), 305, 501, 701(e), and 802(e), and inserting "the Secretary" in lieu thereof; and

(d) inserting "the Department of Homeland Security," after "Attorney General," in section 801.

Sec. 25. Executive Order 12906 of April 11, 1994 ("Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure"), is amended by:

(a) striking "and" in section 7(b)(ii);

(b) striking the period at the end of section 7(b)(iii) and inserting "; and" in lieu thereof; and

(c) inserting a new section 7(b)(iv) to read "(iv) the national security-related activities of the Department of Homeland Security as determined by the Secretary of Homeland Security."

....

Sec. 30. Executive Order 12807 of May 24, 1992 ("Interdiction of Illegal Aliens"), is amended by striking "the Attorney General" in section 2(c)(3) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 34. Executive Order 12777 of October 18, 1991 ("Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990"), is amended by:

(a) inserting "and the Secretary of the Department in which the Coast Guard is operating" after "the Secretary of Transportation" in sections 2(b)(2) and 2(d)(2);

(b) striking "the Secretary of Transportation" in section 2(e)(2) and wherever it appears in sections 5 and 8 and inserting "the Secretary of the Department in which the Coast Guard is operating" in lieu thereof; and

(c) inserting "the Secretary of the Department in which the Coast Guard is operating," after "Agriculture," in section 10(c).

....

Sec. 38. Executive Order 12728 of August 22, 1990 ("Delegating the President's Authority to Suspend any Provision of Law Relating to the Promotion, Retirement, or Separation of Members of the Armed Forces"), is amended by striking "the Secretary of Transportation" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

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Sec. 39. Executive Order 12727 of August 27, 1990 ("Ordering the Selected Reserve of the Armed Forces to Active Duty"), is amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 41. Executive Order 12657 of November 18, 1988 ("Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants"), is amended by:

- (a) striking "Federal Emergency Management Agency" in the title and inserting "Department of Homeland Security" in lieu thereof;
- (b) striking "Federal Emergency Management Agency ("FEMA")" in section 1(b) and inserting "Department of Homeland Security ("DHS")" in lieu thereof;
- (c) striking "FEMA" wherever it appears in sections 1(b), 2(b), 2(c), 3, 4, 5, and 6, and inserting "DHS" in lieu thereof; and
- (d) striking "the Director of FEMA" in section 2(a) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 42. Executive Order 12656 of November 18, 1988 ("Assignment of Emergency Preparedness Responsibilities"), as amended, is further amended by:

- (a) striking "The Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c) and 1702 and inserting "The Secretary of Homeland Security" in lieu thereof;
- (b) striking "the Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c), 201(15), 301(9), 401(10), 501(4), 501(7), 502(7), 601(3), 701(5), 801(9), 1302(4), 1401(4), 1701, and 1801(b), and inserting "the Secretary of Homeland Security" in lieu thereof;
- (c) striking "consistent with current National Security Council guidelines and policies" in section 201(15) and inserting "consistent with current Presidential guidelines and policies" in lieu thereof;
- (d) striking "Secretary" in section 501(9) and inserting "Secretaries" in lieu thereof;
- (e) inserting "and Homeland Security" after "Labor" in section 501(9);
- (f) striking "and" after "State" in section 701(6) and inserting a comma in lieu thereof;
- (g) inserting ", and Homeland Security" after "Defense" in section 701(6);
- (h) striking "the Director of the Federal Emergency Management Agency," in section 701(6); and
- (i) striking "Federal Emergency Management Agency" in the title of Part 17 and inserting "Department of Homeland Security" in lieu thereof.

Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

Sec. 43. Executive Order 12580 of January 23, 1987 ("Superfund Implementation"), as amended, is further amended by:

- (a) inserting "Department of Homeland Security," after "Department of Energy," in section 1(a)(2); and
- (b) striking "Federal Emergency Management Agency" in section 1(a)(2).

....

Sec. 46. Executive Order 12472 of April 3, 1984 ("Assignment of National Security and Emergency Preparedness Telecommunications Functions"), is amended by:

- (a) inserting "the Homeland Security Council," after "National Security Council," in sections 1(b), 1(e)(4), 1(f)(3), and 2(c)(4);
- (b) striking "The Secretary of Defense" in section 1(e) and inserting "The Secretary of Homeland Security" in lieu thereof;
- (c) striking "Federal Emergency Management Agency" in sections 1(e)(3) and 3(j) and inserting "Department of Homeland Security" in lieu thereof;
- (d) inserting ", in consultation with the Homeland Security Council," after "National Security Council" in section 2(b)(1);
- (e) inserting ", the Homeland Security Council," after "National Security Council" in sections 2(d) and 2(e);
- (f) striking "the Director of the Federal Emergency Management Agency" in section 2(d)(1) and inserting "the Secretary of Homeland Security" in lieu thereof;
- (g) striking "Federal Emergency Management Agency. The Director of the Federal Emergency Management Agency shall:" in section 3(b) and inserting "Department of Homeland Security. The Secretary of Homeland Security shall:" in lieu thereof; and
- (h) adding at the end of section 3(d) the following new paragraph: "(3) Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title."

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Sec. 47. Executive Order 12382 of September 13, 1982 ("President's National Security Telecommunications Advisory Committee"), as amended, is further amended by:

- (a) inserting "through the Secretary of Homeland Security," after "the President," in sections 2(a) and 2(b);
- (b) striking "and to the Secretary of Defense" in section 2(e) and inserting ", through the Secretary of Homeland Security," in lieu thereof; and
- (c) striking "the Secretary of Defense" in sections 3(c) and 4(a) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 48. Executive Order 12341 of January 21, 1982 ("Cuban and Haitian Entrants"), is amended by:

- (a) striking "The Attorney General" in section 2 and inserting "The Secretary of Homeland Security" in lieu thereof; and
- (b) striking "the Attorney General" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 49. Executive Order 12208 of April 15, 1980 ("Consultations on the Admission of Refugees"), as amended, is further amended by:

- (a) striking "the following functions: (a) To" in section 1 101 and inserting "to" in lieu thereof;
- (b) striking "the Attorney General" in section 1-101(a) and inserting "the Secretary of Homeland Security" in lieu thereof;
- (c) striking sections 1-101(b) and 1-102; and
- (d) redesignating sections 1-103 and 1-104 as sections 1-102 and 1-103, respectively.

Sec. 52. Executive Order 12148 of July 20, 1979 ("Federal Emergency Management"), as amended, is further amended by:

- (a) striking "the Federal Emergency Management Agency" whenever it appears and inserting "the Department of Homeland Security" in lieu thereof; and
- (b) striking "the Director of the Federal Emergency Management Agency" wherever it appears and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 53. Executive Order 12146 of July 18, 1979 ("Management of Federal Legal Resources"), as amended, is further amended by:

- (a) striking "15" in section 1-101 and inserting "16" in lieu thereof;
- (b) inserting "(n) The Department of Homeland Security." after "(m) The Department of the Treasury." in section 1-102; and
- (c) relettering the subsequent subsections in section 1-102 appropriately.

....

Sec. 85. Designation as a Defense Agency of the United States.

I hereby designate the Department of Homeland Security as a defense agency of the United States for the purposes of chapter 17 of title 35 of the United States Code.

....

Sec. 87. Functions of Certain Officials in the Coast Guard.

The Commandant and the Assistant Commandant for Intelligence of the Coast Guard each shall be considered a "Senior Official of the Intelligence Community" for purposes of Executive Order 12333 of December 4, 1981, and all other relevant authorities.

....

Sec. 89. Savings Provision.

Except as otherwise specifically provided above or in Executive Order 13284 of January 23, 2003 ("Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security"), references in any prior Executive Order relating to an agency or an agency component that is transferred to the Department of Homeland Security ("the Department"), or relating to a function that is transferred to the Secretary of Homeland

Security, shall be deemed to refer, as appropriate, to the Department or its officers, employees, agents, organizational units, or functions.

Sec. 90. Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

Sec. 91. Nothing in this order shall be construed to limit or restrict the authorities of the Central Intelligence Agency and the Director of Central Intelligence pursuant to the National Security Act of 1947 and the CIA Act of 1949.

....

GEORGE W. BUSH
THE WHITE HOUSE,
February 28, 2003.

Source: <http://www.nara.gov/fedreg/codific/eos/e12656.html>

UPDATE: None

Presidential Decision Directive 39, June 21, 1995

United States Policy on Counterterrorism

Purpose. To provide an unclassified synopsis of the U.S. national policy on terrorism as laid out in Presidential Decision Directive-39 (PDD-39).

Background. On June 21, 1995, the President signed PDD-39, U.S. Policy on Counterterrorism. This classified document laid out the national policy and assigned specific missions to designated Federal Departments and agencies. This unclassified synopsis is provided to enable Federal, State, and local emergency response and Consequence Management personnel without appropriate security clearances to have a basic understanding of the provisions of PDD-39.

PDD-39 validates and reaffirms existing Federal Lead Agency responsibilities for counterterrorism, which are assigned to the Department of Justice (DOJ), as delegated to the Federal Bureau of Investigation (FBI), for threats or acts of terrorism within the United States. The FBI as the lead for Crisis Management will involve only those Federal agencies required and designated in classified documents. The Directive further states that the Federal Emergency Management Agency (FEMA), with the support of all agencies in the Federal Response Plan (FRP), will support the FBI in Washington, DC, and on scene until the Attorney General transfers Lead Agency to FEMA. FEMA retains responsibility for Consequence Management throughout the Federal response.

Definitions. Crisis Management includes measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. The laws of the United States assign primary authority to the Federal Government to prevent and respond to acts of terrorism; State and local governments provide assistance as required. Crisis management is predominantly a law enforcement response.

Consequence Management includes measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism. The laws of the United States assign primary authority to the States to respond to the consequences of terrorism; the Federal Government provides assistance as required.

U.S. Policy on Counterterrorism

General. Terrorism is both a threat to our national security as well as a criminal act. The Administration has stated that it is the policy of the United States to use all appropriate means to deter, defeat, and respond to all terrorist attacks on our territory and resources, both with people and facilities, wherever they occur. In support of these efforts, the United States will:

- Employ efforts to deter, preempt, apprehend, and prosecute terrorists.
- Work closely with other governments to carry out counterterrorism policy and combat terrorist threats against them.
- Identify sponsors of terrorists, isolate them, and ensure they pay for their actions.
- Make no concessions to terrorists.

