

**SECTION TWO: THE FEDERAL RESPONSE IN THE ABSENCE OF A STAFFORD
ACT DECLARATION**

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Table I-1: Constitutional and Congressional Grants of Authority to Respond in Absence of Declaration

Reference & Section	Affected Entity	Principal Focus
Constitution		
Article I, §8	Congress, States	Congress' authority to suppress insurrection, raise and maintain armed forces; provide for calling for the militia; regulate commerce; exclusively legislate in areas ceded to USG by States; make all necessary and proper laws
Article II, §§2-3	Executive	President's authority as Commander-in-Chief and duty to faithfully execute the laws
Article IV, §3, cl. 2, Property Clause	Congress	Exclusive jurisdiction with respect to Federal land and property
Amendment X	States	Exercise general police powers not delegated to the USG
Amendment IV, Article XIV	States, Congress	Equal protection; due process; privileges and immunities
Presidential Documents		
Executive Order 12382	Industry, Various Federal Agencies	Sets up President's National Security Telecommunications Advisory Committee
Executive Order 12472	Various Federal Agencies	Broadened the national security and emergency preparedness authority of the National Communications System
Executive Order 12580	Various Federal Agencies	Delegation of President's authority to implement CERCLA; amended by Executive Orders 13016 and 13286
Executive Order 12656	Various Federal Agencies	Assigned emergency preparedness responsibilities
Executive Order 12742	Executive; DOA; DOE; DOT; DOC	Delegation of President's authority under 10 U.S.C. §2538 and 50 U.S.C. §82 to place orders and prioritize the production of necessary products and materials
Executive Order 12919	Various Federal Agencies, Private Sector, States	Delegation of President's Authority under the Defense Production Act to ensure industrial preparedness for an emergency; Commerce to administer the Defense Production and Allocation System (DPAS; other roles specified for other Agencies
Executive Order 13010	Various Federal Agencies	Established President's Commission on Critical Infrastructure Protection
Executive Order 13016	Various Federal Agencies	Delegates President's Superfund Act functions with respect to specified releases to DOI, DOC, DoD, DOA, and DOE
Executive Order 13228	Executive, Various Federal Agencies	Established the White House Office of Homeland Security and the Homeland Security Council
Executive Order 13231	Executive, Various Federal Agencies	Established the President's Critical Infrastructure Protection Board
Executive Order 13295	HHS	President revised the list of quarantinable communicable diseases to include SARS
Executive Order 13286	OHS, DHS, Various Federal Agencies	Transfer of certain functions to the Department of Homeland Security; Assigned responsibility to OHS to protect against and recover from attacks against information systems for critical infrastructure, including emergency preparedness communications
Homeland Security Presidential Directive 5	Various Federal Agencies	Establishes a single, comprehensive national incident response system
Presidential Decision Directive 39	Federal agencies	FBI LFA for incident response; FEMA LFA for incident response
Presidential Decision Directive 62	Executive	Established the office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism; clarified combating terrorism roles of Federal agencies
Presidential Decision Directive 63	Federal Agencies	Delegation of responsibility for protection of critical infrastructures
United States Code		
7 U.S.C. §450	DOA, States	Agriculture authorized to cooperate with States
7 U.S.C. §612c	DOA, States	Authorizes provision of food assistance in specified circumstances
7 U.S.C. §1427	DOA	Secretary of Agriculture to maintain and dispose of a reserve of up to

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Reference & Section	Affected Entity	Principal Focus
		20 million bushels of wheat, soybeans, and feed grains to be used to alleviate distress caused by a natural disaster
7 U.S.C. §1431	DOA	Provide food assistance in the form of congregate feeding and household distribution, in situations in which food assistance needs cannot be met by other food distribution programs
7 U.S.C. §1926a	DOA, Localities	Authorizes emergency community water assistance
7 U.S.C. §1961a.	DOA	Authorizes emergency loans to farmers affected by quarantines
7 U.S.C. §2014(h)	DOA	Authorizes emergency standards of eligibility for food stamps
7 U.S.C. §2273	DOA, States	Assistance in local search and rescue operations for specified emergencies
7 U.S.C. §7701, et seq.	DOA	Authorizes the Secretary of Agriculture to regulate the importation, movement, and exportation, of animals and other things to prevent the introduction or spread of pests or diseases
10 U.S.C. §§331-334	President, States	Authorizes the calling out of the militia for specified purposes
10 U.S.C. §§371, et seq.	DoD, Federal & State law enforcement agencies	Authorizes military support for civilian law enforcement agencies
10 U.S.C. §2538	President, Various Federal Agencies	Ensure the availability of resources necessary to protect the public health and welfare
10 U.S.C. §2644	President, DoD	Control of transportation systems in time of war
10 U.S.C. §12301 et seq.	DoD	Armed Forces reserve components
14 U.S.C. §3	Coast Guard, USN, DHS	Coast Guard status when operating as a service in the U.S. Navy
14 U.S.C. §89	Coast Guard, USN, DHS	Authorizes the Coast Guard to conduct specified law enforcement functions
16 U.S.C. §2106	DOA	Authorizes the Secretary of Agriculture to assist in fire prevention and control on non-Federal land
16 U.S.C. §575	DOA	Authorizes the Secretary of Agriculture to Search for lost persons, and transportation of sick, injured, or dead persons, in national forests
18 U.S.C. §112	DOJ, DoD	AG may request military assistance to protect foreign officials
18 U.S.C. §175, et seq.	DOJ, DoD	AG or delegate may request military assistance to enforce DOJ activities in emergencies involving biological weapons in accordance with 10 U.S.C. §382. Amended by Pub.L. 107-56, USAPATRIOT Act , §817 and Pub.L. 107-188, §231
18 U.S.C. §229 - §229F	DOJ, DoD	AG or delegate may request military assistance to enforce DOJ activities in emergencies involving chemical weapons, in accordance with 10 U.S.C. §382
18 U.S.C. §351	DOJ, DoD	The FBI may request military assistance in investigations related to Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault
USA PATRIOT Act, Pub. L. 107-56	Federal Agencies	Provides enhanced authority and tools to intercept and obstruct terrorism
National Guard Mobilization Act of 1933	National Guard	Established the National Guard as a component of the Army
18 U.S.C. §831	DOJ, DoD	AG may request DoD assistance to enforce DOJ activities in emergencies involving nuclear weapons, in accordance with 10 U.S.C. §382
18 U.S.C. §1116	DOJ, DOD	AG may request DoD assistance to enforce prohibition against murder or manslaughter of foreign officials, official guests, or internationally protected persons
18 U.S.C. §1385	DoD	Prohibits the military from acting as a <i>posse comitatus</i>
18 U.S.C. §1751	DOJ, Executive	Protection of President, Vice-President, and other designated officials
18 U.S.C. §2332a	DOJ	Penalties for use of Weapons of Mass Destruction against U.S. Nationals
18 U.S.C. §2332e	DOJ, DOD	Military may provide assistance with respect to terrorist incidents involving chemical, biological, and nuclear weapons; includes arrest,

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Reference & Section	Affected Entity	Principal Focus
		direct participation in search and seizure and intelligence collection; Amended by Pub. L. 107-56
32 U.S.C. §102	National Guard	Policy that National Guard is the first line of defense
32 U.S.C. §105	National Guard	Inspections of the National Guard
32 U.S.C. §112	National Guard	Drug interdiction and counter-drug activities of the National Guard
32 U.S.C. §325	National Guard	Relief from National Guard duty when ordered to activate duty
Clean Water Act, 33 U.S.C. 1321d	Executive	Authorizes the President to develop a National Contingency Plan
42 U.S.C. §§88, et seq., Sanitation and Quarantine	Executive, States, HHS, DHS, Treasury, DoD	§88: Collectors may designate place for discharge of vessels in quarantine
		§89: President may order erection of quarantine warehouses for vessels
		§90: Cargo unloaded at other than the port of entry will be deposited in warehouses until they can be removed safely
		§97: U.S. customs, Coast Guard, and military officers must observe and aid in the execution of State quarantine and health laws
		§98: On request from HHS, SECNAV may place U.S. vessels at disposal of quarantine authorities
Public Health Service Act, as amended by Pub.L. 107-188, §142	Executive, HHS, DHS	42 U.S.C. §243: General grant of cooperation between States and HHS in enforcing Federal and State quarantine regulations
		42 U.S.C. §264: Surgeon General may make and execute regulations to control the spread of communicable diseases specified in Executive Orders from foreign countries into a State or interstate
		42 U.S.C. §265: Surgeon General can suspend entries and imports to control to prevent introduction of such diseases
		42 U.S.C. §266: Upon approval of the Secretary of HHS, the Surgeon General, during time of war, can make and enforce regulations to prevent the introduction or spread of communicable diseases
		42 U.S.C. §267: Surgeon General to control and manage U.S. quarantine stations, grounds, and anchorages
		42 U.S.C. §268: Customs & Coast Guard Officers must aid in enforcement of quarantines
		42 U.S.C. §270: Surgeon General authorized to apply quarantine regulations to civil aircraft and civil air navigation
		42 U.S.C. §271: Civil and criminal penalties for violation of quarantine laws
		Pub.L. 107-188, §142: amended sections 246 and 266 to omit requirement for National Advisory Health Council recommendation before the issuance of quarantine rules; amends §§264, 266 to allow apprehension of individuals in, "qualifying" to include pre-communicable stage
		42 U.S.C. §217
42 U.S.C. §247d, as amended by Pub.L. 107-188	HHS	HHS may determine that a public health emergency exists and act upon such determination
		Pub.L. 107-188: the emergency terminates when the Secretary HHS determines it no longer exists, or after 90 days, whichever is earlier
42 U.S.C. §248	HHS	Surgeon General may establish, maintain, and control PHS hospitals and administer medical examinations and medical care
42 U.S.C. §249	HHS, INS	Public Health Service may treat quarantined persons, including upon request of INS
42 U.S.C. §300i, as amended by Pub.L. 107-188 §403	HHS	Public Health Service may take action against imminent danger to public health via contamination of the public water supply, intentional or not

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Reference & Section	Affected Entity	Principal Focus
42 U.S.C. §1989	Judiciary	Authorizes magistrate judge
42 U.S.C. §11001 et seq	States, Localities	Requires establishment of State emergency response Commissions, emergency planning districts, and local emergency planning committees; requires emergency response plans
42 U.S.C. §11021 et seq	States, Localities	OSHA requirements regarding reporting hazardous materials for emergency response purposes
42 U.S.C. §1856b	Federal Agencies, States, Localities	Authorization to render emergency assistance to extinguish fires and preserve life and property under specific circumstances
Public Health and Bioterrorism Preparedness Response Act, Pub. L. 107-188	Federal Agencies, States, Localities	Various measures to enhance the ability to manage a domestic public health crisis, to include bioterrorism
42 U.S.C. §2138	NRC	NRC right to suspend licenses and authority and right of entry to recapture special nuclear material
The Stafford Act, 42 U.S.C. §5121, et seq.	Executive	§5170 (C): Upon request from Governor, President may direct SECDEF to use DoD resources to save lives and property
		§5185: Establish and make available to State and local officials temporary communications system in anticipation of major disaster
		§5191(b): Exercise any emergency authority in emergencies involving Federal exclusive or primary responsibility, w/o emergency declaration
		§5191: President may declare a state of emergency in the absence of a State request for such declaration if there is Federal exclusive or primary jurisdiction
		§5201: President may accept payments/gifts as necessary to carry out provisions of the act
CERCLA, 42 U.S.C. §9601, et seq. and National Contingency Plan	EPA	Hazardous substance removal and other remedial action
MSEHPA	States	Model provisions for State management of a public health crisis
43 U.S.C. §1065	President	President's authority to summarily remove enclosures
44 U.S.C. §3501, et seq.	Federal Agencies	Federal Agencies responsible for security of Federal government information technology systems
47 U.S.C. §308	FCC	FCC may waive permit requirements in war or national emergency
47 U.S.C. §606	Executive	President's broad authority during war or national emergency to manage communications systems
50 U.S.C. §82	Executive	In time of war, President may procure ships and other necessary war materials within the limits of the appropriated amounts
National Emergencies Act, 50 U.S.C. §1601 et seq	President, Federal Agencies	Powers and authorities of the President during a national emergency
Defense Production Act, 50 U.S.C. App. §2061, et seq.	President, Federal Agencies	Gives President and Federal Agencies wide authority to make available products, materials, and services for national defense and national emergency requirements
The Homeland Security Act, Pub.L. 107-296	Federal, States, Localities	Strengthens various provisions of the U.S. Code and adds provisions to better assure homeland security; includes Critical Infrastructure Information Act of 2002 at §211, et seq.
Agency Directives/Instructions/Manuals		
DoD Directive 3025.1	DoD, Federal & State Agencies	Military support to civil authorities
DoD Directive 3025.1-M	DoD, Federal & State Agencies	Manual for civil emergencies
DoD Directive 3025.12	DoD, Federal & State Agencies	Military assistance for civil disturbances
DoD Directive 3025.15	DoD, Federal & State Agencies	Military assistance to civil authorities
DoD Directive 5525.5	DoD, Federal & State Agencies	DoD cooperation with civilian law enforcement