Measures to Combat Terrorism. To ensure that the United States is prepared to combat terrorism in all of its forms, a number of measures have been directed. These include reducing vulnerabilities to terrorism, deterring and responding to terrorist attacks, and having capabilities to prevent and manage the consequences of terrorist use of nuclear, biological, or chemical (NBC) weapons, including those of mass destruction.

a. *Reduce Vulnerabilities.* In order to reduce vulnerabilities to terrorism, both at home and abroad, all departmental/agency heads have been directed to ensure that their personnel and facilities are fully protected against terrorism. Specific efforts that will be conducted to ensure our security against terrorist attacks include the following:

- Review the vulnerability of government facilities and critical national infrastructure.
- Expand the program of counterterrorism.
- Reduce vulnerabilities affecting civilian personnel/facilities abroad and military personnel/facilities.
- Exclude/deport persons who pose a terrorist threat.
- Prevent unlawful traffic in firearms and explosives and protect the President and other officials against terrorist attack.
- Reduce U.S. vulnerabilities to international terrorism through intelligence collection/ analysis, counterintelligence, and covert action.

b. *Deter.* To deter terrorism, it is necessary to provide a clear public position that our policies will not be affected by terrorist acts and we will vigorously deal with terrorists/sponsors to reduce terrorist capabilities and support. In this regard, we must make it clear that we will

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not allow terrorism to succeed and that the pursuit, arrest, and prosecution of terrorists are of the highest priority. Our goals include the disruption of terrorist sponsored activity, including termination of financial support, arrest and punishment of terrorists as criminals, application of U.S. laws and new legislation to prevent terrorist groups from operating in the United States, and application of extraterritorial statutes to counter acts of terrorism and apprehend terrorists outside of the United States. The return of terrorists overseas who are wanted for violation of U.S. law is of the highest priority and a central issue in bilateral relations with any state that harbors or assists them.

c. *Respond.* To respond to terrorism, we must have a rapid and decisive capability to protect Americans, defeat or arrest terrorists, respond against terrorist sponsors, and provide relief to the victims of terrorists. The goal during the immediate response phase of an incident is to terminate terrorist attacks, so the terrorists do not accomplish their objectives or maintain their freedom, while seeking to minimize damage and loss of life and provide emergency assistance. After an incident has occurred, a rapidly deployable interagency Emergency Support Team (EST) will provide required capabilities on scene: a Foreign Emergency Support Team (FEST) for foreign incidents, and a Domestic Emergency Support Team (DEST) for domestic incidents. DEST membership will be limited to those agencies required to respond to the specific incident. Both teams will include elements for specific types of incidents such as nuclear, chemical, and biological threats.

The Director, FEMA will ensure that the FRP is adequate for Consequence Management activities in response to terrorist attacks against large U.S. populations, including those where weapons of mass destruction (WMD) are involved. FEMA will also ensure that State response plans and capabilities are adequate and tested. FEMA, supported by all FRP signatories, will assume the Lead Agency role for consequence management in Washington, DC, and on scene. If large-scale casualties and infrastructure damage occur, the President may appoint a Personal Representative for Consequence Management as the on-scene Federal authority during recovery. A roster of senior and former government officials willing to perform these functions will be created, and the rostered individuals will be provided training and information necessary to allow themselves to be called on short notice.

Agencies will bear the cost of their participation in terrorist incidents and counter-terrorist operations, unless otherwise directed.

d. *NBC Consequence Management.* The development of effective capabilities for preventing and managing the consequence of terrorist use of NBC materials or weapons is of the highest priority. Terrorist acquisition of WMD is not acceptable, and there is no higher priority than preventing the acquisition of such materials/weapons or removing the capability from terrorist groups.

Source: <http://www.ojp.usdoj.gov/odp/docs/pdd39.htm>

UPDATE : None

Presidential Decision Directive 62, May 22, 1998

White House Fact Sheet: Combating Terrorism

Since he took office, President Clinton has made the fight against terrorism a top national security objective. The President has worked to deepen our cooperation with our friends and allies abroad, strengthen law enforcement's counterterrorism tools and improve security on airplanes and at airports. These efforts have paid off as major terrorist attacks have been foiled and more terrorists have been apprehended, tried and given severe prison terms.

Yet America's unrivaled military superiority means that potential enemies -- whether nations or terrorist groups -- that choose to attack us will be more likely to resort to terror instead of conventional military assault. Moreover, easier access to sophisticated technology means that the destructive power available to terrorists is greater than ever. Adversaries may thus be tempted to use unconventional tools, such as weapons of mass destruction, to target our cities and disrupt the operations of our government. They may try to attack our economy and critical infrastructure using advanced computer technology.

President Clinton is determined that in the coming century, we will be capable of deterring and preventing such terrorist attacks. The President is convinced that we must also have the ability to limit the damage and manage the consequences should such an attack occur.

To meet these challenges, President Clinton signed Presidential Decision Directive 62. This Directive creates a new and more systematic approach to fighting the terrorist threat of the next century. It reinforces the mission of the many U.S. agencies charged with roles in defeating terrorism; it also codifies and clarifies their activities in the wide range of U.S. counter-terrorism programs, from apprehension and prosecution of terrorists to increasing transportation security, enhancing response capabilities and protecting the computer-based systems that lie at the heart of America's economy. The Directive will help achieve the President's goal of ensuring that we meet the threat of terrorism in the 21st century with the same rigor that we have met military threats in this century.

The National Coordinator

To achieve this new level of integration in the fight against terror, PDD-62 establishes the office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism. The National Coordinator will oversee the broad variety of relevant polices and programs including such areas as counter-terrorism, protection of critical infrastructure, preparedness and consequence management for weapons of mass destruction. The National Coordinator will work within the National Security Council, report to the President through the Assistant to the President for National Security Affairs and produce for him an annual Security Preparedness Report. The National Coordinator will also provide advice regarding budgets for counter-terror programs and coordinate the development of guidelines that might be needed for crisis management.

Source: <http://www.au.af.mil/au/awc/awcgate/ciao/62factsheet.htm>

UPDATE: None

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Homeland Security Presidential Directive-1, October 29, 2001

Organization and Operation of the Homeland Security Council

This is the first in a series of Homeland Security Presidential Directives that shall record and communicate presidential decisions about the homeland security policies of the United States.

A. Homeland Security Council

Securing Americans from terrorist threats or attacks is a critical national security function. It requires extensive coordination across a broad spectrum of Federal, State, and local agencies to reduce the potential for terrorist attacks and to mitigate damage should such an attack occur. The Homeland Security Council (HSC) shall ensure coordination of all homeland security-related activities among executive departments and agencies and promote the effective development and implementation of all homeland security policies.

B. The Homeland Security Council Principals Committee

The HSC Principals Committee (HSC/PC) shall be the senior interagency forum under the HSC for homeland security issues. The HSC/PC is composed of the following members: the Secretary of the Treasury; the Secretary of Defense; the Attorney General; the Secretary of Health and Human Services; the Secretary of Transportation; the Director of the Office of Management and Budget; the Assistant to the President for Homeland Security (who serves as Chairman); the Assistant to the President and Chief of Staff; the Director of Central Intelligence; the Director of the Federal Bureau of Investigation; the Director of the Federal Emergency Management Agency; and the Assistant to the President and Chief of Staff to the Vice President. The Assistant to the President for National Security Affairs shall be invited to attend all meetings of the HSC/PC. The following people shall be invited to HSC/PC meetings when issues pertaining to their responsibilities and expertise are discussed: the Secretary of State; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Labor; the Secretary of Energy; the Secretary of Veterans Affairs; the Administrator of the Environmental Protection Agency; and the Deputy National Security Advisor for Combating Terrorism. The Counsel to the President shall be consulted regarding the agenda of HSC/PC meetings and shall attend any meeting when, in consultation with the Assistant to the President for Homeland Security, the Counsel deems it appropriate. The Deputy Director of the Office of Homeland Security shall serve as Executive Secretary of the HSC/PC. Other heads of departments and agencies and senior officials shall be invited, when appropriate.

The HSC/PC shall meet at the call of the Assistant to the President for Homeland Security, in consultation with the regular attendees of the HSC/PC. The Assistant to the President for Homeland Security shall determine the agenda, in consultation with the regular attendees, and shall ensure that all necessary papers are prepared. When global terrorism with domestic implications is on the agenda of the HSC/PC, the Assistant to the President for Homeland Security and the Assistant to the President for National Security Affairs shall perform these tasks in concert.

C. Homeland Security Council Deputies Committee

The HSC Deputies Committee (HSC/DC) shall serve as the senior sub-Cabinet interagency forum for consideration of policy issues affecting homeland security. The HSC/DC can task and review the work of the HSC interagency groups discussed below. The HSC/DC shall help ensure that issues brought before the HSC/PC or the HSC have been properly analyzed and prepared for action. The HSC/DC shall have the following as its regular members: the Deputy Secretary of the Treasury; the Deputy Secretary of Defense; the Deputy Attorney General; the Deputy Secretary of Health and Human Services; the Deputy Secretary of Transportation; the Deputy Director of the Office of Homeland Security (who serves as Chairman); the Deputy Director of Central Intelligence; the Deputy Director of the Federal Bureau of Investigation; the Deputy Director of the Federal Emergency Management Agency; the Deputy Director of the Office of Management and Budget; and the Assistant to the President and Chief of Staff to the Vice President. The Assistant to the President and Deputy National Security Advisor shall be invited to attend all meetings of the HSC/DC. The following people shall be invited to attend when issues pertaining to their responsibilities and expertise are to be discussed: the Deputy Secretary of State; the Deputy Secretary of the Interior; the Deputy Secretary of Agriculture; the Deputy Secretary of Commerce; the Deputy Secretary of Labor; the Deputy Secretary of Energy; the Deputy Secretary of Veterans Affairs; the Deputy Administrator of the Environmental Protection Agency; the Deputy National Security Advisor for Combating Terrorism; and the Special Advisor to the President for Cyber-space Security. The Executive Secretary of the Office of Homeland Security shall serve as Executive Secretary of the HSC/DC. Other senior officials shall be invited, when appropriate.

The HSC/DC shall meet at the call of its Chairman. Any regular member of the HSC/DC may request a meeting of the HSC/DC for prompt crisis management. For all meetings, the Chairman shall determine the agenda, in consultation with the regular members, and shall ensure that necessary papers are prepared.

D. Homeland Security Council Policy Coordination Committees

HSC Policy Coordination Committees (HSC/PCCs) shall coordinate the development and implementation of homeland security policies

Homeland Security Presidential Directive-1, October 29, 2001

by multiple departments and agencies throughout the Federal Government, and shall coordinate those policies with State and local government. The HSC/PCCs shall be the main day-to-day fora for interagency coordination of homeland security policy. They shall provide policy analysis for consideration by the more senior committees of the HSC system and ensure timely responses to decisions made by the President. Each HSC/PCC shall include representatives from the executive departments, offices, and agencies represented in the HSC/DC.

Eleven HSC/PCCs are hereby established for the following functional areas, each to be chaired by the designated Senior Director from the Office of Homeland Security:

1. Detection, Surveillance, and Intelligence (by the Senior Director, Intelligence and Detection);
2. Plans, Training, Exercises, and Evaluation (by the Senior Director, Policy and Plans);
3. Law Enforcement and Investigation (by the Senior Director, Intelligence and Detection);
4. Weapons of Mass Destruction (WMD) Consequence Management (by the Senior Director, Response and Recovery);
5. Key Asset, Border, Territorial Waters, and Airspace Security (by the Senior Director, Protection and Prevention);
6. Domestic Transportation Security (by the Senior Director, Protection and Prevention);
7. Research and Development (by the Senior Director, Research and Development);
8. Medical and Public Health Preparedness (by the Senior Director, Protection and Prevention);
9. Domestic Threat Response and Incident Management (by the Senior Director, Response and Recovery);
10. Economic Consequences (by the Senior Director, Response and Recovery); and
11. Public Affairs (by the Senior Director, Communications).

Each HSC/PCC shall also have an Executive Secretary to be designated by the Assistant to the President for Homeland Security (from the staff of the HSC). The Executive Secretary of each HSC/PCC shall assist his or her Chair in scheduling the meetings of the HSC/PCC, determining the agenda, recording the actions taken and tasks assigned, and ensuring timely responses to the central policy-making committees of the HSC system. The Chairman of each HSC/PCC, in consultation with its Executive Secretary, may invite representatives of other executive departments and agencies to attend meetings of the HSC/PCC, when appropriate.

The Assistant to the President for Homeland Security, at the direction of the President and in consultation with the Vice President, the Attorney General, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Transportation, and the Director of the Federal Emergency Management Agency, may establish additional HSC/PCCs, as appropriate.

The Chairman of each HSC/PCC, with the agreement of its Executive Secretary, may establish subordinate working groups to assist the PCC in the performance of its duties.

The Vice President may attend any and all meetings of any entity established by or under this directive.

This directive shall be construed in a manner consistent with Executive Order 13228.

GEORGE W. BUSH

UPDATE: None

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Homeland Security Presidential Directive-3, March 12, 2002
Homeland Security Advisory System
For Immediate Release Office of the Press Secretary March 12, 2002
Purpose
<p>The Nation requires a Homeland Security Advisory System to provide a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to Federal, State, and local authorities and to the American people. Such a system would provide warnings in the form of a set of graduated "Threat Conditions" that would increase as the risk of the threat increases. At each Threat Condition, Federal departments and agencies would implement a corresponding set of "Protective Measures" to further reduce vulnerability or increase response capability during a period of heightened alert.</p> <p>This system is intended to create a common vocabulary, context, and structure for an ongoing national discussion about the nature of the threats that confront the homeland and the appropriate measures that should be taken in response. It seeks to inform and facilitate decisions appropriate to different levels of government and to private citizens at home and at work.</p>
Homeland Security Advisory System
<p>The Homeland Security Advisory System shall be binding on the executive branch and suggested, although voluntary, to other levels of government and the private sector. There are five Threat Conditions, each identified by a description and corresponding color. From lowest to highest, the levels and colors are:</p> <p>Low = Green; Guarded = Blue; Elevated = Yellow; High = Orange; Severe = Red.</p> <p>The higher the Threat Condition, the greater the risk of a terrorist attack. Risk includes both the probability of an attack occurring and its potential gravity. Threat Conditions shall be assigned by the Attorney General in consultation with the Assistant to the President for Homeland Security. Except in exigent circumstances, the Attorney General shall seek the views of the appropriate Homeland Security Principals or their subordinates, and other parties as appropriate, on the Threat Condition to be assigned. Threat Conditions may be assigned for the entire Nation, or they may be set for a particular geographic area or industrial sector. Assigned Threat Conditions shall be reviewed at regular intervals to determine whether adjustments are warranted.</p> <p>For facilities, personnel, and operations inside the territorial United States, all Federal departments, agencies, and offices other than military facilities shall conform their existing threat advisory systems to this system and henceforth administer their systems consistent with the determination of the Attorney General with regard to the Threat Condition in effect.</p> <p>The assignment of a Threat Condition shall prompt the implementation of an appropriate set of Protective Measures. Protective Measures are the specific steps an organization shall take to reduce its vulnerability or increase its ability to respond during a period of heightened alert. The authority to craft and implement Protective Measures rests with the Federal departments and agencies. It is recognized that departments and agencies may have several preplanned sets of responses to a particular Threat Condition to facilitate a rapid, appropriate, and tailored response. Department and agency heads are responsible for developing their own Protective Measures and other antiterrorism or self-protection and continuity plans, and resourcing, rehearsing, documenting, and maintaining these plans. Likewise, they retain the authority to respond, as necessary, to risks, threats, incidents, or events at facilities within the specific jurisdiction of their department or agency, and, as authorized by law, to direct agencies and industries to implement their own Protective Measures. They shall continue to be responsible for taking all appropriate proactive steps to reduce the vulnerability of their personnel and facilities to terrorist attack. Federal department and agency heads shall submit an annual written report to the President, through the Assistant to the President for Homeland Security, describing the steps they have taken to develop and implement appropriate Protective Measures for each Threat Condition. Governors, mayors, and the leaders of other organizations are encouraged to conduct a similar review of their organizations' Protective Measures.</p>

Homeland Security Presidential Directive-3, March 12, 2002

The decision whether to publicly announce Threat Conditions shall be made on a case-by-case basis by the Attorney General in consultation with the Assistant to the President for Homeland Security. Every effort shall be made to share as much information regarding the threat as possible, consistent with the safety of the Nation. The Attorney General shall ensure, consistent with the safety of the Nation, that State and local government officials and law enforcement authorities are provided the most relevant and timely information. The Attorney General shall be responsible for identifying any other information developed in the threat assessment process that would be useful to State and local officials and others and conveying it to them as permitted consistent with the constraints of classification. The Attorney General shall establish a process and a system for conveying relevant information to Federal, State, and local government officials, law enforcement authorities, and the private sector expeditiously.

The Director of Central Intelligence and the Attorney General shall ensure that a continuous and timely flow of integrated threat assessments and reports is provided to the President, the Vice President, Assistant to the President and Chief of Staff, the Assistant to the President for Homeland Security, and the Assistant to the President for National Security Affairs. Whenever possible and practicable, these integrated threat assessments and reports shall be reviewed and commented upon by the wider interagency community.

A decision on which Threat Condition to assign shall integrate a variety of considerations. This integration will rely on qualitative assessment, not quantitative calculation. Higher Threat Conditions indicate greater risk of a terrorist act, with risk including both probability and gravity. Despite best efforts, there can be no guarantee that, at any given Threat Condition, a terrorist attack will not occur. An initial and important factor is the quality of the threat information itself. The evaluation of this threat information shall include, but not be limited to, the following factors:

- To what degree is the threat information credible?
 - To what degree is the threat information corroborated?
 - To what degree is the threat specific and/or imminent?
 - How grave are the potential consequences of the threat?
- Threat Conditions and Associated Protective Measures

The world has changed since September 11, 2001. We remain a Nation at risk to terrorist attacks and will remain at risk for the foreseeable future. At all Threat Conditions, we must remain vigilant, prepared, and ready to deter terrorist attacks. The following Threat Conditions each represent an increasing risk of terrorist attacks. Beneath each Threat Condition are some suggested Protective Measures, recognizing that the heads of Federal departments and agencies are responsible for developing and implementing appropriate agency-specific Protective Measures:

Low Condition (Green). This condition is declared when there is a low risk of terrorist attacks. Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures they develop and implement:
Refining and exercising as appropriate preplanned Protective Measures;
Ensuring personnel receive proper training on the Homeland Security Advisory System and specific preplanned department or agency Protective Measures; and

Institutionalizing a process to assure that all facilities and regulated sectors are regularly assessed for vulnerabilities to terrorist attacks, and all reasonable measures are taken to mitigate these vulnerabilities.

Guarded Condition (Blue). This condition is declared when there is a general risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Condition, Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

- Checking communications with designated emergency response or command locations;
- Reviewing and updating emergency response procedures; and
- Providing the public with any information that would strengthen its ability to act appropriately.

Elevated Condition (Yellow). An Elevated Condition is declared when there is a significant risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Conditions, Federal departments and agencies should consider the following general measures in addition to the Protective Measures that they will develop and implement:

- Increasing surveillance of critical locations;
- Coordinating emergency plans as appropriate with nearby jurisdictions;
- Assessing whether the precise characteristics of the threat require the further refinement of preplanned Protective Measures; and
- Implementing, as appropriate, contingency and emergency response plans.

High Condition (Orange). A High Condition is declared when there is a high risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Conditions, Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

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Coordinating necessary security efforts with Federal, State, and local law enforcement agencies or any National Guard or other appropriate armed forces organizations;

Taking additional precautions at public events and possibly considering alternative venues or even cancellation;

Preparing to execute contingency procedures, such as moving to an alternate site or dispersing their workforce; and

Restricting threatened facility access to essential personnel only.

Severe Condition (Red). A Severe Condition reflects a severe risk of terrorist attacks. Under most circumstances, the Protective Measures for a Severe Condition are not intended to be sustained for substantial periods of time. In addition to the Protective Measures in the previous Threat Conditions, Federal departments and agencies also should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

Increasing or redirecting personnel to address critical emergency needs;

Assigning emergency response personnel and pre-positioning and mobilizing specially trained teams or resources;

Monitoring, redirecting, or constraining transportation systems; and

Closing public and government facilities.

Comment and Review Periods

The Attorney General, in consultation and coordination with the Assistant to the President for Homeland Security, shall, for 45 days from the date of this directive, seek the views of government officials at all levels and of public interest groups and the private sector on the proposed Homeland Security Advisory System.

One hundred thirty-five days from the date of this directive the Attorney General, after consultation and coordination with the Assistant to the President for Homeland Security, and having considered the views received during the comment period, shall recommend to the President in writing proposed refinements to the Homeland Security Advisory System.

Source: <http://www.whitehouse.gov/news/releases/2002/03/print/20020312-5.html>

UPDATE

HSPD-5, Management of Domestic Incidents, February 28, 2003

Technical and Conforming Amendments to Homeland Security Presidential Directive-3 (HSPD-3)

(24) The Homeland Security Act of 2002 assigned the responsibility for administering the Homeland Security Advisory System to the Secretary of Homeland Security. Accordingly, HSPD-3 of March 11, 2002 ("Homeland Security Advisory System") is amended as follows:

(a) replacing the third sentence of the second paragraph entitled "Homeland Security Advisory System" with "Except in exigent circumstances, the Secretary of Homeland Security shall seek the views of the Attorney General, and any other federal agency heads the Secretary deems appropriate, including other members of the Homeland Security Council, on the Threat Condition to be assigned."

(b) inserting "At the request of the Secretary of Homeland Security, the Department of Justice shall permit and facilitate the use of delivery systems administered or managed by the Department of Justice for the purposes of delivering threat information pursuant to the Homeland Security Advisory System." as a new paragraph after the fifth paragraph of the section entitled "Homeland Security Advisory System."

(c) inserting ", the Secretary of Homeland Security" after "The Director of Central Intelligence" in the first sentence of the seventh paragraph of the section entitled "Homeland Security Advisory System".

(d) striking "Attorney General" wherever it appears (except in the sentences referred to in subsections (a) and (c) above), and inserting "the Secretary of Homeland Security" in lieu thereof; and

(e) striking the section entitled "Comment and Review Periods."

Homeland Security Presidential Directive (HSPD) 5, February 28, 2003

Management of Domestic Incidents

Purpose

(1) To enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system.

Definitions

(2) In this directive:

(a) the term "Secretary" means the Secretary of Homeland Security.