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Reference & Section	Affected Entity	Principal Focus
CJCSI 3125.01	DoD, Federal & State Agencies	Military assistance to domestic incident response operations in response to a CBRNE situation
Proclamation 7463	President, DoD	Declaration of National Emergency by Reason of Certain Terrorist Attacks
State Regulations		
2003 Conn. Pub. Acts 03-236	State, Military forces	Emergency Health Response amended to include Bioterrorism
NYS Mil. L. §1.2	State, Military forces	Distinction between organized and unorganized militia of the State
S.D. Codified Laws Ann. §33-14-1	State, Military forces	Authority of Governor to organize guards distinct from the State guard
N.H. Rev. Stat. §110:B-1	State, Military forces	Composition of the New Hampshire militia
Tenn. Code §58-1-104	State, Military forces	Governor's authority to call State forces to active duty
Colo. Rev. Stat. §28-3-104	State, Military forces	Governor is commander in chief of military forces
Mont. Code Ann. §10-3-503	State, Military forces	Governor's authority during emergencies and cooperation with the Federal Government
Code of Federal Regulations		
15 CFR Part 700 (2003)	Various Federal Agencies	Defense Priorities Allocation System regulations
21 CFR Part 1240	HHS	Control of Communicable Diseases
21 CFR Part 1250	HHS	Interstate Conveyance Sanitation
40 CFR Part 300, National Oil and Hazardous Contingency Plan (NCP)	Various Federal Agencies	Respond to releases or threats to release hazardous materials that threaten public health
42 CFR Part 34	HHS	Medical Examination of Aliens
42 CFR Part 70	HHS	Interstate Quarantine
42 CFR Part 71	HHS	Foreign Quarantine regulations
Federal Plans & Strategies		
Federal Radiological Emergency Response Plan	Federal Agencies	Responsibilities in the event of a radiological emergency
National Plan for Information Systems Protection	Federal Agencies	Plan to protect the nation's critical cyber-based infrastructures
The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets	Federal, State, local , private entities	Guiding principles for protecting key infrastructures and assets
National Strategy to Secure Cyberspace	Federal, State, local, and private entities, individuals	Guiding principles to improve cyber security for Federal, State, and local government departments and agencies, private companies and organizations, and individuals
Case Law		
Chandler v. United States, 171 F. 2d 921	Military	Posse Comitatus Act
Ex Parte Milligan, 71 U.S. 2 (1866)	Executive	Implied power of the President to declare martial law
Gibbons v. Ogden, 22 U.S. 1 (1824)	Legislative	Commerce Clause confers broad authority to Congress
Luther v. Borden, 48 U.S. 1 (1849)	States	State's declaration of martial law is conclusive and not subject to judicial review
Houston v. Moore, 18 U.S. 1 (1820)	States	States' authority to activate and discipline the militia
Martin v. Mott, 25 U.S. 19	Executive	President's authority to call out the militia
Moyer v. Peabody, 212 U.S. 78 (1909)	States	Governor's declaration of state of insurrection is conclusive
Perpich v. Department of Defense, 496 U.S. 394 (1990)	States, National Guard, DoD	National Guard as State organization unless called into Federal service
The Prize Cases, 67 U.S. 635 (1862)	Executive	President's martial law authority
Sterling v. Constantin, 287 U.S. 378 (1932)	States	Governor's broad discretion to subdue insurrection but judiciary may review whether military has overstepped bounds
United States v. Hartley, 796 F. 2d	Military	Posse Comitatus

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Reference & Section	Affected Entity	Principal Focus
112 (1986)		
United States v. Allred, 867 F. 2d 856 (1989)	Military	Posse Comitatus
United States v. Walden, 490 F. 2d 921	Military	Posse Comitatus
United States v. Yunis, 924 F. 2d 1086	Military	Posse Comitatus
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)	Executive	President's limited takings authority
6 Op. Atty. Gen 466, 473 (1854)		Posse Comitatus
41 Op. Atty. Gen Nov. 7, 1957		
Related Literature		
Webster's Third New International Dictionary, Unabridged, Merriam-Webster, Inc., 1993		
Diane Alden, <i>American Crazy Quilt: Posse Comitatus</i> , September 27, 2000		
<i>Harpweek: Finding Precedent: Hayes vs. Tilden, the Electoral College Controversy</i>		
Arva Moore Parks, <i>Miami in 1876</i> , <i>Tequesta</i> , vol. XXXV, 1975		
Brian L. Porto, <i>Construction and Application of Posse Comitatus Act, and Similar Predecessor Provisions, Restricting Use of United States Army and Air Force to Execute Laws</i> , 141 ALR Fed. 271 (1997 & 2002 Supp.)		
Major Matthew Gilligan, <i>Opening the Gate?: An Analysis of Military Law Enforcement Authority Over Civilian Lawbreakers On and Off the Federal Installation</i> , 161 Mil. L. Rev. 1, September 1999		
Barry Kellman, <i>Managing Terrorism's Consequences: Legal Issues</i> , March 5, 2002		
Center for Law and Military Operations, <i>Domestic Operational Law (DOPLAW) Handbook for Judge Advocates</i> , April 15, 2001		
Major Kirk L. Davies, <i>The Imposition of Martial Law in the United States</i> , 49 AF. L. Rev. 67, 2000		
Ken Lerner, <i>Legal Issues in Mass Casualty Decontamination</i> , May 14, 2002		

I. Constitutional Authority Applicable to Civil WMD Emergency Response

A. Primacy of the States' Police Powers

The police power of the States is highlighted by the Tenth Amendment of the Constitution, which specifically reserves to the States any power not otherwise delegated or prohibited by the Constitution. James Madison, in *The Federalist Papers*, 45 defined the sphere of the States as extending "to all objects which, in the ordinary course of affairs, concern the lives, liberties, and property of the people, and the internal order, improvement, and prosperity of the State." Pursuant to the police power, a State is primarily responsible for managing the consequences of a domestic WMD incident within its borders. Thus, State police powers give States the authority to prescribe, within the limits of the Federal and State constitutions, the laws necessary to preserve public order, health, safety, and welfare. When it comes to WMD incident response, the authority of the Federal Government to act must be based on State consent or on express or implied constitutional grants of power, unless the Federal Government is authorized to act concurrently with the State or has primary jurisdiction over the activity.

In *Luther v. Borden*,¹ the Supreme Court recognized that a State's declaration of martial law is conclusive and not subject to judicial review. In that case, Rhode Island declared martial law in order to suppress an insurrection within the State. In *Moyer v. Peabody*,² the Court affirmed the conclusiveness of a Governor's declaration that a state of insurrection exists, holding that a good faith belief that an arrest is necessary to head off insurrection suffices for due process purposes. In a later opinion,³ the Court held that there needed to be a "direct relation" between the individual being arrested and the insurrection to justify an arrest without due process. The Court stated that not every action taken by a Governor in the exigency of an emergency such as an insurrection would be conclusive; rather, the courts must be the final judge of whether the military has overstepped its bounds in a particular case.

B. Congress' Constitutional Authority

Congress' Express Authority under Article I, §8

Several clauses under Article I, §8 of the Constitution give Congress authority to act without any need for State consent. These powers, especially powers conveyed by the Commerce Clause, which have been broadly construed by the Supreme Court, allow Congress to legislate in the area of WMD incident response in certain instances without the necessity of awaiting a request for assistance from the States concerned. It is pursuant to the following powers enunciated in or implied from Article I, §8 that Congress has legislated in the areas relevant to responding to or managing a domestic WMD incident without an emergency declaration:

- The Militia Clause, clauses 15 and 16, articulate Congress' right to organize, provide for, and call the militia, or National Guard, to suppress insurrection. Congress shares this power with the President pursuant to the Insurrection Act. The power to activate the National Guard is held concurrently with State governments, who also have a right, subordinate to that of the Federal Government to utilize the militia as necessary

¹ 48 U.S. 1 (1849)

² 212 U.S. 78 (1909)

³ *Sterling v. Constantin*, 287 U.S. 378 (1932)

- to suppress insurrection and to punish any failure to obey the President's call of the militia.⁴
- The Commerce Clause, clause 3, is the most powerful grant of authority to Congress and serves as the basis for many of Congress' laws. In *Gibbons v. Ogden*, the scope of the power was described as follows: "its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general functions of the government."⁵ Quarantine and inspection powers, derived from the Commerce Clause, are described in **Section 2.2** below.
 - The power to exclusively legislate in the seat of government and in places purchased by consent of the States is articulated in The Property Clause, Clause 17. Congress has provided for some self-government in the District of Columbia and ceded to the elected municipal government some of its legislative powers. Congress also has exclusive jurisdiction over some property acquired within States to carry on the business of the Federal Government. Additionally, a State may grant to Congress either limited or exclusive jurisdiction over property acquired within the borders of the State for purposes other than those enumerated in the clause.
 - Necessary and Proper Clause, clause 18, gives Congress the power to legislate as necessary and proper to execute all Powers granted to the Federal Government. As such, it must be read in conjunction with all other clauses of Section 8. This clause has served as Congress' authority for enacting, among other things, our Federal criminal code and for regulating the commerce of a State as necessary to promote and protect interstate commerce. The exercise of the authority conferred by this "Elastic Clause" is responsible for, among others, the criminal laws applicable to the use or threat to use WMD and certain of the quarantine measures authorizing Federal action for the protection of commerce in the absence of State action.

Article IV, §3, cl. 2

Article IV, section 3, clause 2, of the U.S. Constitution gives Congress exclusive jurisdiction over the Territories and other property of the United States. Thus, Congress exclusively and in the first instance is responsible for incident response activities on public lands and in the territories, unless it has delegated or shared jurisdiction for that purpose. The discussion in **Section II**, below, includes examples of Congress' delegations and concurrent jurisdiction.

C. The President's Implicit Constitutional Authority

Much of the President's authority to act in a domestic emergency has been delegated to the Executive Branch by Congress. It has been asserted that the President has the authority to take actions that are necessary to quell domestic violence, by virtue of being Commander-in-Chief of the armed forces and of the militia, when it is called into Federal service (Article II, §2), and pursuant to his duty to faithfully execute the laws (Article II, §3). In *The Prize Cases*,⁶ the Supreme Court upheld the principle that the President may establish martial law consistently

⁴ *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820).

⁵ *Gibbons v. Ogden*, 22 U.S. 1, 195 (1824)

⁶ 67 U.S. 635 (1863)

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with the Constitution. The Court affirmed President Lincoln's decision to blockade the seaports of the Southern States and to mobilize the militia during the Civil War, reasoning that such authority flowed from the Commander-in-Chief's duty to faithfully execute the laws. In *Ex Parte Milligan*, the Supreme Court declared void President Lincoln's suspension of the writ of *habeas corpus* and trial of persons by military commission. The Court declared, "Martial rule can never exist where the courts are open, and in proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of war."⁷

If the State Governor does not request Federal assistance, military personnel are severely restricted before the incident occurs, unless the President acts under Article II of the Constitution to deploy military assets before an anticipated event for pre-attack protection or incident response purposes.

II. Congressional Grants of Response Authority to the Executive Branch

Different agencies can respond in a variety of ways to a WMD event in the absence of an emergency or major disaster declaration under the Stafford Act.

A. Satisfying the National Emergencies Act

The National Emergencies Act states that the President must declare a national emergency in order to exercise any emergency power and specify in the proclamation of national emergency or in Executive Orders under which statutory authorities or powers he proposes to act.⁸ The national emergency, and any power or authority exercised because of such, terminates upon the date specified in the legal enactment of a joint resolution terminating it or in Presidential proclamation, whichever is earlier. It may also terminate automatically one year after the President declares it, if the President does not provide timely notification to the Congress that it is to remain in effect. Thus, on September 14, 2001, the President issued Proclamation 7463, declaring a national emergency due to the terrorist attacks of September 11th. In so doing, he availed himself of emergency authority to, among other things: reapportion funds; suspend officer personnel laws; waive strength limitations; order the Ready Reserve to active duty; and order Coast Guard officers on the retired list to active duty.⁹

B. The Stafford Act: Emergencies Involving Federal Primary Responsibility

The Stafford Act applies in the event of a major disaster or emergency. Generally, Stafford Act assistance is rendered upon request from State Governor(s) provided certain conditions are met, primarily that the Governor certifies that the State lacks the resources and capabilities to manage the consequences of the event without Federal assistance. Once an emergency or major disaster is declared pursuant to its procedures, the President may authorize any of the aid specified in the Act. However, the Act contains provisions that allow for Federal assistance before the emergency or major disaster declaration of the President. Upon request from a State Governor, the President is authorized to direct the Secretary of Defense to use resources of the Department

⁷ 71 U.S. 2, 127 (1866)

⁸ 50 U.S.C. §1601, *et seq.* (2002)

⁹ Proclamation 7463 of September 14, 2001

of Defense (DoD) as necessary to save lives and property.¹⁰ The President may also establish and make available to State and local officials a temporary communications system in anticipation of a major disaster.¹¹ Finally, section 5191 of the Act allows the President to unilaterally declare a state of emergency in the absence of a State request if the emergency involves a matter for which the Federal Government has exclusive or primary responsibility and authority. Detailed discussion of other provisions of the Stafford Act is contained in **Section 3** of the Deskbook.

C. Public Health

Congress has given the Department of Health and Human Resources (HHS), the Department of Agriculture (DOA), and other Federal agencies plenary power to protect the lives and health of the public.

1. Interstate Quarantine and Other Restrictions on Movement and Property/Goods

Various provisions of Federal law and other legal authorities address the authority of the Secretary of Health and Human Services (HHS) to safeguard the public health in the event of a public health emergency. As with most other incident response functions, State authorities have the primary role in managing public health emergencies. Pursuant to their police powers, all State governments may legislate and regulate in the interest of their citizens' health, safety, and welfare. The areas addressed by the following provisions are those in which the Federal Government has traditionally had primary responsibility: foreign relations and interstate commerce. While some statutes regulate enforcement of quarantine against persons, most statutes are concerned with preventing the importation and dissemination of infected goods into the stream of commerce.