(b) the term "Federal departments and agencies" means those executive departments enumerated in 5 U.S.C. 101, together with the Department of Homeland Security; independent establishments as defined by 5 U.S.C. 104(1); government corporations as defined by 5 U.S.C. 103(1); and the United States Postal Service.

(c) the terms "State," "local," and the "United States" when it is used in a geographical sense, have the same meanings as used in the Homeland Security Act of 2002, Public Law 107-296.

Policy

(3) To prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies, the United States Government shall establish a single, comprehensive approach to domestic incident management. The objective of the United States Government is to ensure that all levels of government across the Nation have the capability to work efficiently and effectively together, using a national approach to domestic incident management. In these efforts, with regard to domestic incidents, the United States Government treats crisis management and consequence management as a single, integrated function, rather than as two separate functions.

(4) The Secretary of Homeland Security is the principal Federal official for domestic incident management. Pursuant to the Homeland Security Act of 2002, the Secretary is responsible for coordinating Federal operations within the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The Secretary shall coordinate the Federal Government's resources utilized in response to or recovery from terrorist attacks, major disasters, or other emergencies if and when any one of the following four conditions applies: (1) a Federal department or agency acting under its own authority has requested the assistance of the Secretary; (2) the resources of State and local authorities are overwhelmed and Federal assistance has been requested by the appropriate State and local authorities; (3) more than one Federal department or agency has become substantially involved in responding to the incident; or (4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President.

(5) Nothing in this directive alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law. All Federal departments and agencies shall cooperate with the Secretary in the Secretary's domestic incident management role.

(6) The Federal Government recognizes the roles and responsibilities of State and local authorities in domestic incident management. Initial responsibility for managing domestic incidents generally falls on State and local authorities. The Federal Government will assist State and local authorities when their resources are overwhelmed, or when Federal interests are involved. The Secretary will coordinate with State and local governments to ensure adequate planning, equipment, training, and exercise activities. The Secretary will also provide assistance to State and local governments to develop all-hazards plans and capabilities, including those of greatest importance to the security of the United States, and will ensure that State, local, and Federal plans are compatible.

(7) The Federal Government recognizes the role that the private and nongovernmental sectors play in preventing, preparing for, responding to, and recovering from terrorist attacks, major disasters, and other emergencies. The Secretary will coordinate with the private and nongovernmental sectors to ensure adequate planning, equipment, training, and exercise activities and to promote partnerships to address incident management capabilities.

(8) The Attorney General has lead responsibility for criminal investigations of terrorist acts or terrorist threats by individuals or groups inside the United States, or directed at United States citizens or institutions abroad, where such acts are within the Federal criminal jurisdiction of the United States, as well as for related intelligence collection activities within the United States, subject to the National Security Act of 1947 and other applicable law, Executive Order 12333, and Attorney General-approved procedures pursuant to that Executive Order. Generally acting through the Federal Bureau of Investigation, the Attorney General, in cooperation with other Federal departments and agencies engaged in activities to protect our national security, shall also coordinate the activities of the other members of the law enforcement community to detect, prevent, preempt, and disrupt terrorist attacks against the United States. Following a terrorist threat or an actual incident that falls within the criminal jurisdiction of the United States, the full capabilities of the United States

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shall be dedicated, consistent with United States law and with activities of other Federal departments and agencies to protect our national security, to assisting the Attorney General to identify the perpetrators and bring them to justice. The Attorney General and the Secretary shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.

(9) Nothing in this directive impairs or otherwise affects the authority of the Secretary of Defense over the Department of Defense, including the chain of command for military forces from the President as Commander in Chief, to the Secretary of Defense, to the commander of military forces, or military command and control procedures. The Secretary of Defense shall provide military support to civil authorities for domestic incidents as directed by the President or when consistent with military readiness and appropriate under the circumstances and the law. The Secretary of Defense shall retain command of military forces providing civil support. The Secretary of Defense and the Secretary shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.

(10) The Secretary of State has the responsibility, consistent with other United States Government activities to protect our national security, to coordinate international activities related to the prevention, preparation, response, and recovery from a domestic incident, and for the protection of United States citizens and United States interests overseas. The Secretary of State and the Secretary shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.

(11) The Assistant to the President for Homeland Security and the Assistant to the President for National Security Affairs shall be responsible for interagency policy coordination on domestic and international incident management, respectively, as directed by the President. The Assistant to the President for Homeland Security and the Assistant to the President for National Security Affairs shall work together to ensure that the United States domestic and international incident management efforts are seamlessly united.

(12) The Secretary shall ensure that, as appropriate, information related to domestic incidents is gathered and provided to the public, the private sector, State and local authorities, Federal departments and agencies, and, generally through the Assistant to the President for Homeland Security, to the President. The Secretary shall provide standardized, quantitative reports to the Assistant to the President for Homeland Security on the readiness and preparedness of the Nation -- at all levels of government -- to prevent, prepare for, respond to, and recover from domestic incidents.

(13) Nothing in this directive shall be construed to grant to any Assistant to the President any authority to issue orders to Federal departments and agencies, their officers, or their employees.

Tasking

(14) The heads of all Federal departments and agencies are directed to provide their full and prompt cooperation, resources, and support, as appropriate and consistent with their own responsibilities for protecting our national security, to the Secretary, the Attorney General, the Secretary of Defense, and the Secretary of State in the exercise of the individual leadership responsibilities and missions assigned in paragraphs (4), (8), (9), and (10), respectively, above.

(15) The Secretary shall develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS). This system will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

(16) The Secretary shall develop, submit for review to the Homeland Security Council, and administer a National Response Plan (NRP). The Secretary shall consult with appropriate Assistants to the President (including the Assistant to the President for Economic Policy) and the Director of the Office of Science and Technology Policy, and other such Federal officials as may be appropriate, in developing and implementing the NRP. This plan shall integrate Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan. The NRP shall be unclassified. If certain operational aspects require classification, they shall be included in classified annexes to the NRP.

(a) The NRP, using the NIMS, shall, with regard to response to domestic incidents, provide the structure and mechanisms for national level policy and operational direction for Federal support to State and local incident managers and for exercising direct Federal authorities and responsibilities, as appropriate.

(b) The NRP will include protocols for operating under different threats or threat levels; incorporation of existing Federal emergency and incident management plans (with appropriate modifications and revisions) as either integrated components of the NRP or as supporting

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operational plans; and additional operational plans or annexes, as appropriate, including public affairs and intergovernmental communications.

(c) The NRP will include a consistent approach to reporting incidents, providing assessments, and making recommendations to the President, the Secretary, and the Homeland Security Council.

(d) The NRP will include rigorous requirements for continuous improvements from testing, exercising, experience with incidents, and new information and technologies.

(17) The Secretary shall:

(a) By April 1, 2003, (1) develop and publish an initial version of the NRP, in consultation with other Federal departments and agencies; and (2) provide the Assistant to the President for Homeland Security with a plan for full development and implementation of the NRP.

(b) By June 1, 2003, (1) in consultation with Federal departments and agencies and with State and local governments, develop a national system of standards, guidelines, and protocols to implement the NIMS; and (2) establish a mechanism for ensuring ongoing management and maintenance of the NIMS, including regular consultation with other Federal departments and agencies and with State and local governments.

(c) By September 1, 2003, in consultation with Federal departments and agencies and the Assistant to the President for Homeland Security, review existing authorities and regulations and prepare recommendations for the President on revisions necessary to implement fully the NRP.

(18) The heads of Federal departments and agencies shall adopt the NIMS within their departments and agencies and shall provide support and assistance to the Secretary in the development and maintenance of the NIMS. All Federal departments and agencies will use the NIMS in their domestic incident management and emergency prevention, preparedness, response, recovery, and mitigation activities, as well as those actions taken in support of State or local entities. The heads of Federal departments and agencies shall participate in the NRP, shall assist and support the Secretary in the development and maintenance of the NRP, and shall participate in and use domestic incident reporting systems and protocols established by the Secretary.

(19) The head of each Federal department and agency shall:

(a) By June 1, 2003, make initial revisions to existing plans in accordance with the initial version of the NRP.

(b) By August 1, 2003, submit a plan to adopt and implement the NIMS to the Secretary and the Assistant to the President for Homeland Security. The Assistant to the President for Homeland Security shall advise the President on whether such plans effectively implement the NIMS.

(20) Beginning in Fiscal Year 2005, Federal departments and agencies shall make adoption of the NIMS a requirement, to the extent permitted by law, for providing Federal preparedness assistance through grants, contracts, or other activities. The Secretary shall develop standards and guidelines for determining whether a State or local entity has adopted the NIMS.

Technical and Conforming Amendments to National Security Presidential Directive-1 (NSPD-1)

(21) NSPD-1 ("Organization of the National Security Council System") is amended by replacing the fifth sentence of the third paragraph on the first page with the following: "The Attorney General, the Secretary of Homeland Security, and the Director of the Office of Management and Budget shall be invited to attend meetings pertaining to their responsibilities."

Technical and Conforming Amendments to National Security Presidential Directive-8 (NSPD-8)

(22) NSPD-8 ("National Director and Deputy National Security Advisor for Combating Terrorism") is amended by striking "and the Office of Homeland Security," on page 4, and inserting "the Department of Homeland Security, and the Homeland Security Council" in lieu thereof.

Technical and Conforming Amendments to Homeland Security Presidential Directive-2 (HSPD-2)

(23) HSPD-2 ("Combating Terrorism Through Immigration Policies") is amended as follows:

(a) striking "the Commissioner of the Immigration and Naturalization Service (INS)" in the second sentence of the second paragraph in section 1, and inserting "the Secretary of Homeland Security" in lieu thereof ;

(b) striking "the INS," in the third paragraph in section 1, and inserting "the Department of Homeland Security" in lieu thereof;

(c) inserting ", the Secretary of Homeland Security," after "The Attorney General" in the fourth paragraph in section 1;

(d) inserting ", the Secretary of Homeland Security," after "the Attorney General" in the fifth paragraph in section 1;

(e) striking "the INS and the Customs Service" in the first sentence of the first paragraph of section 2, and inserting "the Department of Homeland Security" in lieu thereof;

(f) striking "Customs and INS" in the first sentence of the second paragraph of section 2, and inserting "the Department of Homeland

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Security" in lieu thereof;

(g) striking "the two agencies" in the second sentence of the second paragraph of section 2, and inserting "the Department of Homeland Security" in lieu thereof;

(h) striking "the Secretary of the Treasury" wherever it appears in section 2, and inserting "the Secretary of Homeland Security" in lieu thereof;

(i) inserting ", the Secretary of Homeland Security," after "The Secretary of State" wherever the latter appears in section 3;

(j) inserting ", the Department of Homeland Security," after "the Department of State," in the second sentence in the third paragraph in section 3;

(k) inserting "the Secretary of Homeland Security," after "the Secretary of State," in the first sentence of the fifth paragraph of section 3;

(l) striking "INS" in the first sentence of the sixth paragraph of section 3, and inserting "Department of Homeland Security" in lieu thereof;

(m) striking "the Treasury" wherever it appears in section 4 and inserting "Homeland Security" in lieu thereof;

(n) inserting ", the Secretary of Homeland Security," after "the Attorney General" in the first sentence in section 5; and

(o) inserting ", Homeland Security" after "State" in the first sentence of section 6.

Technical and Conforming Amendments to Homeland Security Presidential Directive-3 (HSPD-3)

(24) The Homeland Security Act of 2002 assigned the responsibility for administering the Homeland Security Advisory System to the Secretary of Homeland Security. Accordingly, HSPD-3 of March 11, 2002 ("Homeland Security Advisory System") is amended as follows:

(a) replacing the third sentence of the second paragraph entitled "Homeland Security Advisory System" with "Except in exigent circumstances, the Secretary of Homeland Security shall seek the views of the Attorney General, and any other federal agency heads the Secretary deems appropriate, including other members of the Homeland Security Council, on the Threat Condition to be assigned."

(b) inserting "At the request of the Secretary of Homeland Security, the Department of Justice shall permit and facilitate the use of delivery systems administered or managed by the Department of Justice for the purposes of delivering threat information pursuant to the Homeland Security Advisory System." as a new paragraph after the fifth paragraph of the section entitled "Homeland Security Advisory System."

(c) inserting ", the Secretary of Homeland Security" after "The Director of Central Intelligence" in the first sentence of the seventh paragraph of the section entitled "Homeland Security Advisory System".

(d) striking "Attorney General" wherever it appears (except in the sentences referred to in subsections (a) and (c) above), and inserting "the Secretary of Homeland Security" in lieu thereof; and

(e) striking the section entitled "Comment and Review Periods."

GEORGE W. BUSH

Source: <http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html>

UPDATE: None

10 U.S.C. §331, et seq. (2001)

Insurrection Act

Section 331 Federal aid for State governments

Whenever there is an insurrections in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

Section 332 Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

Section 333 Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it -

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

Section 334 Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

Section 335. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term "State" includes the unincorporated territories of Guam and the Virgin Islands.

UPDATE: None

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10 U.S.C. §371, et seq. (2002)

Defense Drug Interdiction Assistance Act

Sec. 371. - Use of information collected during military operations

- (a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.
- (b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.
- (c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials

Sec. 372. - Use of military equipment and facilities

(a) In General. -

The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(b) Emergencies Involving Chemical and Biological Agents. -

(1) In addition to equipment and facilities described in subsection (a), the Secretary may provide an item referred to in paragraph (2) to a Federal, State, or local law enforcement or emergency response agency to prepare for or respond to an emergency involving chemical or biological agents if the Secretary determines that the item is not reasonably available from another source. The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.

(2) An item referred to in paragraph (1) is any material or expertise of the Department of Defense appropriate for use in preparing for or responding to an emergency involving chemical or biological agents, including the following:

- (A) Training facilities.
- (B) Sensors.
- (C) Protective clothing.
- (D) Antidotes

Sec. 373. - Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available -

- (1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and
- (2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter

Sec. 374. - Maintenance and operation of equipment

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372 of this title.

(b)

(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Department of Defense personnel available to operate equipment (including equipment made available under section 372 of this title) with respect to -

- (A) a criminal violation of a provision of law specified in paragraph (4)(A);
- (B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws;
- (C) a foreign or domestic counter-terrorism operation; or
- (D) a rendition of a suspected terrorist from a foreign country to the United States to stand trial.

(2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:

- (A) Detection, monitoring, and communication of the movement of air and sea traffic.
- (B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

10 U.S.C. §371, et seq. (2002)

(C) Aerial reconnaissance.

(D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States) -

(i) the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;

(ii) the operation of a base of operations for civilian law enforcement and supporting personnel; and

(iii) the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(4) In this subsection:

(A) The term "Federal law enforcement agency" means a Federal agency with jurisdiction to enforce any of the following:

(i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324-1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) or any other territory or possession of the United States.

(iv) The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(v) Any law, foreign or domestic, prohibiting terrorist activities.

(B) The term "land area of the United States" includes the land area of any territory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law

Sec. 375. - Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law

Sec. 376. - Support not to affect adversely military preparedness

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States

Sec. 382. - Emergency situations involving chemical or biological weapons of mass destruction

(a) In General. -

The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 or 2332c ^[1] of title 18 during an emergency situation involving a biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if -

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2)

the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) Emergency Situations Covered. -

In this section, the term "emergency situation involving a biological or chemical weapon of mass destruction" means a circumstance involving a biological or chemical weapon of mass destruction -

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10 U.S.C. §371, et seq. (2002)
(1) that poses a serious threat to the interests of the United States; and (2) in which - (A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved; (B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and (C) enforcement of section 175 or 2332c ⁽¹⁾ of title 18 would be seriously impaired if the Department of Defense assistance were not provided. (c) Forms of Assistance. - The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon. (d) Regulations. - (1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section. (2) (A) Except as provided in subparagraph (B), the regulations may not authorize the following actions: (i) Arrest. (ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c ⁽¹⁾ of title 18. (iii) Any direct participation in the collection of intelligence for law enforcement purposes. (B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions: (i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action. (ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law. (e) Reimbursements. - The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.
UPDATE
Pub. L. 107-248, Making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes (2002)
New note added by Pub. L. 107-248, sec. 8058(a), 116 Stat. 1549.
Pub. L. 108-87, Department of Defense Appropriations Act for FY2004 (2003)
New note added by Pub. L. 108-87, sec. 8057(a), 117 Stat. 1085.
Pub. L. 107-296, Homeland Security Act of 2002
Amended by Pub. L. 107-296, sec. 1704(b)(1), 116 Stat. 2314.

18 U.S.C. §831 (2001)

Prohibited transactions involving nuclear materials

- (a) Whoever, if one of the circumstances described in subsection (c) of this section occurs -
- (1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material or nuclear byproduct material and -
 - (A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property or to the environment;
 - or
 - (B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;
 - (2) with intent to deprive another of nuclear material or nuclear byproduct material, knowingly -
 - (A) takes and carries away nuclear material or nuclear byproduct material of another without authority;
 - (B) makes an unauthorized use, disposition, or transfer, of nuclear material or nuclear byproduct material belonging to another; or
 - (C) uses fraud and thereby obtains nuclear material or nuclear byproduct material belonging to another;
 - (3) knowingly -
 - (A) uses force; or
 - (B) threatens or places another in fear that any person other than the actor imminently be subject to bodily injury; and thereby takes nuclear material or nuclear byproduct material belonging to another from the person or presence of any other;
 - (4) intentionally intimidates any person and thereby obtains nuclear material or nuclear byproduct material belonging to another;
 - (5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;
 - (6) knowingly threatens to use nuclear material or nuclear byproduct material to cause death or serious bodily injury to any person or substantial damage to property or to the environment under circumstances in which the threat may reasonably be understood as an expression of serious purposes;
 - (7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or
 - (8) is a party to a conspiracy of two or more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense;

shall be punished as provided in subsection (b) of this section.

- (b) The punishment for an offense under -
- (1) paragraphs (1) through (7) of subsection (a) of this section is -
 - (A) a fine under this title; and
 - (B) imprisonment -
 - (i) for any term of years or for life (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and
 - (ii) for not more than 20 years in any other case; and
 - (2) paragraph (8) of subsection (a) of this section is -
 - (A) a fine under this title; and
 - (B) imprisonment -
 - (i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and
 - (ii) for not more than 10 years in any other case.
- (c) The circumstances referred to in subsection (a) of this section are that -
- (1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);
 - (2) an offender or a victim is -

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18 U.S.C. §831 (2001)

(A) a national of the United States; or

(B) a United States corporation or other legal entity;

(3) after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States;

(4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material or nuclear byproduct material by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States; or

(5) either -

(A) the governmental entity under subsection (a)(5) is the United States; or

(B) the threat under subsection (a)(6) is directed at the United States.

(d) The Attorney General may request assistance from the Secretary of Defense under chapter 18 of title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with chapter 18 of title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.

(e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if -

(A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and

(B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(2) As used in this subsection, the term "emergency situation" means a circumstance -

(A) that poses a serious threat to the interests of the United States; and

(B) in which -

(i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(3) Assistance under this section may include -

(A) use of personnel of the Department of Defense to arrest persons and conduct searches and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(4) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(5) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(f) As used in this section -

(1) the term "nuclear material" means material containing any -

(A) plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(3) the term "international organization" means a public international organization designated as such pursuant to section 1 of the

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International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(4) the term "serious bodily injury" means bodily injury which involves -
(A) a substantial risk of death;
(B) extreme physical pain;
(C) protracted and obvious disfigurement; or
(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "bodily injury" means -
(A) a cut, abrasion, bruise, burn, or disfigurement;
(B) physical pain;
(C) illness;
(D) impairment of a function of a bodily member, organ, or mental faculty; or
(E) any other injury to the body, no matter how temporary;

(6) the term "national of the United States" has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(7) the term "United States corporation or other legal entity" means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.

UPDATE: None

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18 U.S.C. §921 (2002)
Definitions
<i>This document is included in its entirety in the Deskbook CD-ROM</i>
<p>Sec. 921. Definitions</p> <p>(a) As used in this chapter -</p> <p>the term "terrorism" means activity, directed against United States persons, which -</p> <p>A) is committed by an individual who is not a national or permanent resident alien of the United States; (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and (C) is intended -</p> <p>(i) to intimidate or coerce a civilian population;</p> <p>(ii) to influence the policy of a government by intimidation or coercion; or</p> <p>(iii) to affect the conduct of a government by assassination or kidnapping.</p> <p>(4) The term "destructive device" means -</p> <p>(A) any explosive, incendiary, or poison gas -</p> <p>(i) bomb,</p> <p>(ii) grenade,</p> <p>(iii) rocket having a propellant charge of more than four ounces,</p> <p>(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,</p> <p>(v) mine, or</p> <p>(vi) device similar to any of the devices described in the preceding clauses;</p> <p>(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and</p> <p>(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.</p> <p>The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.</p>
UPDATE
Pub. L. 107-273, 21st Century Department of Justice Appropriations Authorization Act (2002)
Amended by Pub. L. 107-273, sec. 11009(e)(1), 116 Stat. 1821
Pub. L. 107-296, Homeland Security Act of 2002
Amended by Pub. L. 107-296, sec. 1112(f)(1)(3) and (f)(6)

18 U.S.C. §1385 (2002)
Use of Army and Air Force as Posse Comitatus
Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both
UPDATE: None

18 U.S.C. §2331 et seq. (2002)
Terrorism
Sec. 2332a. Use of certain weapons of mass destruction
<p>(a) Offense Against a National of the United States or Within the United States. - A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction (other than a chemical weapon as that term is defined in section 229F), including any biological agent, toxin, or vector (as those terms are defined in section 178) -</p> <p>(1) against a national of the United States while such national is outside of the United States;</p> <p>(2) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce; or</p> <p>(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.</p> <p>(b) Offense by National of the United States Outside of the United States. - Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction (other than a chemical weapon (as that term is defined in section 229F)) outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.</p> <p>(c) Definitions. - For purposes of this section -</p> <p>(1) the term "national of the United States" has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and</p> <p>(2) the term "weapon of mass destruction" means -</p> <p>(A) any destructive device as defined in section 921 of this title;</p> <p>(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;</p> <p>(C) any weapon involving a disease organism; or</p> <p>(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.</p>
<i>Source:</i> http://uscode.house.gov/
UPDATE
Pub. L. 107-188, Public Health Security and Bioterrorism Preparedness Response Act of 2002
Amended by Pub. L. 107-188, sec. 231(d), 116 Stat. 661.