The Public Health Service Act (PHSA) authorizes the President to utilize the Public Health Service to promote the public interest, in the event he declares war or a national emergency.¹² Title 42, Section 243 of the United States Code, which deals exclusively with public health and welfare issues, encourages Federal and State cooperation in preventing and controlling epidemics and managing other public health emergencies. In order to facilitate collaboration between the Federal and the State levels, Congress has authorized the Secretary of HHS to accept assistance from State and local authorities in enforcing quarantine regulations and in taking other actions to control the spread of communicable diseases and conditions. In addition, the Secretary must cooperate with and assist the States in preventing the spread of communicable diseases and in addressing other public health concerns. Not only must the Secretary encourage cooperation between the States in planning and training to address future health requirements, the Section authorizes the Secretary to develop a plan to transfer personnel, equipment, and supplies under his jurisdiction to the States to meet the full range of public health crises, including the spread of communicable diseases.¹³ If a State or local authority requests, the Secretary may assist the State or locality in meeting public health emergencies that require Federal support. The assistance

¹⁰ See The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §5121, *et seq.* (2002), §5170(C). An additional exception to the Act is the President's authority to order into active duty certain members of a reserve component without a declaration of war or national emergency, under 10 U.S.C. §12304.

¹¹ 42 U.S.C. §5185.

¹² 42 U.S.C. §217 (2002).

¹³ 42 U.S.C. §243 (2002).

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provided, however, cannot exceed six months. Title 42 U.S.C. §243 provides for State and local assistance from the National Guard and 42 U.S.C. §268 for the recruitment of members of the U.S. Customs Service and the Coast Guard for quarantine enforcement. The latter statute provides for the use of military officers in the enforcement of State quarantines, however it is a very old statute, dating from a time when the sea was the only means of intercontinental or otherwise long-distance travel, and it deals with seacoast installations and mostly protects ports of entry. It is the only mention of military support of State quarantine in the United States Code.

Title 42, Section 247d of the United States Code authorizes the Secretary, after consultation with various agencies within HHS, including the National Institutes of Health (NIH), the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC) to declare a public health emergency with respect to a disease or disorder that presents such an emergency or with respect to emergencies in which the Secretary is otherwise authorized to act without solicitation from a State. Generally, HHS is "otherwise authorized to act" and to assume the lead role in directing and enforcing certain quarantine and other containment measures, when the emergency necessitating such measures affects interstate commerce or foreign lands.

The Public Health Service Act authorizes the Surgeon General to act directly in several circumstances. Pursuant to 42 U.S.C. §264, the Surgeon General, upon approval of the Secretary of HHS, may make and enforce the regulations he or she determines is necessary to prevent the introduction, transmission, or dissemination of communicable diseases across State lines or from foreign countries.¹⁴ Among other things, the Surgeon General may order inspection, fumigation, and the destruction of infected animals or items. In exercising the powers granted under 42 U.S.C. §264, the Surgeon General is prohibited from authorizing containment measures against individuals within a State who are not traveling to another State unless certain conditions are included in the regulations. This authority is limited to persons engaged in interstate or international travel. However, its use is not limited to a war or national emergency declared by the President. Regulations may provide for the apprehension, examination, and detention of any person believed to be in the communicable stage of a specified disease, who may travel across State lines or infect someone who will so travel. The Surgeon General can only promulgate such regulations with respect to diseases that are specified by the President in Executive Orders. Section 142 of the Bioterrorism Act amends 42 U.S.C. §264(b) to authorize regulations for the apprehension, detention, and release of persons to prevent the spread of communicable diseases specified in Executive Orders on recommendation from the Secretary of HHS in consultation with the Surgeon General. The prior provision required the National Advisory Health Council (NAHC) to make recommendations before the issuance of quarantine rules.¹⁵ The Council also no longer recommends regulations that provide for apprehending individuals, as was specified in 42 U.S.C. §264(d). The authority of the Secretary to institute interstate quarantine is expanded as well. Individuals need not be in a communicable stage of a communicable disease to be detained and examined; if in a "qualifying stage", *i.e.*, a communicable stage *or* a pre-communicable stage of a disease that likely would cause a public health emergency if transmitted.

The Surgeon General also has authority to protect the armed forces and others supporting war efforts in time of war. Section 266 of Title 42 authorizes the Surgeon General, on

¹⁴ 42 U.S.C. §264 (2002).

¹⁵ Pub. L.107-188, Public Health Security and Bioterrorism Preparedness and Response Act, June 12, 2002.

recommendation from the NAHC to provide regulations regarding the apprehension, detention, and examination of any person reasonably believed to be infected with a communicable disease.¹⁶ A person who is found to be infected and who may pose a risk of infection to the armed forces or those supporting the armed forces may be detained for as long as necessary. The Bioterrorism Act amends 42 U.S.C. §266 to authorize the Secretary, in consultation with the Surgeon General, to institute wartime quarantine. Additionally, the infected person does not have to be "in a communicable stage" to be detained and examined; rather, the Secretary simply needs to have a reasonable belief that the individual is believed to be infected with a communicable disease. Previously, the Surgeon General, with recommendations from the National Advisory Health Council, had wartime quarantine authority.

Interstate quarantine regulations may be found at 42 Code of Federal Regulations (CFR) Part 70. They implement the Federal Government's authority to conduct inspections and implement quarantine and containment measures to control the spread of communicable diseases from foreign countries and across State and territorial possession lines. "Communicable diseases" is defined broadly to include:

illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.¹⁷

The provisions indicate that the States are primarily responsible for quarantine measures within State borders. For instance, local health authorities have primary responsibility for issuing travel permits to persons within the State for travel from a designated area and for conducting inspections within their borders. However, the Centers for Disease Control and Prevention (CDC) has broad authority to take any actions deemed "reasonable necessary," in the event the Director determines that local authorities and controls cannot halt the spread of a communicable disease.¹⁸ CDC areas of responsibility covered by these and other provisions of the Code to prevent the spread of communicable diseases include: administration of travel restrictions; notification and regulation of vessels in interstate traffic that may be carrying certain communicable diseases; inspection and decontamination of interstate conveyances; and administration of servicing areas. These regulations implement a Federal travel permit system under which persons with cholera, plague, smallpox, diphtheria, infectious tuberculosis, yellow fever, and viral hemorrhagic fevers may not travel from one State to another without a written permit issued by the Surgeon General. Executive Order 13295 updates the list of quarantinable communicable diseases to include severe acute respiratory syndrome (SARS).¹⁹ In addition, the regulation includes provisions for Federal intervention in the event of inadequate local control of communicable diseases.

Title 21, Parts 1240 and 1250 gives the Food and Drug Administration broad authority to prevent the spread of communicable diseases by way of certain types of interstate traffic. These provisions highlight the mitigation aspect of incident response as well as the interplay between Federal and State proscriptive authority at the State borders. Part 1240 is primarily concerned

¹⁶ 42 U.S.C. §266 (2002).

¹⁷ Interstate Quarantine, 42 CFR 70 (2002).

¹⁸ 42 CFR 70.2.

¹⁹ Executive Order 13295, "Revised List of Quarantinable Communicable Diseases," April 4, 2003.

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with the transmission of communicable diseases through interstate traffic via specified media, e.g., psittacine birds, shellfish, garbage, some food and drink. In the event that the Commissioner of Food and Drugs "determines that the measures taken by health authorities" at the State and local levels are "insufficient" to stop the spread of communicable diseases across State (or Possession) lines, the Commissioner is authorized to conduct a range of actions to halt the proliferation of the disease. The mitigating actions include inspecting and sanitizing interstate vehicles; providing for sanitary servicing areas; receiving from and transmitting to localities notifications about the movement or possible movement of communicable disease on the nation's interstate highways; and any other measures necessary to halt the spread of the disease. The FDA has the authority to regulate the drinking waters to prevent the spread or threatened spread of a communicable disease across State lines and ensure potable water for the population. However, if the communicable disease is within the State, the State has the lead role within its borders even if it requests a declaration of emergency from the President to ensure Federal disaster assistance and even if the FDA determines that the State is unable to control the spread of it. This is because the provisions authorize the FDA to manage and control only movement that might impact interstate commerce.

Congress has provided enforcement mechanisms for quarantines and other restrictions within the Public Health Service Act and within the Criminal code. Title 42 U.S.C. §271 states that a person may be fined not more than \$1,000 or imprisoned for not more than one year or both for failure to abide by quarantine regulations. Owners of vessels violating quarantine rules may also be fined. Under 18 U.S.C. §§3559 and 3571, individuals may be fined up to \$250,000 if a violation of the regulation results in death or up to \$100,000 if death does not result.

2. Foreign Quarantine Authority

The Secretary of HHS is responsible for preventing the introduction, transmission, and spread of communicable diseases from foreign countries into the United States.²⁰ Title 42, Part 71 of the Code of Federal Regulations identifies the Centers for Disease Control and Prevention (CDC) as the lead Federal agency for ordering and implementing foreign quarantines, with respect to foreign cargo, animals, and persons entering the United States. Part 71 authorizes the CDC to: detain and inspect carriers at U.S. ports; detain individuals carrying or suspected of carrying specified communicable diseases, including smallpox and cholera; disinfect cargo items; and request and monitor the disinfection of specified pests from aircraft. Other issues covered by the CFR include detention and quarantine of various types of cargo, approval of watering points for detained vessels at air- and seaports, and the medical examination and treatment of aliens and refugees. In accordance with the Congressional grants of authority cited above, the provisions authorize the Surgeon General to: suspend imports from foreign countries in which a communicable disease is present and to prevent persons from that country to enter the United States; build and maintain quarantine stations designated by the President; and approve quarantine anchorages and stations. Customs and Coast Guard officers must aid in the enforcement of quarantine regulations and consular and medical officers must report to the Surgeon General on the health conditions at the place they are stationed. The Surgeon General is also authorized to apply the quarantine provisions to or otherwise regulate civil air flights and navigation to prevent the spread of communicable diseases.

²⁰ 42 U.S.C. §264

Aliens arriving at a U.S. port are subject to the examination and foreign quarantine regulations.²¹ The CDC has primary responsibility for aliens and nonimmigrant visa applicants who, upon medical examination by designated CDC personnel, are found to be carrying a "communicable disease of public health significance." Among other things, medical examiners designated by the CDC are required to notify either consular officers or the Immigration and Naturalization Service (INS), now a part of the Department of Homeland Security (DHS), if an alien is found to be afflicted with or carrying a "communicable disease of public health significance."

Foreign quarantine regulations established in 42 CFR Part 71 include requirements for reporting death or illness, quarantine stations, sanitary measures for carriers, articles and cargo, medical surveillance of persons arriving at U.S. ports, and the quarantine of persons arriving into the United States, if necessary.

3. Hazardous Substances

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) provides broad Federal authority to respond directly to releases or threatened releases of hazardous substances or of pollutants or contaminants that may endanger public health or the environment.²² Pursuant to 42 U.S.C. §9604, the President is authorized to respond to a release or substantial threat of release into the environment of a hazardous material, or a pollutant or contaminant which presents a grave danger to the public health or welfare.²³ The removal or other response action of the President must be consistent with the National Oil and Hazardous Substances Contingency Plan (NCP). The law authorizes two kinds of response actions: removal actions and remedial actions. The Environmental Protection Agency (EPA) can conduct remedial actions financed from the Superfund only at sites on the EPA's National Priorities List. The EPA has the authority to respond to a release or threat of release specified in CERCLA without a request from a State. The decision to respond, however, is discretionary and the decision to take action is linked to the availability of funds and other resources. CERCLA also provides authority to issue orders as may be necessary to "protect public health, welfare and the environment."²⁴

CERCLA also authorized the revision of the NCP. Found at 40 C.F.R. Part 300, the NCP applies to, among other things, "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."²⁵ Initially developed as a coordinated approach to managing oil spills, Congress has broadened the scope of the NCP to include hazardous substance releases in addition to oil spills.

²¹ Medical Examination of Aliens, 42 CFR 34 (2003)

²² 42 U.S.C. §9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (2002) (hereinafter CERCLA).

²³ The definitions for "hazardous substance" may be found at 42 U.S.C. §9601. It includes reference to four other laws: Federal Water Pollution Control Act; Solid Waste Disposal Act; Clean Water Act; Toxic Substances Control Act.

²⁴ CERCLA, *supra* note 22 at §9606(a).

²⁵ 40 CFR Part 300.3. The NCP also is required by section 105 of 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.

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Executive Order 12580 delegates to various executive agencies the authority of the President to implement certain provisions of CERCLA.²⁶ Among other things, the Order delegates to the Administrator of the EPA responsibility for revision of the NCP. It also established the National Response Teams and Regional Response Teams to carry out responsibilities specified in the National Contingency Plan; designates EPA as the chair and the USCG as the vice-chair of the National Response Team (NRT) and their personnel as co-chairs of the Regional Response Teams (RRTs); and requires the EPA to consult with members of the NRT before revising the NCP. The NCP is discussed in further detail in **Section 3** below.

D. Critical Infrastructure Protection

This compendium will not explore critical infrastructure protection in depth as the focus is on the response aspect of incident response. It is appropriate, however, to mention the major authorities outlining the roles and responsibilities in this area. Title 44, United States Code, Chapter 35 assigns responsibility to senior Executive agency officials for the security of Federal Government information systems.²⁷ The President has expanded on these authorities in various Executive Orders, Presidential Decision Directives and national plans and strategies.

Critical Infrastructures are defined as "those systems and assets—both physical and cyber—so vital to the Nation that their incapacity or destruction would have a debilitating impact on national security, national economic security, and/or national public health and safety."²⁸ These include banking, energy, finance, transportation, telecommunications, and essential government services. The President's Commission on Critical Infrastructure Protection (CIP), created by Executive Order 13010, studied the vulnerabilities of the nation's critical facilities and cyber systems and issued its findings in October 1997.²⁹ The Administration issued PDD-63 in May 1998, which incorporated many of the findings of the Commission. PDD-63 requires each executive agency to work to reduce the threats to its critical infrastructures and encourages collaboration between the public and private sector in meeting the "common goals for protecting our critical systems."