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33 U.S.C. §1251-1387 (2002)

Clean Water Act

This document is included in its entirety on the deskbook CD-ROM.

Sec. 1321. Oil and hazardous substance liability

(d) National Contingency Plan

(1) Preparation by President The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

(2) Contents The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following: (A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife). (B) Identification, procurement, maintenance, and storage of equipment and supplies. (C) Establishment or designation of Coast Guard strike teams, consisting of – (i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan; (ii) adequate oil and hazardous substance pollution control equipment and material; and (iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife. (D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies. (E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan. (F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances. (G) A schedule, prepared in cooperation with the States, identifying - (i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and (iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters. (H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990 (33 U. S.C. 2701 et seq.), in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund. (I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2) of this section. (J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge. (K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j) of this section. (L) Establishment of procedures for the coordination of activities of – (i) Coast Guard strike teams established under subparagraph (C) ; (ii) Federal On-Scene Coordinators designated under subparagraph (K); (iii) District Response Groups established under subsection (j) of this section; and (iv) Area Committees established under subsection (j) of this section. (M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

(3) Revisions and amendments The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

(4) Actions in accordance with National Contingency Plan After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

UPDATE

Pub. L. 107-295, Maritime Transportation Security Act of 2002

Sec. 1321: New note added by Pub. L. 107-295, sec. 440, 116 Stat. 2130.

42 U.S.C. §5121, et seq. (2002)
The Robert T. Stafford Disaster Relief And Emergency Assistance Act, As Amended
<i>This document is included in its entirety on the Deskbook CD-ROM</i> Section 5121. Congressional findings and declarations
(a) The Congress hereby finds and declares that-- (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.
(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by-- (1) revising and broadening the scope of existing disaster relief programs; (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments; (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs; (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance; (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and (6) providing Federal assistance programs for both public and private losses sustained in disasters (7) Repealed. Pub.L. 100-707, Title I, 103(a)(1), Nov. 23, 1988, 102 Stat. 4689
UPDATE
Pub. L. 108-7, Consolidated Appropriations Resolution, 2003
Sec. 417 Amended 42 U.S.C. §5170(c)
Sec. 419 Added new note to 42 U.S.C. §5196(c)
Pub. L. 106-390, Disaster Mitigation Act of 2000
Sec. 104(c)(2) Repealed 42 U.S.C. §5176
Pub. L. 107-188, Public Health Security and Bioterrorism Preparedness Response Act of 2002
Amended 42 U.S.C. §5196 (b)

42 U.S.C. §9601-9675 (2002)
Comprehensive Environmental Response, Compensation, and Liability Act, As Amended (CERCLA)
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
UPDATE: None

42 U.S.C. §10501 et seq. (2002)
Federal Emergency Law Enforcement Assistance
<i>This Document is included in its entirety on the Deskbook CD-ROM</i> Sec. 10501. Application for Assistance (a) State as applicant In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance. (b) Execution of application; period for action of Attorney General on application An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Director of the Office of Justice Assistance and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application.

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42 U.S.C. §10501 et seq. (2002)

(c) Criteria

Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider -

- (1) the nature and extent of such emergency throughout a State or in any part of a State,
- (2) the situation or extraordinary circumstances which produced such emergency,
- (3) the availability of State and local criminal justice resources to resolve the problem,
- (4) the cost associated with the increased Federal presence,
- (5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and
- (6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.).

SOURCE

(Pub. L. 98-473, title II, Sec. 609M, Oct. 12, 1984, 98 Stat. 2103.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(6), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (Sec. 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

UPDATE

Pub. L.107-296, Homeland Security Act of 2002

42 U.S.C. 10502 amended by Pub. L. 107-296, sec. 1112(o), 116 Stat. 2278.

50 U.S.C. §2301, et seq. (2002)

Defense Against Weapons of Mass Destruction

Sec. 2302. Definitions

In this chapter:

- (1) The term "weapon of mass destruction" means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of -
 - (A) toxic or poisonous chemicals or their precursors;
 - (B) a disease organism; or
 - (C) radiation or radioactivity.
- (2) The term "independent states of the former Soviet Union" has the meaning given that term in section 5801 of title 22.
- (3) The term "highly enriched uranium" means uranium enriched to 20 percent or more in the isotope U-235

Sec. 2311. Response to threats of terrorist use of weapons of mass destruction

(a) Enhanced response capability

In light of the potential for terrorist use of weapons of mass destruction against the United States, the President shall take immediate action -

- (1) to enhance the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction; and
- (2) to provide enhanced support to improve the capabilities of State and local emergency response agencies to prevent and respond to such incidents at both the national and the local level.

(b) Report required

Not later than January 31, 1997, the President shall transmit to Congress a report containing -

- (1) an assessment of the capabilities of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction and to support State and local prevention and response efforts;
- (2) requirements for improvements in those capabilities; and
- (3) the measures that should be taken to achieve such improvements, including additional resources and legislative authorities that would be required

Sec. 2313. Nuclear, chemical, and biological emergency response

(a) Department of Defense

The Secretary of Defense shall designate an official within the Department of Defense as the executive agent for -

- (1) the coordination of Department of Defense assistance to Federal, State, and local officials in responding to threats involving biological or chemical weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of biological and chemical weapons and related materials and technologies; and
- (2) the coordination of Department of Defense assistance to the Department of Energy in carrying out that department's responsibilities under subsection (b) of this section.

(b) Department of Energy

The Secretary of Energy shall designate an official within the Department of Energy as the executive agent for -

- (1) the coordination of Department of Energy assistance to Federal, State, and local officials in responding to threats involving nuclear, chemical, and biological weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear weapons and related materials and technologies; and
- (2) the coordination of Department of Energy assistance to the Department of Defense in carrying out that department's responsibilities under subsection (a) of this section.

(c) Funding

Of the total amount authorized to be appropriated under section 301,¹ \$15,000,000 is available for providing assistance described in subsection (a) of this section.

Footnote 1

Section 301, referred to in subsec. (c), is section 301 of Pub. L. 104-201, div. A, title III, Sept. 23, 1996, 110 Stat. 2475, which is not classified to the Code

Sec. 2314. Chemical-biological emergency response team

(a) Department of Defense rapid response team

The Secretary of Defense shall develop and maintain at least one domestic terrorism rapid response team composed of members of the Armed Forces and employees of the Department of Defense who are capable of aiding Federal, State, and local officials in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction containing chemical, biological, or

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50 U.S.C. §2301, et seq. (2002)

related materials.

(b) Addition to Federal response plan

Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 5196(b) of title 42 guidance on the use and deployment of the rapid response teams established under this section to respond to emergencies involving weapons of mass destruction. The Director shall carry out this subsection in consultation with the Secretary of Defense and the heads of other Federal agencies involved with the emergency response plans

Sec. 2315. Testing of preparedness for emergencies involving nuclear, radiological, chemical, and biological weapons

(a) Emergencies involving chemical or biological weapons

(1) The Secretary of Defense shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving biological weapons and related materials and emergencies involving chemical weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal Emergency Management Agency, the Secretary of Energy, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

(b) Emergencies involving nuclear and radiological weapons

(1) The Secretary of Energy shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving nuclear and radiological weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal Emergency Management Agency, the Secretary of Defense, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

UPDATE

Pub. L. 107-314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (2002)

Sec. 3154(a) amended and added new note to 50 U.S.C. §2315;

Sec. 3155 (a) added new note to 50 U.S.C. §2315

Pub. L. 107-296 (2002)

Homeland Security Act of 2002

This document is included in its entirety on the Deskbook CD-ROM

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) **ESTABLISHMENT-** There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) **MISSION-**

(1) **IN GENERAL-** The primary mission of the Department is to--

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) **RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM-** Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) **SECRETARY-**

(1) **IN GENERAL-** There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) **HEAD OF DEPARTMENT-** The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) **FUNCTIONS VESTED IN SECRETARY-** All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) **FUNCTIONS-** The Secretary--

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) **COORDINATION WITH NON-FEDERAL ENTITIES-** With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by--

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) **MEETINGS OF NATIONAL SECURITY COUNCIL-** The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) **ISSUANCE OF REGULATIONS-** The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) **SPECIAL ASSISTANT TO THE SECRETARY-** The Secretary shall appoint a Special Assistant to the Secretary who shall be

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responsible for--

- (1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;
 - (2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;
 - (3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;
 - (4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to--
 - (A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and
 - (B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;
 - (5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;
 - (6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and
 - (7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.
- (g) STANDARDS POLICY- All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES- There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

- (1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.
- (2) An Under Secretary for Information Analysis and Infrastructure Protection.
- (3) An Under Secretary for Science and Technology.
- (4) An Under Secretary for Border and Transportation Security.
- (5) An Under Secretary for Emergency Preparedness and Response.
- (6) A Director of the Bureau of Citizenship and Immigration Services.
- (7) An Under Secretary for Management.
- (8) Not more than 12 Assistant Secretaries.
- (9) A General Counsel, who shall be the chief legal officer of the Department.

(b) INSPECTOR GENERAL- There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD- To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS- To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

- (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.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS- Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL- The functions of the Federal Emergency Management Agency include the following:

- (1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
- (2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program--

Pub. L. 107-296 (2002)

- (A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;
 - (B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
 - (C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;
 - (D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and
 - (E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.
- (b) FEDERAL RESPONSE PLAN-
- (1) ROLE OF FEMA- Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order No. 12148 (44 Fed. Reg. 43239) and Executive Order No. 12656 (53 Fed. Reg. 47491).
 - (2) REVISION OF RESPONSE PLAN- Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

UPDATE: None

**Domestic WMD Incident Management
Legal Deskbook**

Pub. L. 107-314 (2002)

Bob Stump National Defense Authorization Act for Fiscal Year 2003

This document is included in its entirety on the Deskbook CD-ROM

SEC. 901. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE

(a) ESTABLISHMENT OF POSITION.—Chapter 4 of title 10, United States Code, is amended—

(1) by transferring section 137 within such chapter to appear after section 139 and redesignating that section as section 139a; and

(2) by inserting after section 136a the following new section 137:

“§ 137. Under Secretary of Defense for Intelligence

“(a) There is an Under Secretary of Defense for Intelligence, appointed from civilian life by the President, by and with the advice and consent of the Senate.

“(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.

“(c) The Under Secretary of Defense for Intelligence takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.” . . .