PDD 62 establishes the office of the National Coordinator for Security, Infrastructure Protection, and Counter-Terrorism at the National Security Council, which is responsible for supervising policies and programs related to counter-terrorism, CIP, and WMD preparedness and incident response.³⁰ PDD 63 sets up a comprehensive structure to manage the CIP challenge. Among other things, it established the Critical Infrastructure Assurance Office and assigned responsibility to the National Coordinator for implementing the directive, and to focus not only CIP, but also foreign terrorism and domestic threats of mass destruction.³¹

The FBI's National Infrastructure Protection Center (NIPC), inclusive of representatives from the Departments of Defense, Energy, Transportation, Treasury, the Intelligence Community, and the private sector, share information and facilitate and coordinate the Federal Government's response

²⁶ Executive Order 12580, "Superfund Implementation," January 23, 1987, as amended by Executive Orders 13016 and 13286.

²⁷ 44 U.S.C. §3501, *et seq.* (2002).

²⁸ *National Plan for Information Systems Protection*, v. 1.0., The White House, 2000.

²⁹ Executive Order 13010, "Critical Infrastructure Protection," July 15, 1996 (revoked by Executive 13231).

³⁰ Presidential Decision Directive /National Security Council 62, "Protection Against Unconventional Homeland Threats," May 22, 1998.

³¹ PDD-63, "Protecting America's Critical Infrastructures," May 22, 1998.

to an incident. PDD 63 encourages the private sector to establish an Information Sharing and Analysis Center (ISAC) in cooperation with the Federal government. It establishes a National Infrastructure Assurance Council, comprising private sector leaders and State/local officials to assist in the formulation of a National Plan.³² Finally, the Critical Infrastructure Assurance Office (CIAO) is directed to assist in the development of the National Plan and to coordinate an awareness, legislative, and public affairs program.³³

The *National Plan for Information Systems Protection*, a product of substantial collaboration between the Federal Government and the private sector, was released in January 2000. Its focus is the domestic efforts of the Federal Government to protect the nation's critical cyber-based infrastructures and it reiterates the goal stated in PDD-63 of protecting the privacy and civil liberties of Americans. The National Plan identifies the following legal issues attendant to sharing information between the private sector and government: "apprehension over potential liability (antitrust, tort), national security concerns, classification of information, legal processes compelling public disclosure, and concerns over the protection of proprietary and trade secret information."³⁴ It does not address the protection of physical infrastructures or the international issues related to CIP.

Executive Order 13231 states the policy of the United States to, among other things, "ensure that any disruptions [to the operation of information systems for critical infrastructure] that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible." To that end, the Order established the "President's Critical Infrastructure Protection Board." Among other things, the Board is responsible for incident coordination and incident response. This involves coordinating with the Department of Justice, through the NIPC and the Manager of the National Communications System (NCS) and other departments and agencies, "programs and policies for responding to information systems security incidents that threaten information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems."³⁵ Executive Order 13288 assigned to the White House Office of Homeland Security responsibility to protect against and recover from attacks against information systems for critical infrastructure, including emergency preparedness communications.³⁶

*The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*³⁷ identifies national goals, objectives, and guiding principles for protecting key infrastructures and assets. It also outlines the Federal organization and specific initiatives for such and establishes the foundation for government, private sector, and citizen collaboration. *The National Strategy to Secure Cyberspace* accomplishes the same with respect to cyberspace, defined as "the

³² See *National Plan for Information Systems Protection*, *supra* note 28.

³³ Pub. L. 107-296, The Homeland Security Act of 2002, November 25, 2002, transferred the CIAO from the Department of Commerce to the Department of Homeland Security.

³⁴ See *National Plan for Information Systems Protection*, *supra* note 28, p. 78

³⁵ Executive Order 13231, "Critical Infrastructure Protection in the Information Age," October 16, 2001.

³⁶ Executive Order 13228, "Establishing the Office of Homeland Security and the Homeland Security Council," October 8, 2001, as amended.

³⁷ *The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*, White House, February 2003

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interdependent network of information technology infrastructures."³⁸ The Homeland Security Act requires the Information Analysis and Information Directorate of the Department of Homeland Security to assess the vulnerabilities in and develop a national plan to secure the nation's critical infrastructures³⁹ and addresses in detail the protection of the nation's information systems.⁴⁰ The sharing and protection of information is discussed in detail in **Section 5**.

E. Resource Allocation and Use

Various provisions in Titles 10 and 50 of the United States Code authorize actions by the President and senior officials of executive agencies to ensure the availability of resources necessary to protect the public health and welfare. The majority of these presidential powers are useful only in war, but some of these are applicable for other domestic emergencies. Several Executive Orders delegate these authorities to various Executive agencies.

"In time of war or when war is imminent," the President, through agency and department heads, is authorized to order from any person or manufacturing industry, any necessary products or materials usually produced by that person or industry. The provision requires compliance with and that precedence be given to such an order. If the owner of a manufacturing plant refuses to give precedence to the order, to manufacture the necessary supplies as requested, or to provide them at a reasonable price, he or she is subject to imprisonment or fines and the President may seize the plant to manufacture the necessary products. The provision requires the President to provide just compensation for the products and materials ordered and just rental for any plant seized.⁴¹

Congress has authorized the President, through the Secretary of Defense, to assume control of the transportation systems in time of war to transport troops, war material, and equipment, or for any purpose related to the emergency. The system may be used to the exclusion of other traffic.⁴²

Title 50 of the United States Code gives the President plenary authority to allocate various resources as necessary in specified circumstances. Pursuant to 50 U.S.C. §82, a World War I statute, the President may procure ships and other necessary war materials within the limits of the amount appropriated by Congress for such spending. Should the person from whom such materials are requested fail to produce them at all, fail to produce them in the kind or quantity requested, or fail to give them priority in production, the President may seize all or part of the production facility for as long as necessary or expedient. The President may "modify or cancel any existing contract for the building, production, or purchase of ships or war material" or "require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output" of the factory as specified by the President. The President is also authorized to use or operate any part of or all of a factory whether or not the United States has an agreement with the factory's owner or operator. This authority is available only "in time of war."

³⁸ *The National Strategy to Secure Cyberspace*, White House, February 2003

³⁹ The Homeland Security Act of 2002, *supra* note 33, §201.

⁴⁰ Critical Infrastructure Information Act of 2002, *Id.* at §211, *et seq.*

⁴¹ 10 U.S.C. §2538 (2002), which consolidates previous provisions 10 U.S.C. §4501 and §9501.

⁴² 10 U.S.C. §2644 (2002)

Executive Order 12742, as amended,⁴³ delegates the President's authority under 10 U.S.C. §2538 and 50 U.S.C. §82 to place orders and prioritize the production of the necessary products and materials, as follows:

- (1) the Secretary of Agriculture with respect to all food resources;
- (2) the Secretary of Energy with respect to all forms of energy;
- (3) the Secretary of Transportation with respect to all forms of civil transportation; and
- (4) the Secretary of Commerce with respect to all other products and materials, including construction materials.

This delegation does not include the delegation of the President's taking authority. In addition, the authority delegated may only be exercised after the relevant agency heads make a determination that such exercise is in the interest of national security.

The Defense Production Act of 1950, as amended,⁴⁴ authorizes the President to: require any person to perform, accept and give priority to contracts or orders, other than employment contracts, over performance of other contracts or orders, as necessary or appropriate to promote the national defense; allocate services, materials, and facilities as he deems necessary or appropriate to promote the national defense; and require the priority performance under, or allocation of, contracts or orders relating to the services, equipment, and materials necessary to maximize domestic energy supplies.⁴⁵ The penalty for failure to comply with the Act or any related regulations or order will be a fine of up to \$10,000, imprisonment up to one year, or both.⁴⁶

Executive Order 12919⁴⁷ delegates authorities granted to the President pursuant to the Defense Production Act (DPA), as amended. Section 201 of the Executive Order delegates the authority of the President to the following:

- (1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;
- (2) The Secretary of Energy with respect to all forms of energy;
- (3) The Secretary of Health and Human Services with respect to health resources;
- (4) The Secretary of Transportation with respect to all forms of civil transportation;
- (5) The Secretary of Defense with respect to water resources; and
- (6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

⁴³ Executive Order 12742, "National Security Industrial Responsiveness," January 8, 1991, as amended by 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.

⁴⁴ 50 U.S.C. App. §2061, *et seq.* (2002). Pub.L. 107-47 reauthorized the Defense Production Act, which was due to expire on September 30, 2001, for another five-year period.

⁴⁵ 50 U.S.C. App. §2072. "National defense" include "emergency preparedness" activities under the Stafford Act which, in turn, includes both emergency preparedness and response.

⁴⁶ 50 U.S.C. App. §2073.

⁴⁷ Executive Order 12919, "National Defense Industrial Resources Preparedness," June 3, 1994, as amended by Executive Order 13286, *supra* note 43.

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The Order, as amended, designates the authority to give such approvals as follows to:

the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities; . . . the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and . . . the Secretary of Homeland Security with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

It also designates the Secretary of Commerce to administer the Defense Priorities Allocation System (DPAS) regulations that implement the priorities and allocations provisions of the Defense Production Act, and to re-delegate to the heads of Federal Agencies "authority for the priority rating of contracts and orders for all materials, services, and facilities needed in support of programs" approved as necessary for the national defense.⁴⁸ The DPAS regulations implement the DPA, 50 U.S.C. §82, and 50 U.S.C. App. §468. The DPAS is used not only for defense items and military crises; it is also used to meet critical energy and law enforcement requirements for programs. In addition, the priorities and allocations authority of the Defense Production Act has been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).⁴⁹

Within the Department of Commerce (DOC), the Bureau of Industry and Security's (BXA) Office of Strategic Industries and Economic Security (SIES) is assigned the responsibility to administer Commerce's authority under Executive Order 12919 and the DPAS regulations. DPAS is intended to ensure the timely availability of industrial resources needed to meet national defense and emergency preparedness requirements with minimal disruption to normal commercial activities. It also provides an operating system that supports timely and comprehensive response by domestic industry in the event of a national emergency. To implement the authority delegated to them by Commerce, the Federal agencies such as Energy, Defense, and Transportation place "rated orders" on procurement contracts to meet national defense or civil emergency needs, which contractors must prioritize over unrated commercial orders in order to meet the delivery dates.

F. Telecommunications

Title 47, Section 308 of the United States Code allows the Federal Communications Commission (FCC) to grant permits and licenses or modify or renew such during a period of war or a national emergency declared by Congress or the President, or at the FCC's discretion in cases of emergency where there is danger to life or property, damage to equipment, or emergencies where it is not feasible to follow normal licensing procedures. The emergency grants of authority may last no longer than the war or the emergency requiring it.

Other war and emergency powers of the President with respect to communications are discussed in 47 U.S.C. §606. Section 606(a) authorizes the President, during a current war, to give preference and priority with any communications carrier as he deems necessary for the national defense and security. Carriers that comply with such an order from the President will be exempt from any criminal or civil penalties or liabilities they might incur under existing law. Section 606(b) makes it unlawful for "any person during any war in which the United States is engaged

⁴⁸ These regulations may be found at 15 CFR Part 700.

⁴⁹ 42 U.S.C. §5201 (2002).

to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire." In addition, the President is authorized to utilize the military to prevent the obstruction or retardation of communications. Section 606(c) authorizes the President to suspend or amend the rules and any regulations applicable to radio communication stations and other specified devices used as navigational aids, or to authorize the use or control of such stations, devices, and/or their apparatus or equipment. In order to exercise this authority, the President must have declared that there exists a war, a threat of war, or a disaster or other national emergency, or determine that the measure is necessary to preserve the nation's neutrality; the President must also deem the exercise of this authority necessary in the interest of national defense or security. Section 606(d) authorizes the President to suspend or amend rules and regulations applicable to any or all wire communication facilities or stations within U.S. jurisdiction; close any wire communication facility or station for and remove its apparatus and equipment; or, upon just compensation to the owners, authorize any Government department to use or control such facility or station and its apparatus and equipment. This authority may be exercised in the interest of national security and defense, no later than six months after the termination of a State of war or threat of war proclaimed by the President.

The White House first confronted the requirement for establishing an emergency communications infrastructure and capability during the Cuban Missile Crisis. President Kennedy established the National Communications System (NCS) by memorandum on August 21, 1963, to endow the nation with an integrated, reliable national security and emergency communications system. The Executive Agent for this interagency organization was the Secretary of Defense. Executive Order 12382 established the National Security Telecommunications Advisory Committee, composed of industry leaders, to advise President Reagan on communications policy.⁵⁰ One result of its work was the establishment of the National Coordinating Center, an industry-government information-sharing mechanism for emergency and national security communications which, as of January 2000, functions as the Information Sharing and Analysis Center (ISAC) for the telecommunications sector. President Ronald Reagan reestablished the NCS and broadened its national security and emergency preparedness capabilities with Executive Order 12472.⁵¹ The Executive Order defines the mission of the NCS as "the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal Government under all circumstances, including crisis or emergency, attack, recovery and reconstitution." Pursuant to Executive Order 13286, the Secretary of Homeland Security is now the Executive Agent for the NCS. The Secretary designated the Under Secretary for Information Assurance and Infrastructure Protection of DHS as NCS Manager.

In 1996, President Clinton issued Executive Order 13010, which established the President's Commission on Critical Infrastructure Protection.⁵² The Commission was responsible for

⁵⁰ Executive Order 12382, "President's National Security Telecommunications Advisory Committee," September 13, 1982, as amended.

⁵¹ Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984.

⁵² Executive Order 13010, *supra* note 29. The Commission's report, *Critical Foundations: Protecting America's Infrastructures*, was released in 1997.

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identifying vulnerabilities in and threats to, and making recommendations for, the protection of domestic critical infrastructures. Its report to the President evaluated and made recommendations on five sectors: Banking and Finance; Energy; Information and Communications; Physical Distribution; and Critical Human Services. PDD 63 implemented some of the Commission's recommendations.⁵³ Among other things, the Directive sets up a national structure to manage emergency preparedness and national security telecommunications requirements. In addition to a National Coordinator, the structure includes the National Infrastructure Protection Center (NIPC), formerly at the FBI and now at the Department of Homeland Security (DHS), to facilitate threat information sharing among the Federal agencies and with the private sector and to coordinate the Federal response to an incident; an Information Sharing and Analysis Center (ISAC), again a Federal-private-sector entity; the National Infrastructure Assurance Council; and the Critical Infrastructure Assurance Office, formed in the Department of Commerce and now in the Department of Homeland Security, to aid the National Coordinator in the development of a national plan and to coordinate legislative and public affairs.⁵⁴

President George H.W. Bush issued Executive Order 13231, which revoked Executive Order 13010 and established the President's Critical Infrastructure Protection Board, a replacement body for the National Coordinator established by PDD 63.⁵⁵ Chaired by the special advisor to the president for cyberspace security, the board is responsible for recommending policies and coordinating programs for the protection of information systems for critical infrastructure, to include emergency preparedness communications, as well as the physical assets supporting such systems. The board is directed to consult with not only Federal, State, and local government departments and agencies, but also the private sector, academia, and other relevant sectors. In addition, the Board coordinated with the White House Office of Homeland Security (OHS) on information infrastructure protection functions assigned to the OHS by Executive Order 13228.⁵⁶ On March 1, 2003, CIAO, NIPC, and the National Communications System moved to the Directorate of Information Analysis and Infrastructure Protection in the Department of Homeland Security.⁵⁷ Also in February 2003, Executive Order 13286 amended Executive Order 13231 to, among other things, elaborate on the authority of the National Infrastructure Advisory Council and expand the authority of Federal agencies to secure the information systems supporting their programs, including their emergency communications systems.⁵⁸

G. Agricultural Measures⁵⁹

The Secretary of Agriculture has been delegated the authority in section 101 of the DPA (50 U.S.C. §2071) under Executive Order 12919 to place priority ratings on contracts or orders with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer. DHS must approve the Secretary's determination to issue a

⁵³ PDD 63, *supra* note 31.

⁵⁴ *National Plan for Information Systems Protection*, *supra* note 28.

⁵⁵ Executive Order 13231, *supra* note 35, as amended by Executive Order 13284, "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, and Executive Order 13286, *supra* note 43.

⁵⁶ Executive Order 13228, *supra* note 36.

⁵⁷ The Homeland Security Act, *supra* note 33.

⁵⁸ Executive Order 13286, *supra* note 43.

⁵⁹ Much of the information discussed in this section reflects material provided to the Defense Threat Reduction Agency by representatives of the Department of Agriculture.

priority order. The broad authority granted under the DPA over civilian contracting is limited when it comes to establishing controls over general distribution of materials in the civilian marketplace, i.e., government-imposed rationing. The DPA specifically provides that the authorities in that Act:

shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

In implementing 50 U.S.C. §82, the President delegated to agency heads these two very similar authorities in Executive Order 12742, except for the taking authority provided in these two statutes. The Secretary of Agriculture was delegated authority "with respect to all food resources." Agencies were directed to amend their rules and regulations to reflect these delegations, but any rules and regulations issued under the DPA are deemed, where appropriate, to implement this Executive Order. Under the Executive Order, the authority granted under 50 U.S.C. App. §468 goes into effect upon a determination by the Secretary of Defense that prompt delivery of the articles or materials for the exclusive use of the armed forces is in the interest of national security, or a determination by the Secretary of Energy that the prompt delivery of articles or materials for the Department's atomic energy programs is in the interest of national security. The authority granted under 50 U.S.C. §82 goes into effect after the Secretary has made the statutorily required determination.

Executive Order 12656 establishes a National Security Emergency Preparedness Policy and assigns Federal departments and agencies responsibilities for national security emergency preparedness. Essentially, as opposed to allocating any specific authority, it assigns areas of responsibilities for which the agencies are expected to develop plans. The Secretary of Agriculture is assigned lead responsibility for developing plans for food and agriculture.

1. Food Distribution

Section 416 of the Agricultural Act of 1949 and Section 4(a) of the Agriculture and Consumer Protection Act of 1973⁶⁰ authorize the provision of food assistance in the form of congregate feeding and household distribution, in situations in which food assistance needs cannot be met by other food distribution programs. No Presidential declaration is required to invoke this authority. Food and Nutrition Service (FNS) within the Department of Agriculture (USDA) administers the food distribution program after a disruption of normal food distribution programs. Section 813 of the Agricultural Act of 1970 authorizes the Secretary of Agriculture to maintain and dispose of a reserve of up to 20 million bushels of wheat, soybeans, and feed grains to be used to alleviate distress caused by a natural disaster. The reserve may only be used for the purposes specified in the Act, some of which have been repealed or suspended through 2002. The Act also provides that the reserve can be sold or disposed of if a state of emergency is proclaimed by the President or by a concurrent resolution of Congress.⁶¹

⁶⁰ Respectively, 7 U.S.C. §1431 and 7 U.S.C. §612c note; see also 7 U.S.C. §612c and 7 U.S.C. §1446a-1.

⁶¹ 7 U.S.C. §1427a (2002).

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Section 5(h) of the Food Stamp Act of 1977 permits the Secretary to establish temporary emergency standards of eligibility for food stamps during any disaster or emergency where the Secretary, in consultation with FEMA/Department of Homeland Security (DHS), finds that the commercial channels of food distribution have been disrupted and restored.⁶² Section 5(h)(3) requires the Secretary to provide, by regulation, emergency allotments to eligible households to replace food destroyed in a disaster. FNS administers this authority for the USDA in consultation with DHS, coordinating the response through State and local agencies.

2. Fire Prevention and Control

The USDA Forest Service has broad authority to assist in the prevention and control of fires. The Forest Service may provide emergency assistance in fire emergencies.⁶³ Section 10 of the Cooperative Forestry Assistance Act of 1978, as amended⁶⁴ authorizes the Secretary of Agriculture to provide financial, technical, and related assistance to State officials, and other agencies and individuals through them, for the prevention, control, suppression, and prescribed use of fire on non-Federal land. It also authorizes the Secretary to provide assistance to State officials to train local firefighting forces; and to provide assistance, through State officials, to rural volunteer fire departments to conduct preparedness and mobilization activities. This authority, implemented by the Forest Service, is triggered in the event of a rural fire emergency that overwhelms, or threatens to overwhelm, the firefighting capability of an affected State or rural area. Section 10A of the Cooperative Forestry Assistance Act requires the Secretary to establish a Community and Private Land Fire Assistance program. The Secretary also is authorized, in consultation with State officials, to undertake on non-Federal lands fuel hazard mitigation and prevention, invasive species management, and other activities.⁶⁵

3. Search and Rescue

Congress has authorized the USDA to cooperate with States to provide assistance in local search and rescue operations for specified emergencies. Section 3 of the Act of May 27, 1930, as amended, allows the Secretary of Agriculture to incur expenses as may be necessary in searching for persons lost in National Forests and in transporting persons seriously ill, injured or who die within National Forests.⁶⁶ In addition, the Secretary may assist in local search and rescue operations when requested by responsible local public authorities. Such assistance may be provided in emergencies caused by tornadoes, fires, floods, snowstorms, earthquakes and similar disasters upon request. This assistance is rendered through the use of Natural Resources Conservation Service personnel, vehicles, communication equipment, and other equipment or materials available to the Secretary.⁶⁷

4. Producer Assistance

Section 321(a) of the Consolidated Farm and Rural Development Act authorizes direct and guaranteed loans to farms and ranchers who are U.S. citizens who operate family farms that have been substantially affected by a quarantine imposed by the Secretary under the Plant Protection

⁶² 7 U.S.C. §2014(h) (2002).

⁶³ 42 U.S.C. §1856b (2002).

⁶⁴ 16 U.S.C. §2106 (2002).

⁶⁵ 16 U.S.C. §2106c (2002).

⁶⁶ 16 U.S.C. §575 (2002).

⁶⁷ 7 U.S.C. §2273 (2002).

Act or the animal quarantine laws, or a natural disaster.⁶⁸ The Farm Service Agency administers the emergency loan program.

5. Animal, Plant, and Forest Health

Section 7701 of the Plant Protection Act (PPA) authorizes the Secretary of Agriculture to regulate the importation, interstate movement, and exportation of plants, plant products, plant pests, biological control organisms, and noxious weeds.⁶⁹ To prevent the dissemination of a plant pest or noxious weed that is new to or not widely distributed in the United States, the PPA allows the Secretary to hold, seize, quarantine, treat or otherwise remediate, destroy or otherwise dispose of, any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that is infested with a plant pest or noxious weed or is in violation of the PPA. The Secretary also has the authority to compensate for economic losses incurred as a result of action taken by the Secretary. The Secretary has broad authority to cooperate with other Federal, State, and foreign entities and other persons in carrying out the provisions of the PPA. In connection with an emergency in which a plant pest or noxious weed threatens any segment of the agricultural production of the United States, the Secretary may make available to the agencies or corporations of the Department of Agriculture the funds necessary to arrest, control, eradicate or prevent the spread of the plant pest or noxious weed and for related expenses. If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not widely distributed in the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, 7 U.S.C. §7715 authorizes the Secretary to take certain specified actions, including quarantining any State or portion of a State, and prohibiting or restricting the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance if necessary to eradicate or prevent the dissemination of the plant pest or noxious weed. Before taking action in a State under §7715, the Secretary must notify the Governor or other appropriate official of the State, issue a public announcement and file a statement in the Federal Register. The Animal Plant Health and Inspection Service administers this plant pest and noxious weed authority.⁷⁰

Pursuant to the Animal Health and Protection Act (AHPA), the Secretary is authorized to regulate the importation, interstate movement and exportation of animals, articles or means of conveyance to prevent the introduction or dissemination of any pest or disease of livestock.⁷¹ For purposes of this statute, livestock includes all farm-raised animals. The Secretary may hold, seize, quarantine, treat or destroy, dispose of, or take other remedial action with respect to any animal or progeny of any animal, article, or means of conveyance that has been imported or moved in interstate commerce and that may be affected with or exposed to any pest or disease of livestock or that is in violation of the AHPA. The Secretary is authorized to carry out operations and measures to detect, control or eradicate any pest or disease of livestock and to pay claims arising out of the destruction of any animal, article, or means of conveyance. The Secretary has broad authority to cooperate with other Federal agencies, States and foreign governments,

⁶⁸ 7 U.S.C. §1961, *et seq.* (2002). It also applies in the case of a major disaster or emergency designated by the President under the Stafford Act, *supra* note 10.

⁶⁹ The Plant Protection Act may be found at 7 U.S.C. §7701, *et seq.* (2002) (hereinafter PPA).

⁷⁰ *Id.* at §7715.

⁷¹ 7 U.S.C. §8301, *et seq.* (2002).

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organizations, associations, Indian tribes and other persons in carrying out the provisions of the AHPA. In connection with an emergency under which a pest or disease of livestock threatens any segment of agricultural production in the United States, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department of Agriculture, funds necessary to arrest, control, eradicate or prevent the spread of the pest or disease of livestock and for related expenses. If the Secretary determines that an extraordinary emergency exists because of the presence of a pest or disease of livestock and that the presence of the pest or disease of livestock threatens the livestock of the United States, section 10407 of the AHPA authorizes the Secretary to take certain specified actions, including prohibiting or restricting the movement or use within a State, or any portion of a State, of any animal, articles, means of conveyance or facility if necessary to eradicate or prevent the dissemination of the pest or disease. Before taking action in a State under section 10407 of the AHPA, the Secretary must notify the Governor or other appropriate animal health official of the State, issue a public announcement of the proposed action and publish a statement in the Federal Register.

Section 306A of the Consolidated Farm and Rural Development Act authorizes the Secretary to make grants to residents of rural areas and small communities to secure adequate supplies of safe water where there has been, or imminently will be, a significant decline in the quality or quantity of water available to such communities.⁷² The Secretary may issue grants of up to \$150,000 or \$500,000 for waterline extensions, repairs, drilling wells, significant maintenance, assisting communities in complying with the Federal Water Pollution Control Act and the Safe Water Drinking Act, providing potable water through other means, and other appropriate purposes associated with developing sources of treating, storing or distributing water. The act authorizes priority processing of required applications over any other water or waste loan or grant program. The Emergency and Imminent Community Water Assistance Grant Program is administered by the Rural Utilities Service.

6. Hazardous Substance, Pollutant, or Contaminant Release

With respect to lands and facilities under USDA jurisdiction, custody or control, USDA is authorized to conduct certain response actions in the event of a release or threat of a release of a hazardous substance, pollutant or contaminant into the environment. Executive Order 12580, delegates to the Secretary of Agriculture the responsibility under section 104 of CERCLA for releases or threatened releases which are not on the National Priorities List and removal actions other than emergencies, where either the release is on or the sole source of the release is from USDA lands or facilities.⁷³ The United States Environmental Protection Agency (EPA) or the Coast Guard is the lead Federal agency for emergency removals. Executive Order 13016 delegates to the Secretary the authority under section 106 of CERCLA to issue, with the concurrence of EPA or the Coast Guard, administrative orders to responsible parties to respond to a release or threatened release affecting natural resources under USDA trusteeship or lands or facilities under USDA jurisdiction, custody or control.⁷⁴ In order to exercise Section 106 authority, the Secretary must determine that there may be an imminent and substantial endangerment to public health or welfare or the environment because of an actual or threatened release of a hazardous substance.

⁷² 7 U.S.C. §1926a (2003).

⁷³ Executive Order 12580, *supra* note 26, as amended by Executive Order 13016; CERCLA, *supra* note 22, §§9604, 9621

⁷⁴ Executive Order 13016; CERCLA, *supra* note 22, §§9606, 9622.