SEC. 902. REORGANIZATION OF OFFICE OF SECRETARY OF DEFENSE FOR ADMINISTRATION OF DUTIES RELATING TO HOMELAND DEFENSE AND COMBATING TERRORISM.

(a) ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND

DEFENSE.—Section 138(b) of title 10, United States Code, is amended by inserting after paragraph (2) the following new paragraph:

“(3) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Homeland Defense. He shall have as his principal duty the overall supervision of the homeland defense activities of the Department of Defense.”.

(b) TRANSFER TO UNDER SECRETARY OF DEFENSE FOR POLICY

OF RESPONSIBILITY FOR COMBATING TERRORISM.—Section 134(b) of such title is amended by adding at the end the following new paragraph:

“(4) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Policy shall have overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for combating terrorism.”.

SEC. 921. REPORT ON ESTABLISHMENT OF UNITED STATES NORTHERN COMMAND.

Not later than March 1, 2003, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report providing an implementation plan for the establishment of the United States Northern Command, which is established effective October 1, 2002. The report shall address the following:

(1) The required budget for standing-up and maintaining that command over the period of the future-years defense program.

(2) The rationale for the selection of Peterson Air Force Base, Colorado, as the headquarters of that command, the criteria used in the selection of Peterson Air Force Base, and the alternative locations considered for that headquarters.

(3) The required military and civilian personnel levels for the headquarters of that command and a specification of the combatant commands and other Department of Defense sources from which such headquarters personnel will be transferred, shown by the number of military and civilian personnel from each such command or other Department of Defense source.

(4) The organization of the command, a justification of any components of the command, and a review of organizations and units permanently assigned or tasked to the command.

(5) The relationship of that command (A) to the Office of Homeland Security, the Department of Homeland Security, the Homeland Security Council, and any other Federal coordinating entity, (B) to other Federal departments and agencies, and (C) to State and local law enforcement agencies.

(6) The relationship of that command with the National Guard Bureau, individual State National Guard Headquarters, and State and local officials the command may be called upon to provide support.

(7) The legal implications of members of the Armed Forces, including the National Guard in both Federal and State status, operating on United States territory pursuant to missions, operations, or activities of that command.

(8) The status of Department of Defense consultations—

(A) with Canada regarding Canada's role in, or relationship with, and any expansion of mission for, the North American Air Defense Command; and (B) with Mexico regarding Mexico's role in, or relationship with, the United States Northern Command.

(9) The status of United States consultations with the North Atlantic Treaty Organization relating to the position

SEC. 924. REPORT ON ESTABLISHMENT OF A JOINT NATIONAL TRAINING COMPLEX AND JOINT OPPOSING FORCES.

Pub. L. 107-314 (2002)

(a) **REPORT REQUIRED.**—The commander of the United States Joint Forces Command shall submit to the Secretary of Defense a report that outlines a plan that would provide for the development and implementation of a joint national training concept together with the establishment of a joint training complex for supporting the implementation of that concept. Such a concept and complex—

- (1) may include various training sites, mobile training ranges, public and private modeling and simulation centers, and appropriate joint opposing forces; and
- (2) shall be capable of supporting field exercises and experimentation at the operational level of war across a broad spectrum of adversary capabilities.

SEC. 1401. TRANSFER OF TECHNOLOGY ITEMS AND EQUIPMENT IN SUPPORT OF HOMELAND SECURITY.

(a) **RESPONSIBLE SENIOR OFFICIAL.**—The Secretary of Defense shall designate a senior official of the Department of Defense to coordinate all Department of Defense efforts to identify, evaluate, deploy, and transfer to Federal, State, and local first responders technology items and equipment in support of homeland security.

SEC. 1402. COMPREHENSIVE PLAN FOR IMPROVING THE PREPAREDNESS OF MILITARY INSTALLATIONS FOR TERRORIST INCIDENTS.

(a) **COMPREHENSIVE PLAN.**—The Secretary of Defense shall develop a comprehensive plan for improving the preparedness of military installations for preventing and responding to terrorist attacks, including attacks involving the use or threat of use of weapons of mass destruction.

SEC. 1403. ADDITIONAL WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAMS.

(a) **ESTABLISHMENT OF ADDITIONAL TEAMS.**—The Secretary of Defense shall—

- (1) establish 23 additional teams designated as Weapons of Mass Destruction Civil Support Teams, for a total of 55 such teams; and
- (2) ensure that of such 55 teams, there is at least one team established in each State and territory.

SEC. 1404. REPORT ON THE ROLE OF THE DEPARTMENT OF DEFENSE IN SUPPORTING HOMELAND SECURITY.

(a) **REPORT REQUIRED.**—Not later than March 1, 2003, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense responsibilities, mission, and plans for military support of homeland security.

SEC. 1405. SENSE OF CONGRESS ON DEPARTMENT OF DEFENSE ASSISTANCE TO LOCAL FIRST RESPONDERS.

It is the sense of Congress that the Secretary of Defense should, to the extent the Secretary considers appropriate and feasible, provide assistance, in accordance with otherwise applicable provisions of law, to entities that are local first responders for domestic terrorist incidents in order to assist those entities in improving their capabilities to respond to such incidents.

UPDATE: None

Domestic WMD Incident Management Legal Deskbook

28 CFR 0.85 (2003)

This document is available in its entirety on the Deskbook CD-ROM

Sec. 0.85. General Functions [Federal Bureau of Investigation]

The Director of the Federal Bureau of Investigation shall:

(l) Exercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate. If another Federal agency identifies an individual who is engaged in terrorist activities or in acts in preparation of terrorist activities, that agency is requested to promptly notify the FBI. **Terrorism** includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

UPDATE: None

Department of Defense Directive 3025.1 (1993)

Military Assistance to Civil Authorities

This document is included in its entirety on the Deskbook CD-ROM

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and replaces references (b) and (c) to:

1.1. Consolidate all policy and responsibilities previously known as "Military Assistance to Civil Authorities (MACA)," applicable to disaster-related civil emergencies within the United States, its territories, and possessions under reference (a), with those related to attacks on the United States, which previously were known as "Military Support to Civil Defense (MSCD)" under reference (b).

1.2. Provide for continuation of the DoD Regional Military Emergency

Coordinator (RMEC) teams, previously developed under reference (c), to facilitate peacetime planning for MSCA and to provide trained teams of DoD liaison personnel to represent essential DoD Components, as appropriate, for response to any national security emergency.

1.3. Constitute a single system for MSCA, by which DoD Components (as defined in subsection 2.1., below) shall plan for, and respond to, requests from civil government agencies for military support in dealing with the actual or anticipated consequences of civil emergencies requiring Federal response, or attacks, including national security emergencies as defined in reference (d).

1.4. State the policy and responsibilities by which the Department of Defense responds to major disasters or emergencies in accordance with the Stafford Act, as amended (reference (e)), and supports the national civil defense policy and Federal or State civil defense programs, in cooperation with the Federal Emergency Management Agency (FEMA), under the authority of The Federal Civil Defense Act of 1950 (reference (f)).

1.5. Designate the Secretary of the Army as the DoD Executive Agent for MSCA.

1.6. Authorize the publication of DoD 3025.1-M, "DoD Manual for Civil Emergencies," consistent with DoD 5025.1-M, reference (g).

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating, or planning for operations, as a Service in the Navy).

2.2. Shall govern MSCA activities of all DoD Components in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.

2.3. Does not apply to foreign disasters covered by DoD Directive 5100.46 (reference (h)).

2.4. Focuses on the assignment and allocation of DoD resources to support civilian authorities during civil emergencies arising during peace, war, or transition to war.

2.5. Does not integrate contingency war planning as a subelement of MSCA, and does not relieve the Chairman of the Joint Chiefs of Staff of his authority to supervise contingency planning.

2.6. Does not include military support to civil law enforcement. (See paragraph 4.2., below.)

Department of Defense Directive 3025.12, February 4, 1994
Military Assistance for Civil Disturbances (MACDIS)
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
<p>This Directive reissues reference (a) to:</p> <ol style="list-style-type: none">1.1. Update policy and responsibilities governing planning and response by the DD Components for military assistance to Federal, State, and local government including government of U.S. territories) and their law enforcement agencies for civil disturbances and civil disturbance operations, including response to terrorist incidents, which hereafter are referred to cumulatively as "Military Assistance for Civil Disturbances (MACDIS)."1.2. Designate the Secretary of the Army as the "DoD Executive Agent for MACDIS."1.3. Ensure continuous planning by the DoD Components, both in the Department of Defense and in cooperation with civil government agencies for MACDIS operations that may be required during any time or condition of peace, war, or transition to war, including any national security emergency, as defined in reference (b).1.4. Provide for the inclusion in MACDIS of appropriate measures to support civil law enforcement in providing for the physical security of Federal property and DoD key assets (as defined by reference (c)) when they are threatened by a civil disturbance or terrorist incident.1.5. Facilitate the coordination of MACDIS with Military Support to Civil Authorities (MSCA) under reference (d), when required in civil emergencies, particularly those following any attack on the United States.1.6. Authorize the publication of DoD 3025.12-R, "Military Assistance for Civil Disturbances (MACDIS) Regulation," consistent with DoD 5025.1-M (reference (e)), at the election of the DoD Executive Agent. Alternatively, the DoD Executive Agent is authorized to include in the DoD Civil Disturbance Plan (GARDEN PLOT) all material that might otherwise be publishable by a DoD regulation, to provide administrative and logistics procedures and operational guidance for implementation of this Directive by all the DoD Components.
UPDATE: None

DoD Directive 5525.5 (1986)
DoD Cooperation with Civilian Law Enforcement Officials
<i>This document is included in its entirety on the Deskbook CD-ROM</i> SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials References: (a) through (ll), see enclosure E1.
<p>1. REISSUANCE AND PURPOSE</p> <p>This Directive reissues reference (a) to update uniform DoD policies and procedures to be followed with respect to support provided to Federal, State, and local civilian law enforcement efforts; and assigns responsibilities.</p> <p>2. APPLICABILITY AND SCOPE</p> <p>2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as DoD Components). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.</p> <p>2.2. DoD policy on assistance to law enforcement officials in foreign governments is not governed by this Directive except as specified by other DoD issuances.</p>
UPDATE: None

**Domestic WMD Incident Management
Legal Deskbook**

Department of Defense Directive 3025.15, February 18, 1997

Military Assistance to Civil Authorities (MACA)

This document is included in its entirety on the Deskbook CD-ROM

1. PURPOSE

This Directive:

1.1. Establishes DoD policy and assigns responsibilities for providing military assistance to civil authorities.

...

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating, or planning for operations, as a Service in the Navy).

2.2. Governs all DoD military assistance provided to civil authorities within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof, including sensitive support requests under reference (d), civil disturbances under DoD Directive 3025.12, protection of key assets under DoD Directive 5160.54, DoD responses to civil emergencies under DoD Directive 3025.1, acts or threats of terrorism under DoD Directive 2000.12, and requests for aid to civil law enforcement authorities under DoD Directive 5525.5 (references (e) through (i)).

2.3. Does not apply to military service community affairs programs or innovative readiness training (formerly called "civil-military cooperative action programs"). 2.4. Does not apply to the Inspector General of the Department of Defense, the Defense Criminal Investigative Service, or the military criminal investigative organizations (MCIOs) when they are conducting joint investigations with civil law enforcement agencies of matters within their respective jurisdictions, using their own forces and equipment. Support by other components of the Department to such joint investigations is covered by this Directive.

4.7. Requests for military assistance should be made and approved in the following ways:

4.7.1. Immediate Response. Requests for an immediate response (i.e., any form of immediate action taken by a DoD Component or military commander to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions) may be made to any Component or Command. The DoD Components that receive verbal requests from civil authorities for support in an exigent emergency may initiate informal planning and, if required, immediately respond as authorized in DoD Directive 3025.1 (reference (g)). Civil authorities shall be informed that verbal requests for support in an emergency must be followed by a written request. As soon as practical, the Component or Command rendering assistance shall report the fact of the request, the nature of the response, and any other pertinent information through the chain of command to the DoD Executive Secretary, who shall notify the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and any other appropriate officials. If the report does not include a copy of the civil authorities' written request, that request shall be forwarded to the DoD Executive Secretary as soon as it is available.

UPDATE: None

Federal Response Plan, Interim (January 2003)

FRP

This document is included in its entirety on the Deskbook CD-ROM

A. Purpose

The Federal Response Plan (FRP) establishes a process and structure for the systematic, coordinated, and effective delivery of Federal assistance to address the consequences of any major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S. Code (U.S.C.) 5121, *et seq.*). The FRP:

1. Sets forth fundamental policies, planning assumptions, a concept of operations, response and recovery actions, and Federal agency responsibilities;
2. Describes the array of Federal response, recovery, and mitigation resources available to augment State and local efforts to save lives; protect public health, safety, and property; and aid affected individuals and communities in rebuilding after a disaster;
3. Organizes the types of Federal response assistance that a State is most likely to need under 12 Emergency Support Functions (ESFs), each of which has a designated primary agency;
4. Describes the process and methodology for implementing and managing Federal recovery and mitigation programs and support/technical services;
5. Addresses linkages to other Federal emergency operations plans developed for specific incidents;
6. Provides a focus for interagency and intergovernmental emergency preparedness, planning, training, exercising, coordination, and information exchange; and
7. Serves as the foundation for the development of detailed supplemental plans and procedures to implement Federal response and recovery activities rapidly and efficiently.

B. Scope

1. The FRP concepts apply to a major disaster or emergency as defined under the Stafford Act, which includes a natural catastrophe; fire, flood, or explosion regardless of cause; or any other occasion or instance for which the President determines that Federal assistance is needed to supplement State and local efforts and capabilities. Throughout the FRP, any reference to a disaster, major disaster, or emergency generally means a presidentially declared major disaster or emergency under the Stafford Act.

Federal Radiological Emergency Response Plan (May 1, 1996)

FRERP

This document is included in its entirety on the Deskbook CD-ROM

A. Introduction

The objective of the Federal Radiological Emergency Response Plan (FRERP) is to establish an organized and integrated capability for timely, coordinated response by Federal agencies to peacetime radiological emergencies.

The FRERP:

1. Provides the Federal Government's concept of operations based on specific authorities for responding to radiological emergencies
2. Outlines Federal policies and planning considerations on which the concept of operations of this Plan and Federal agency specific response plans are based and
3. Specifies authorities and responsibilities of each Federal agency that may have a significant role in such emergencies.

There are two Sections in this Plan. Section I contains background, considerations, and scope. Section II describes the concept of operations for response.

C. Scope

The FRERP covers any peacetime radiological emergency that has actual, potential, or perceived radiological consequences within the United States, its Territories, possessions, or territorial waters and that could require a response by the Federal Government. The level of the Federal response to a specific emergency will be based on the type and/or amount of radioactive material involved, the location of the emergency, the impact on or the potential for impact on the public and environment, and the size of the affected area. Emergencies occurring at fixed nuclear facilities or during the transportation of radioactive materials, including nuclear weapons, fall within the scope of the Plan regardless of whether the facility or radioactive materials are publicly or privately owned, Federally regulated, regulated by an Agreement State, or not regulated at all. (Under the Atomic Energy Act of 1954 [Subsection 274.b.], the NRC has relinquished to certain States its regulatory authority for licensing the use of source, byproduct, and small quantities of special nuclear material.)

Domestic WMD Incident Management Legal Deskbook

45 CFR Part 300, National Contingency Plan (2002)

NCP

This document is included in its entirety on the Deskbook CD-ROM

Sec.300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

Sec. 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Pub. L. 101-380. In Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

Sec. 300.3 Scope.

(a) The NCP applies to and is in effect for:

(1) Discharges of oil into or on the navigable waters of the United States, on the adjoining shorelines, the waters of the contiguous zone, into waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (See sections 311(c)(1) and 502(7) of the CWA).

(2) Releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to public health or welfare of the United States.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local governments and describes resources that are available for response.

(2) The establishment of requirements for federal, regional, and area contingency plans. It also summarizes state and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions, pursuant to CERCLA.

(6) Listing of federal trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

(d) Additionally, the NCP applies to and is in effect when the Federal Response Plan and some or all its Emergency Support Functions (ESFs) are activated.

Initial National Response Plan (September 30, 2003)

Initial NRP

This document is included in its entirety on the Deskbook CD-ROM

I. Purpose

A. This document implements, on an interim basis, the domestic incident management authorities, roles, and responsibilities of the Secretary of Homeland Security as defined in Homeland Security Presidential Directive-5 (HSPD-5), *Management of Domestic Incidents*. This document also provides interim guidance on Federal coordinating structures and processes for domestic incident management pending the development, coordination, validation, and implementation of a full National Response Plan (NRP) and National Incident Management System (NIMS), as required by HSPD-5. It is applicable to domestic incident management in the context of terrorist attacks, major disasters, and other emergencies.

B. The current family of Federal incident management and emergency response plans remains in effect during this interim period, except as specifically modified in this document.

C. To the extent that this document conflicts with existing plans or protocols, it supersedes such plans or protocols. Federal departments and agencies are expected to update existing plans or protocols, as appropriate, to bring them into conformance with this document. In addition, Federal departments and agencies are expected to modify existing plans and protocols to bring them into compliance with relevant provisions in the Homeland Security Act of 2002 and HSPD-5.

D. Nothing in this document alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under the law. All Federal departments and agencies will cooperate with the Secretary of Homeland Security in the implementation of his domestic incident management role. All activities identified in this Initial National Response Plan will be carried out consistent with applicable authorities and Presidential guidance, including HSPD-5.

Domestic WMD Incident Management Legal Deskbook

Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism (June 21, 1996)

HMS Support Plan

This document is included in its entirety on the Deskbook CD-ROM

A. Purpose

The purpose of this Chemical/Biological (C/B) Health and Medical Services Support Plan for the Federal response to acts of C/B terrorism is to provide a coordinated Federal response for urgent public health and medical care needs resulting from C/B terrorist threats or acts in the United States. Response actions for health and medical services needs are directed by the Department of Health and Human Services (HHS) through its executive agent, the Assistant Secretary for Health (ASH). HHS directs the provision of U.S.

Government-provided health and medical assistance in response to a C/B terrorist incident. The Office of Emergency Preparedness (OEP) is assigned responsibility within HHS for implementation and coordination of health and medical assistance actions.

The principal purpose of this plan is to support the Federal Bureau of Investigation (FBI) and the Federal Emergency Management Agency (FEMA) by leading the Emergency Support Function (ESF) #8 response to the health and medical aspects of a C/B terrorist incident. This response will supplement and assist State and local governments affected by providing resources from:

1. HHS,
2. Supporting Federal Departments and Agencies, and
3. Specific non-Federal sources such as major pharmaceutical suppliers, hospital supply vendors, the National Foundation for Mortuary Care (NFMC) (formerly the National Funeral Directors Association NFDA), certain international disaster response organizations, the Ministry of Health Canada (HC), etc.

This plan will be provided as an appendix to ESF #8 of the Federal Response Plan (FRP). To provide a timely health and medical services response to acts of C/B terrorism, portions of this plan may be implemented under HHS' authorities prior to formal implementation of the FRP.

B. Scope

A C/B terrorist act poses a significant threat to the public sector, including the potential for massive loss of life. The very nature of a C/B terrorist incident requires that assistance be provided in an extremely time critical manner to support public health and medical care needs. This assistance includes overall public health response: the triage, treatment, transportation, hospitalization, and follow-up of victims of C/B terrorist acts. The local government bears the responsibility for support of its citizens through a first responder system. As required, patients will be evacuated from an area into a network of pre-enrolled non-Federal National Disaster Medical System (NDMS) hospitals located in the major metropolitan areas of the United States. To augment this capacity, medical support including Federal medical treatment facilities (military services, Department of Veterans Affairs (VA), and HHS) will be utilized as needed. Support will be provided for the management of human remains, as required.

Specific elements of critical health and medical services support in response to a C/B terrorist incident may include the following:

1. Threat assessment.
2. C/B consultation with affected jurisdictions.
3. Public information related to health and medical issues.
4. C/B Rapid Deployment Team (CBRDT).
5. Agent identification.
6. Epidemiological investigation.
7. Expedient hazard detection.
8. Expedient hazard reduction.
9. Environmental decontamination and disposal.
10. Clinical medical support:
 - a. Health Professionals,
 - b. Laboratory support,
 - c. Patient evacuations, and
 - d. In-hospital care.
11. Pharmaceutical support.
12. Human toxic effects registry and exposed persons registry for acute and chronic effects.
13. Supplies and equipment.
14. Victim identification and mortuary services.
15. Worker health and safety.
16. Mental health.
17. Specialized communications.
18. Transport of personnel, supplies, and equipment related to health and medical issues.
19. Security for personnel, supplies, and equipment related to health and medical mission.

Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism (June 21, 1996)
20. Pathological services. To meet the requirement for urgent and immediate assistance, resources may be required to be prepositioned. These pre-positioned resources could include C/B agent medical treatment supplies; C/B Rapid Deployment Teams; C/B Metro Medical Strike Teams MMST (under development); and other C/B enhanced medical support teams, supplies, equipment, and services.

28 CFR Part 65 (2003)
Emergency Federal Law Enforcement Assistance
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
UPDATE: None

44 CFR Part 206 (2003)
Federal Disaster Assistance for disasters declared on or after November 23, 1988
<i>This document is included in its entirety on the Deskbook CD-ROM</i>

Department of Defense Manual 3025.1-M (1994)
Manual for Civil Emergencies
<i>This document is included in its entirety on the Deskbook CD-ROM</i>

Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism (1996)
HMS Support Plan
<i>This document is included in its entirety on the Deskbook CD-ROM</i>

WMD Incident Contingency Plan
WMD Incident Contingency Plan
<i>This document is classified</i>

DoD Civil Disturbance Plan (GARDENPLOT)
GARDENPLOT
<i>This document is classified</i>