H. Law Enforcement Authorities

Congress has brought into Federal jurisdiction crimes involving weapons of mass destruction, to include biological, chemical, nuclear, and high-yield explosives. The Biological Weapons Anti-Terrorism Act of 1989, as amended, criminalizes, among other things, the development, production, stockpile, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for use as a weapon.⁷⁵ The Act confers extraterritorial foreign jurisdiction over such a crime involving a U.S. national. The Attorney General (or his delegate) is authorized to seize the biological agent,⁷⁶ to request a civil injunction against the offending activities,⁷⁷ and to request military assistance "relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction."⁷⁸ In the USA PATRIOT Act, Congress strengthened Section 175 of the Biological Weapons Anti-Terrorism Act. Section 817 of the PATRIOT Act makes it a crime not only to develop, produce, stockpile, transfer, retain, and possess biological agents, toxins or delivery systems for use as a weapon, but also to simply possess such items knowingly in a type or quantity not "reasonably justified" by a peaceful purpose.⁷⁹

In Chapter 11B, of Title 18 of the U.S. Code, Congress makes it unlawful for any person to develop, produce, acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or to assist or induce, in any way, any person to attempt, conspire to do, or to do so.⁸⁰ The law provides broad Federal jurisdiction over the offense and imposes civil and criminal penalties, to include destruction, seizure, and forfeiture of the weapon. In addition, the Attorney General may request any Federal agency "to assist in the

⁷⁵ 18 U.S.C. §175, *et seq.* (2002). The Act gives the following definitions:

(1) the term "biological agent" means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing -

(A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; (B) deterioration of food, water, equipment, supplies, or material of any kind; or (C) deleterious alteration of the environment;

(2) the term "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including -

(A) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or (B) any poisonous isomer or biological product, homolog, or derivative of such a substance;

⁷⁶ 18 U.S.C. §176.

⁷⁷ 18 U.S.C. §177.

⁷⁸ 18 U.S.C. §175a.

⁷⁹ Pub. L. 107-56, The Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Section 817, October 26, 2001.

⁸⁰ 18 U.S.C. §229, *et seq.* (2002). A chemical weapon is defined as follows:

The term "chemical weapon" means the following, together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter as long as the type and quantity is consistent with such a purpose. (B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

18 U.S.C. §229F.

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handling, storage, transportation, or destruction of property seized under this section."⁸¹ As with crimes involving biological weapons, the Attorney General may request military assistance in enforcing this law in an emergency situation involving a chemical weapon.⁸² The Convention on the Physical Protection of Nuclear Material Implementation Act of 1982 criminalized a whole range of activities involving nuclear materials and nuclear weapons.⁸³ The Act prohibits, among other things, the unauthorized possession, use or threat to use, transfer, alteration of, and disposition of nuclear materials and nuclear weapons. As with the other statutes involving WMD criminal activities, Congress grants the Attorney General authority to request military assistance to enforce the prohibition in an emergency situation involving nuclear materials.

Title 18, Chapter 113B defines and criminalizes terrorism, to include the use of certain WMD. Previously, Section 18 U.S.C. §2332e read:

18 U.S.C. § 2332e. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 2332c . . . of this title during an emergency situation involving a chemical weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10 . . .

The USA PATRIOT Act struck from the text "2332c", which related only to the use of chemical weapons and which was repealed in 1998, and inserted "2332a", which relates to the use or threat, attempt or conspiracy to use WMD, defined as weapons that are chemical, biological, radiological, nuclear, and other specified explosive devices. The Act also strikes from the text of §2332e "chemical", which modified "weapon of mass destruction".⁸⁴ The effect of these changes is to authorize the Attorney General to request military assistance during emergencies involving all types of WMD, and not simply those involving biological and chemical weapons. Section 382(f) of Title 10 details the types of and conditions under which military assistance may be requested and rendered.

III. Military Response

A. Posse Comitatus Restrictions

1. History Leading to Enactment of Posse Comitatus Act

In order to comprehend a Federal statute it is often helpful, if not necessary, to know and understand the history that led to its enactment. This is particularly true with the Posse Comitatus Act.⁸⁵ Although it is well known that the direct translation of posse comitatus from Latin to English means the "power of a county,"⁸⁶ the reasons for the enactment of the Posse Comitatus Act are not common knowledge.

⁸¹ 18 U.S.C. §229B.

⁸² 18 U.S.C. §229E.

⁸³ 18 U.S.C. §831 (2002).

⁸⁴ USA PATRIOT Act, *supra* note 79.

⁸⁵ 18 U.S.C. §1385.

⁸⁶ Webster's Third New International Dictionary, Unabridged, Merriam-Webster, Inc., 1993.

Posse Comitatus originated early in British history when the constabulary of the shire, or shire-reeve (which eventually became known as the sheriff) had the duty to maintain order in his turn, or grouping of ten families.⁸⁷ When the sheriff would give the "hue and cry" for assistance, any individual hearing the sheriff was legally bound to assist in bringing the criminal to justice.⁸⁸

Assisting the sheriff in apprehending criminals has continued in some fashion to this day. In the past, this assistance included the use of both civilian and military personnel.

Before the American Revolution, British troops were often used to enforce civil law—the most notable being the Boston Massacre. After the American Revolution, the United States military was used to enforce civil laws on several occasions:⁸⁹

- 1787 – Shay's Rebellion
- 1794 – Whiskey Rebellion
- 1807 – Congress declares the Army is the enforcer of laws
- 1846 – Anti-Catholic riots in Philadelphia
- 1850 – Bloody Kansas
- 1854 – Army used to enforce fugitive slave laws
- 1854 – U.S. Attorney General opined that persons who serve in a posse comitatus perform a citizen's duty regardless of whether they are civilians, members of a militia, or members of the regular military.⁹⁰
- 1859 – John Brown captured and turned over to Federal authorities
- 1863 – Draft riots in New York
- 1865-1877 – Occupation of the South (Reconstruction Act Period – Between 1869 and 1875, Federal troops were removed from all of the former Confederate States, except for Florida, Louisiana, and North Carolina.⁹¹)

The 1876 Presidential election, however, eventually led to the end of the customary use of the military to enforce civil law. In that election, Samuel J. Tilden, Democrat and Governor of New York, ran against Rutherford B. Hayes, Republican. At the conclusion of the election, Samuel Tilden had won the popular vote but was one Electoral College vote shy of becoming President of the United States. Ironically, Florida played a central role in the controversy just as it did in the 2000 Presidential election.⁹²

On election night, Samuel Tilden went to sleep believing he had won the election. In fact, the next day the New York Tribune headlined: "Tilden Elected."⁹³ John C. Reid of the New York Times, however, discovered that Tilden had 184 electoral votes and needed one more to win the

⁸⁷ *American Crazy Quilt: Posse Comitatus*, Diane Alden, October 12, 2000.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ 6 Op. Atty. Gen 466, 473 (1854).

⁹¹ *Harpweek, Finding Precedent: Hayes vs. Tilden, The Electoral College Controversy of 1876-1877*, <http://elections.harpweek.com/9Con>.

⁹² *Id.*

⁹³ Excerpt from "Miami in 1876," by Arva Moore Parks, in *Tequesta*, vol. XXXV, 1975. Copyright 1976 by the Historical Association of Southern Florida.

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election.⁹⁴ Tilden was ahead of Hayes in the popular vote by almost 250,000. But, there were three states whose votes were not in: Florida, South Carolina and Louisiana and Tilden needed just one electoral vote from one of these three states or Oregon.⁹⁵ The election was ultimately decided by an Electoral Commission bill that established a 15-member Commission consisting of 5 Supreme Court judges (4 chosen on geographic diversity who would then select a fifth: this resulted in 2 Democrats and 3 Republicans); 5 senators (3 Republicans, 2 Democrats); and 5 House members (3 Democrats, 2 Republicans).⁹⁶ The Commission decisions were to be legally regarded as final unless overridden by both Houses of Congress.⁹⁷

During the deliberations, the most important negotiation took place at the Wormley House Hotel in Washington, D.C. on February 26, 1877 between four Southern Democrats and five Ohio Republicans.⁹⁸ The Democrats agreed to stop the House filibuster which was blocking the final count, giving Hayes the Presidency, while the Republicans agreed that Hayes would withdraw Federal troops from guarding the State houses in Florida, Louisiana and South Carolina, thus permitting the Democratic Governors to take office.⁹⁹ Accordingly, by an 8 to 7 margin, the Electoral Commission awarded all of the contested 20 electoral votes to Hayes, allowing him to win by one electoral vote, 185-184.¹⁰⁰ On March 5, 1877, Hayes was sworn in as President and he removed the troops shortly thereafter.

2. General Discussion of the Posse Comitatus Act

In 1878, Congress passed the Posse Comitatus Act. The Posse Comitatus Act states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or 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.¹⁰¹

There are those who view the Posse Comitatus Act as a means to prevent the military from interfering with civil law—the "Posse Comitatus Act was intended as an attempt to end the use of Federal troops to police State elections in ex-Confederate states."¹⁰²

But another view states that the Posse Comitatus Act was passed to protect the military from having to assist law enforcement when requested to aid in the enforcement of civil law—"the Posse Comitatus Act was designed to limit direct active use of Federal troops by civil law enforcement officers to enforce laws of nation."¹⁰³

As written in the statute, the Posse Comitatus Act applies directly to the Army and the Air Force. Although the Act does not extend to the Navy,¹⁰⁴ the Navy and Marine Corps are incorporated

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ 18 U.S.C. §1385 (2002).

¹⁰² *United States v. Allred*, 867 F.2d 856 (1989)

¹⁰³ *United States v. Hartley*, C.A.5 (La.) 1986, 796 F.2d 112.

¹⁰⁴ *United States v. Yunis*, C.A.D.C. 1991, 924 F.2d 1086, 288 U.S. App. D.C. 129.

by Federal statute¹⁰⁵ and by Department of Defense Directive.¹⁰⁶ The United States Coast Guard is not subject to the Posse Comitatus Act while it is part of the Department of Homeland Security.¹⁰⁷ However, upon declaration of war or when the President directs, the Coast Guard shall operate as a service of the Navy and shall be subject to the orders of the Secretary of Navy.¹⁰⁸

While under United States Code, Title 32 status (State control), the National Guard is not subject to the Posse Comitatus Act.¹⁰⁹ Once the National Guard transitions to Federal status (United States Code, Title 10 status), it must comply with the provisions of the Posse Comitatus Act.

The immediate objective of the Posse Comitatus Act was to end the use of Federal troops to police State elections, and this objective was accomplished.¹¹⁰ After the attainment of this goal, the Posse Comitatus Act was so rarely the subject of litigation for more than a century that it led one court to describe it as "obscure and all-but-forgotten."¹¹¹ But, in the 1970s, two unrelated events revived interest in the Posse Comitatus Act and led to legislation regarding the Act in the 1980s. Those events were Wounded Knee, South Dakota in 1973 and the other involved the use of Marines in the investigation of the illegal possession and sale of firearms in Quantico, Virginia.¹¹²

3. Posse Comitatus Act Clarification Statutes

Partially as a result of the lawsuits in the 1970s, Congress, in 1981, enacted statutes to clarify the types of military support that may be provided to law enforcement without violating the Posse Comitatus Act.¹¹³ These statutes are not considered exceptions to the Posse Comitatus Act; they are simply clarifications. By enacting these clarification statutes, Congress stated that the military may provide "indirect or passive" assistance to civil law enforcement as long as the

¹⁰⁵ 10 U.S.C. §375:

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 assignment of 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.

¹⁰⁶ DoDD 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," January 15, 1986, at para. E4.3.

¹⁰⁷ 14 U.S.C. §89.

¹⁰⁸ 14 U.S.C. §3.

¹⁰⁹ Care must be taken, however, to ensure that there are no State laws restricting law enforcement activities by National Guard soldiers while under state control, to include while in Title 32 status. For example, absent certain circumstances, Rhode Island prohibits National Guard soldiers below the rank of sergeant from detaining anyone for law enforcement purposes, and Rhode Island National Guard sergeants and above may only detain, not arrest, suspected criminals. See General Laws of Rhode Island, Title 12 (Criminal Procedure), Chapter 12- 7 (Arrest), Section 12-7-18 (Temporary Detention Powers of National Guard) and Section 12-7-21 ("Peace Officer" defined).

¹¹⁰ See Brian L. Porto, Annotation, *Construction and Application of Posse Comitatus Act, and Similar Predecessor Provisions, Restricting Use of United States Army and Air Force to Execute Laws*, 141 A.L.R. Fed. 271 (1997); *United States v. Hartley* (1980, MD Fla) 486 F. Supp. 1348.

¹¹¹ *Chandler v. United States* ((1948, CA1 Mass) 171 F2d 921, cert den 336 U.S. 918, 93 L. Ed. 1081, 69 S. Ct. 640, reh den 336 U.S. 947, 93 L. Ed. 1103, 69 S. Ct. 809.

¹¹² Porto, *supra* note 110; *United States v. Walden* (1974, CA4 Va) 490 F.2d 372, cert den 416 U.S. 983, 40 L. Ed. 2d 760, 94 S. Ct. 2385, reh den 417 U.S. 977, 41 L. Ed. 2d 1148, 94 S. Ct. 3187.

¹¹³ 10 U.S.C. §§371-378 (2002).

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assistance does not reach the level of "direct participation" which includes: searches, seizures, arrest and other similar activities, unless authorized by law.¹¹⁴

4. Tests to Be Used to Determine "Indirect" Versus "Direct" Military Assistance

Indirect assistance allows the Secretary of Defense to, in accordance with other applicable law:

- Provide Federal, State and 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.¹¹⁵
- Make available any equipment, base facility, or research facility to any Federal, State or local civilian law enforcement official for law enforcement purposes. This includes training facilities, sensors, protective clothing and antidotes in preparing for or responding to an emergency involving chemical or biological agents.¹¹⁶
- Train Federal, State and local civilian law enforcement officials in the operation and maintenance of equipment.¹¹⁷
- Allow military personnel to maintain and operate equipment for Federal, State and local civilian law enforcement officials.¹¹⁸
- 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.¹¹⁹
- To the extent otherwise required by section 1535 of title 31 (popularly known as the "Economy Act") or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.¹²⁰

To determine if the assistance provided to law enforcement crosses the threshold from "indirect" to "direct" the courts generally apply three tests:¹²¹

- Whether civilian law enforcement officials made "direct active use" of military personnel to execute civil laws;
- Whether the use of military personnel "pervaded the activities" of civil authorities;
- and

¹¹⁴ 10 U.S.C. §375.

¹¹⁵ 10 U.S.C. §371.

¹¹⁶ 10 U.S.C. §372.

¹¹⁷ 10 U.S.C. §373.

¹¹⁸ 10 U.S.C. §374.

¹¹⁹ 10 U.S.C. §376.

¹²⁰ 10 U.S.C. §377.

¹²¹ Major Matthew J. Gilligan, *Opening the Gate?: An Analysis of Military Law Enforcement Authority Over Civilian Lawbreakers On and Off the Federal Installation*, 161 Mil. L. Rev. 1 (September 1999); *United States v. Yunis*, 924 F.2d 1086, 1094 (D.C. Cir. 1991) (setting out the three established tests to determine when military involvement constitutes more than just indirect assistance). See also *United States v. Kahn*, 35 F.3d 426,431 (9th Cir. 1994); *United States v. Hartley*, 678 F.2d 961, 978 n. 24 (11th Cir. 1982).

- Whether the military was used so as to subject citizens to the "exercise of military power which was regulatory, proscriptive, or compulsory in nature."

If any one of the above three tests is met, it is likely the military has violated the Posse Comitatus Act, unless allowed to do so by the Constitution or Federal statute.

5. Constitutional Authority for Use of the Military

Many describe United States Constitutional provisions as exceptions to the Posse Comitatus Act, but because the Constitution is the supreme law of the land its provisions are not exceptions to Federal law.

Pursuant to Article I, Section 8, Clause 15 of the Constitution, Congress can call "forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

The Constitution gives to Congress the power, among others, to declare war and suppress insurrection, and the latter power is not limited to victories in the field and the dispersion of the insurgent forces: it carries with it inherently rightful authority to guard against an immediate renewal of conflict, and to remedy the evils growing out of its rise and progress. *Raymond v. Thomas*, S.C. 1875, 91 U.S. 712, 1 Otto. 712, 23 L.Ed. 434. See also, *Stewart v. Kahn*, La. 1870, 78 U.S. 493, 11 Wall. 493, 20 L.Ed. 176.¹²²

Accordingly, the Constitution gives Congress the authority to enact Federal statutes that allow the military to execute the laws of the union in a manner proscribed by Congress. Hence the enactment of the Posse Comitatus Act and its exceptions and clarifications are authorized pursuant to the Constitution.

The Constitution states that the President ". . . shall take Care that the Laws be faithfully executed . . ." ¹²³

The duty of the President to take care that the laws be faithfully executed is not limited to the enforcement of Acts of Congress or of statutes of the United States according to their expressed terms, but includes the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution.¹²⁴

Therefore, the U. S. Constitution and the Supreme Court give the President broad, but not unbounded authority¹²⁵ to use the military to enforce the laws of the nation. Although it is unforeseeable that the President would need to exercise authority not expressly granted by Federal statute, there have been instances where the President has taken action without express statutory authority in order to "take Care that the Laws be faithfully executed," in particular, the declaration of martial law.

¹²² Art. 1, Sec. 8, cl. 15, note 3

¹²³ U.S. Constitution, Art. II, Sec 3.

¹²⁴ *In re Neagle*, Cal. 1890, 10 S.Ct. 658, 135 U.S. 64, 34 L.Ed. 55.

¹²⁵ Barry Kellman, *Managing Terrorism's Consequences: Legal Issues*, Ch. 2, Pg. 1, Note 1, March 5, 2002. In *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Court rejected President Truman's order directing the Secretary of Commerce to take possession of the nation's steel mills. Despite Truman's concern that a strike during the Korean War would jeopardize national defense and endanger the nation's well-being and safety, the Court held that the Constitution did not give the President such broad power.

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The United States Constitution and Federal statutes (with the exception of statutes pertaining to United States territories—*see* 48 U.S.C. §§ 1422 and 1591) are silent when it comes to martial law. Accordingly, the authority to declare martial law is derived from the interpretation of Art. II, Sec. 3 of the Constitution which gives the President the authority to "take Care that the Laws be faithfully executed."

In *Luther v. Borden*¹²⁶ and the *Prize Cases*¹²⁷ the Supreme Court upheld the President's mobilization of the militia and blockade of seaports as authorized by his duty to "faithfully execute the laws of the land" during states of extreme domestic emergency.¹²⁸ But, there are limits to the President's authority to declare martial law. In *Ex parte Milligan*¹²⁹ the Supreme Court ruled that martial law is only allowed: (1) during dire conditions of necessity or during war; (2) when the courts are closed; and (3) only in the actual war area.¹³⁰ Major Kirk L. Davies states that "Perhaps the most important point from *Milligan* is that any exercise of emergency power by the President must be viewed in conjunction with congressional will."¹³¹

6. Exceptions to the Posse Comitatus Act

The remainder of this section will examine the relevant Federal statutes that serve as exceptions to the Posse Comitatus Act. Below is a list of these exceptions followed by a discussion of only the first six exceptions. The first six exceptions are most applicable to an event involving weapons of mass destruction.

- The Insurrection Act.¹³²
- Emergency situations involving chemical or biological weapons of mass destruction.¹³³
- Prohibited transactions involving nuclear materials.¹³⁴
- Execution of quarantine and certain health laws.¹³⁵
- Emergency Authority.¹³⁶
- Military Purpose Doctrine.¹³⁷
- Assistance in crimes against foreign officials, official guests of the United States, and other internationally protected persons.¹³⁸
- Assistance in crimes against members of Congress.¹³⁹

¹²⁶ *Luther v. Borden*, 48 U.S. 1 (1849).

¹²⁷ *In re The Amy Warwick*, 67 U.S. 635 (1862).

¹²⁸ See Kellman, *supra* note 125, at Ch. 2, Pg 3.

¹²⁹ *Ex Parte Milligan*, 71 U.S. 2 (1866).

¹³⁰ Kellman, *supra* note 125, at Ch. 2, Pg 3.

¹³¹ *Id.* at note 16; Major Kirk L. Davies, *The Imposition of Martial Law in the United States*, 49 A.F.L. Rev. 67, at 106-107 (2000).

¹³² 10 U.S.C. §§331-334.

¹³³ 10 U.S.C. §382; 18 U.S.C. §175a; 18 U.S.C. §2332e.

¹³⁴ 18 U.S.C. § 831(e).

¹³⁵ 42 U.S.C. § 97.

¹³⁶ DoD Directive 3025.12, "Military Assistance for Civil Disturbances (MACDIS)," February 4, 19994; DoD Directive 5525.5, *supra* note 106.

¹³⁷ DoD Directive 5525.5, *Id.*

¹³⁸ 18 U.S.C. §§1112 and 1116.

¹³⁹ 18 U.S.C. §351.

- Protection of the President, Vice President, and other designated dignitaries.¹⁴⁰
- Execution of certain warrants relating to enforcement of specified civil rights laws.¹⁴¹
- Removal of unlawful enclosures from public lands.¹⁴²
- Support of territorial governors if civil disorder occurs.¹⁴³

Insurrection Act

Title 10 to the United States Code § 331 states that when the legislature or governor of a State asks the President for assistance in suppressing an insurrection the President may call upon the military to suppress the insurrection.¹⁴⁴ "Under this section the President may employ the militia and the land and naval forces for the purpose of causing the laws to be dually executed . . . and the military power on such an occasion must be kept in strict subordination to the civil authority."¹⁴⁵

Pursuant to 10 U.S.C.A. § 332, whenever the insurrection is interfering with the authority of the United States to the point that it becomes impracticable to enforce the laws of the United States, the President may call upon the military without first receiving a request from any State official.¹⁴⁶ The President's authority to use Federal troops under Sections 332 and 333 of this Title is not impaired by the Posse Comitatus Act.¹⁴⁷

Section 333 of Title 10 allows the President to call upon the military whenever the insurrection deprives any part or class of people a constitutional right, privilege, immunity or protection.¹⁴⁸

The instrument used to call up the military to suppress an insurrection is the Executive Order.¹⁴⁹ Finally, prior to using the military, the President shall immediately order the insurgents to disperse and retire peaceably within a limited time.¹⁵⁰ This is how the term "being read the riot act" originated.

¹⁴⁰ 18 U.S.C. §1751.

¹⁴¹ 42 U.S.C. §1989.

¹⁴² 43 U.S.C. §1065.

¹⁴³ 48 U.S.C. §§ 1422 and 1591.

¹⁴⁴ 10 U.S.C.A. §331:

Whenever there is an insurrection in any State against its government, the President may, upon 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.

¹⁴⁵ 9 Op. Atty.Gen 517 (1860), *Id.* at Note 4.

¹⁴⁶ 10 U.S.C.A. § 332:

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.

¹⁴⁷ *Id.* at note 1; 41 Op.Atty.Gen. Nov 7, 1957.

¹⁴⁸ 10 U.S.C. §333

¹⁴⁹ DoDD 3025.12, *supra* note 136 at para. 4.1.6, "The employment of U.S. Military Forces to control civil disturbances shall be authorized by the President through an Executive Order directing the Secretary of Defense to act in a specified civil jurisdiction under specific circumstances."

¹⁵⁰ 10 U.S.C. §334.

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When the Insurrection Act statutes are invoked, the military implements the Act using DoD Directive 3025.12 and a plan entitled "Garden Plot."

While performing Military Assistance for Civil Disturbances (MACDIS) operations, the military may be required to conduct arrests, searches, seizures, etc. Paragraph 4.1.5 of DoD Directive 3025.12 states that "any employment of Military Forces in support of law enforcement operations shall maintain the primacy of civilian authority." But, this directive goes on to state in paragraph 4.2.5 that "The Military Forces employed in MACDIS operations shall remain under military command and control at all times."

Emergency situations involving chemical or biological weapons of mass destruction¹⁵¹

The Attorney General may request the Secretary of Defense to provide assistance during an emergency situation involving a weapon of mass destruction.¹⁵² During an emergency involving a biological or chemical weapon of mass destruction, if military assistance is necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking action, the military may assist in arrests, searches and seizures, and any direct participation in the collection of intelligence for law enforcement purposes.¹⁵³

In an emergency situation involving a chemical weapon, the Attorney General may, pursuant to 18 U.S.C. §229E, request military assistance from the Secretary of Defense for activities. Title 18 U.S.C. §2332(e), as amended by the USA PATRIOT Act, authorizes the Attorney General to request military assistance during emergencies involving all types of WMD.¹⁵⁴ Section 382(f) of title 10 details the types of and conditions under which military assistance may be requested and rendered.

Pursuant to the above Federal statutes, military assistance must not adversely affect military preparedness. Furthermore, the Secretary of Defense may require reimbursement.¹⁵⁵

Prohibited transactions involving nuclear materials

Pursuant to 18 U.S.C.A. § 831(e), the Attorney General can request assistance from the Secretary of Defense for an emergency situation involving radiological materials that pose a serious threat to the interests of the United States. Additional conditions that must be met before the military may be used are: (1) enforcement of the law would be seriously impaired if the assistance were not provided; and (2) civilian law enforcement personnel are not capable of enforcing the law.¹⁵⁶ Assistance under this section may include arrests, searches and seizures, and 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.¹⁵⁷

¹⁵¹ Weapon of Mass Destruction is defined in 18 U.S.C. §2332a.

¹⁵² 18 U.S.C. §2332e.

¹⁵³ 10 U.S.C. §382.

¹⁵⁴ Pub. L. 107-56, USA PATRIOT Act, *supra* note 79.

¹⁵⁵ 10 U.S.C. §377.

¹⁵⁶ 18 U.S.C. §831(e)(2).

¹⁵⁷ 18 U.S.C. §831(e)(3).

As with chemical and biological weapons of mass destruction, the Secretary of Defense may require reimbursement¹⁵⁸ and the military assistance will not adversely affect military preparedness.¹⁵⁹

Execution of quarantine and certain health laws

Title 42 U.S.C.A. § 97 states that quarantines and other restraints established by the health laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by . . . the military officers commanding in any fort or station upon the seacoast.; and all such officers shall faithfully aid in the execution of such quarantines and health laws.

Because this statute was enacted in 1915, it is very narrow covering just the seacoast. But, it is important to realize that this exists as an exception to the Posse Comitatus Act.

Section 4 discusses in greater detail quarantine and other health issues that might arise in WMD response.

Emergency Authority

The Emergency Authority is reserved for *extremely unusual* circumstances and this authority will only be used under the guidance of DoD Directive 3025.12, *Military Assistance for Civil Disturbances (MACDIS)*.¹⁶⁰

Military Forces shall not be used for MACDIS unless specifically authorized by the President, except in the following emergency circumstances:¹⁶¹

- When the use of Military Forces is necessary to prevent loss of life or wanton destruction of property, or to restore governmental functioning and public order. That "emergency authority" applies when sudden and unexpected civil disturbances (including civil disturbances incident to earthquake, fire, flood, or other such calamity endangering life) occur, if duly constituted local authorities are unable to control the situation and circumstances preclude obtaining prior authorization by the President.¹⁶²
- When duly constituted State or local authorities are unable or decline to provide adequate protection for Federal property or Federal Governmental functions, Federal action (including the use of Military Forces) is authorized, as necessary to protect the Federal property or functions.¹⁶³

While responding to the two emergency situations discussed above, responsible DoD officials and commanders will use all available means to seek Presidential authorization through the chain of command while applying their emergency authority.¹⁶⁴

¹⁵⁸ 18 U.S.C. §831(4).

¹⁵⁹ 18 U.S.C. §831(e)(1)(B).

¹⁶⁰ Center for Law and Military Operations, *Domestic Operational Law (DOPLAW) Handbook for Judge Advocates*, 2001 [hereinafter DOPLAW Handbook].

¹⁶¹ DoD Directive 3025.12, *supra* note 136 at para 4.2.2.

¹⁶² *Id.* at para. 4.2.2.1.

¹⁶³ *Id.* at para. 4.2.2.2.

¹⁶⁴ *Id.* at para. 4.2.2.

Military Purpose Doctrine

The following forms of direct assistance by the military are permissible and not in violation of the Posse Comitatus Act:

- Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. Actions under this provision may include the following, depending on the nature of the DoD interest and the authority governing the specific action in question:¹⁶⁵
 - Investigations and other actions related to enforcement of the Uniform Code of Military Justice (UCMJ).¹⁶⁶
 - Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding.¹⁶⁷
 - Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.¹⁶⁸
 - Protection of classified military information or equipment.¹⁶⁹
 - Protection of DoD personnel, DoD equipment, and official guests of the Department of Defense.¹⁷⁰
 - Such other actions that are undertaken primarily for a military or foreign affair's purpose.¹⁷¹

B. Other Military Response Authorities

1. NDAA 2003

Section 902 of the National Defense Authorization Act, FY 2003, creates an Assistant Secretary of Defense for Homeland Defense (ASD(HD)) responsible for overall supervision of DoD's homeland defense activities. The Section also allocates to the Under Secretary of Defense for Policy responsibility for "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." Taking over the role of DoD's executive agent for civil support from the Army on March, 16, 2003, the ASD (HD) closely coordinates with the Department of Homeland Security and supervises the homeland defense activities of U.S. Northern Command and of the U.S. Pacific, Transportation and Strategic commands.

2. DoD Guidance

DoDD 3025.1, "Department of Defense Manual for Civil Emergencies," focuses on the provision of DoD resources to civilian authorities during civil emergencies arising during peace, war, or

¹⁶⁵ DoD Directive 5525.5, *supra* note 106 at para. E4.1.2.1.

¹⁶⁶ *Id.* at E4.1.2.1.1.

¹⁶⁷ *Id.* at E4.1.2.1.2.

¹⁶⁸ *Id.* at E4.1.2.1.3.

¹⁶⁹ *Id.* at E4.1.2.1.4.

¹⁷⁰ *Id.* at E4.1.2.1.5.

¹⁷¹ *Id.* at E4.1.2.1.6

transition to war¹⁷² and restates that, acting under State authority, the Army and Air National Guard have primary responsibility for providing this assistance. Civil disturbances are not addressed. The Directive defines "emergency" exactly as does the Stafford Act.

The Secretary of the Army was designated as Executive Agent for exercising the emergency response and incident response responsibilities. In April 2000, the Secretary of Defense restructured the oversight responsibilities for WMD incident response. A Joint Chief of Staff publication states the changes as follows:

On 1 April 2000, the Secretary of Defense recalled the Executive Agency for domestic CBRNE CM from the Secretary of Army. The Secretary of Defense retains CBRNE CM authority.

On 10 August 2000, the Secretary of Defense determined that certain CBRNE situations may be qualitatively and quantitatively different than other situations, and DOD response might require special management procedures and channels. The Deputy Secretary of Defense has the responsibility to determine whether or not the CBRNE situation warrants special management. If so, the Joint Staff will translate Secretary of Defense's decision into military orders for those CBRNE events, under the oversight of the ASD(SO/LIC). If not, the Secretary of the Army will exercise authority as the DOD Executive Agent through normal Director of Military Support (DOMS) military support to civil authorities (MSCA) procedures.¹⁷³

DoDD 3025.1 would thus be applicable to those domestic WMD incidents that do not warrant "special management," as well as to other civil disturbances that require military assistance.¹⁷⁴

The roles and responsibilities of DoD components in responding to civil emergencies are detailed in DoD Directive 3025.1. The Directive provides an ALL HAZARDS focus on the assignment and allocation of DoD resources to support civil authorities. ALL HAZARDS refers to any number of natural or man-made disasters or emergencies. DoD components respond to the requirements of the Executive Agent through liaisons, as discussed below.

Since the establishment of the office of the Assistant Secretary of Defense for Homeland Defense in DoD, the Secretary of Defense has transferred Executive Agent responsibilities to that office. ASD(HD) is the DoD primary contact for all Federal Departments and Agencies during periods of domestic civil emergencies or disaster response. The Defense Coordinating Officer (DCO) is the DoD on-scene representative who coordinates civil authority support requirements with the Federal Coordinating Officer (FCO). DoD Emergency Preparedness Liaison Officers (EPLOs) are assigned by the Military Services and selected DoD Agencies with primary responsibility to plan, coordinate, and execute support to civil authority.

EPLOs are also designated within the U.S. Atlantic (currently the U.S. Joint Forces Command) and Pacific Commands to serve as principal planning and operating agents for military support to civilian authorities in their respective jurisdictions. The respective combatant commanders maintain liaison with FEMA and activate, task, and supervise the EPLOs; they also designate installations that may provide resource support to the response effort.

¹⁷² DoD Directive 3025.1, "Military Support to Civil Authorities," January 15, 1993. See also, DoDD 3025.12, *supra* note 136; DoD Directive 3025.15, "Military Assistance to Civil Authorities," February 18, 1997.

¹⁷³ CJCSI 3125.01, "Military Assistance to Domestic Consequence Management Operations in Response to a Chemical, Biological, Radiological, Nuclear, or High-Yield Explosive Situation," August 3, 2001.

¹⁷⁴ To date, the Directive has not been revised in light of the Secretary of Defense's guidance.

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The DoD Manual for Civil Emergencies describes in detail the command structure for emergency support and sets out the interaction between FEMA, the Services, and the other agencies in the field as well as discuss the use of resources such as the National Defense Medical System, and the Federal Coordinating Centers.¹⁷⁵

C. Use of the National Guard

Article I, § 8, Clause 15 of the U.S. Constitution, or the first Militia Clause, authorizes Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Clause 16, or the second Militia Clause, authorizes Congress to organize, arm, and discipline, the militia, and to govern the part of the militia that is employed in the service of the United States; the clause reserves to the States the authority to appoint officers and to train the militia as prescribed by Congress. Title 32 implements the second Militia Clause such that training of the National Guard is done under State authority. Article II, § 2, Clause 1 designates the President as Commander-in-Chief of the army and of the militia when federalized. Congress delegated to the President the power to call out the militia by the act of February 28, 1795,¹⁷⁶ and such delegation was held constitutional.¹⁷⁷ However, the States were understood to exercise concurrent jurisdiction with the Federal Government over the militia:

The power of the state government to legislate on the same subjects, having existed prior to the formation of the Constitution, and not having been prohibited by that instrument, it remains with the States, subordinate nevertheless to the paramount law of the General Government.¹⁷⁸

The National Defense Act of 1916 reorganized the military, federalized the organized militia, or National Guard, under the control of the Federal Government and legislated, among other things, its size, criteria for appointment of its officers, and the term of service of its members. The Act also authorized the President to draft individual members of the militia into Federal military service to serve in war.¹⁷⁹ In 1933, Congress established the Army National Guard as a reserve component of the United States Army with a dual mission and status.¹⁸⁰ In 1952, Congress authorized the President to activate the National Guard for 15 days annually without a declaration of a national emergency; however, such activation required the consent of a State governor. Congress extended this authority in 1976 to allow the President to activate involuntarily no more than 50,000 National Guard and/or Reserve members for up to 90 days without a declaration of war or national emergency.¹⁸¹ An amendment in 1980 increased the number from 50,000 to 100,000.¹⁸² In 1986, the number was again increased to the current figure of 200,000.¹⁸³ In addition, the period of active duty was increased in 1994 from 90 days to 270 days.¹⁸⁴

¹⁷⁵ DOD 3025.1-M, "DoD Manual for Civil Emergencies," June 1994.

¹⁷⁶ 1 Stat. 424 (1795), 10 U.S.C. §332 (2002).

¹⁷⁷ *Martin v. Mott*, 25 U.S. 19 (1827).

¹⁷⁸ *Houston v. Moore*, 18 U.S. 1 (1820).

¹⁷⁹ 39 Stat. §§166, 197-98, 200, 202, 211 (1916), found in Titles 10 and 32 of the United States Code.

¹⁸⁰ National Guard Mobilization Act of 1933.

¹⁸¹ 10 U.S.C. §12304 (formerly §673b) (2002).

¹⁸² Pub. L. 96-584, Sec. 2, December 23, 1980.

¹⁸³ Pub. L. 99-661, Sec. 521, November 14, 1986.

¹⁸⁴ Pub. L. 103-337, Secs. 511(a), 1662(e)(2) and 1675(c)(2), Oct. 5, 1994.

The Supreme Court has affirmed that the National Guard is a State organization pursuant to the second Militia Clause unless called into Federal Service. The Court also held that the National Guard may be federalized as militia pursuant to the first Militia Clause, in which case Militia status ends until the end of Federal active duty.¹⁸⁵ In essence, States have command and control of the National Guard, with Federal oversight, unless it is called into Federal service.¹⁸⁶

Generally, State laws authorize the Adjutant General, as directed by the Governor, to call up the National Guard in an emergency to protect lives and property within the State. Thus, absent the President calling the National Guard into Federal Service, the States likely will call first on the National Guard to respond to a WMD event in the United States. Title 32 of the United States Code, which governs the National Guard when it is not in Federal service, states, "in accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all time."¹⁸⁷ Local Guard members, under Title 32 authority, thus represent the local military response to WMD events. Pursuant to Title 32, the National Guard, in State service, also may conduct counter-drug and WMD operations.¹⁸⁸ States decide where to locate the National Guard units and train the units. However, training is conducted according to Army and Air Force standards¹⁸⁹ and the Army and the Air Force determine equipment¹⁹⁰ and inspection requirements.¹⁹¹ In addition to active duty forces, National Guard and Reserve forces possess the expertise and equipment to support response to chemical, biological, radiological attacks in local communities and on DoD installations. As discussed in the section above related to Military Response, the President is authorized to utilize the federalized militia, or National Guard, to quell insurrection and enforce Federal law.¹⁹² The National Guard and Reserves may be activated for the duration of a war or emergency and for six months subsequently.¹⁹³

Whether the National Guard, acting under Title 32, has the authority to cross State lines pursuant to Emergency Management and Assistance Compacts is dependent on the individual States under consideration.

IV. State Emergency Management Authorities

The primary public health concerns and safety measures associated with an emergency arising from a terrorist attack are under the jurisdiction and the responsibility of State governments. Considering the mass confusion generated by a terrorist attack, the rapid and timely response of State emergency agencies and officials is crucial. State preparedness and emergency action authority can have a more immediate effect than a Federal response, which might take longer to coordinate and could require greater amounts of organization. It is therefore vital to understand

¹⁸⁵ *Perpich v. Department of Defense*, 496 U.S. 394 (1990).

¹⁸⁶ See 32 U.S.C. §325 (2002).

¹⁸⁷ 32 U.S.C. §102 (2002).

¹⁸⁸ 32 U.S.C. §112 (2002).

¹⁸⁹ 32 U.S.C. Chapter 5 (2002).

¹⁹⁰ 32 U.S.C. Chapter 7 (2002).

¹⁹¹ 32 U.S.C. §105 (2002).

¹⁹² 10 U.S.C. §331, *et seq.* (2002).

¹⁹³ 10 U.S.C. §12301(a).

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State emergency management authorities. Not understanding the laws and authorities states possess in emergency situations can have consequences on the preservation of civil liberties and hinder effective incident response. Additionally, a full awareness of State functions during an emergency situation will help to maintain order and protect public welfare. This section summarizes the responsibilities of states during an emergency by highlighting the authority of State governors, issues involved with the movement of populations, the use and organization of State military forces such as the National Guard or militia, and the common pieces of legislation used by states when dealing with emergency situations.

A. Authority of the Governor

The Governor is the lead official for coordinating emergency responses and conducting emergency management at the State level.¹⁹⁴ The Governor is responsible for issuing the executive order that officially declares a state of emergency. This declaration must be made before many of the emergency response procedures for which the State is responsible can be undertaken. The powers of the Governor, which become more concentrated and expansive relative during a state of emergency, include most of the organization and coordination required to respond to emergencies once they are declared. These powers can include mobilization of the National Guard, the use of emergency funds, and the allocation of resources such as equipment and personnel.¹⁹⁵ Another important role for the Governor is notifying the public of the actions being taken for their defense and safety. Judicial rulings have affirmed the authority of a governor's actions and those of other State agencies responding to emergencies, even if they infringe on certain civil rights or liberties, so long as those actions are done while attempting to maintain and preserve public health and safety.¹⁹⁶

In the interests of better coordination and efficiency, the Governor's power for emergency preparedness is often delegated to an emergency management agency or department that is established by State legislatures.¹⁹⁷ These State agencies are responsible for a large amount of the coordination and communication needed at regional and local levels for both planning and implementing emergency management plans. Other State agencies involved in emergency preparedness and response, such as those related to public health and safety, are also responsible to the Governor.

B. Sheltering, Evacuation, and Quarantine

Most decisions relating to population movements during a time of emergency are normally under the purview of the Governor, but special responsibilities are also given to local officials and State health departments depending on the situation.¹⁹⁸ The release of hazardous materials can be immediately followed by mitigation measures regardless of whether a state of emergency exists. In non-emergency situations, quarantines are based largely on court rulings and decisions but in cases of emergency or immediate threats to public health, short-term actions taken to protect the general public that might suspend civil liberties are justified. Decisions involving quarantines, curfews, and evacuations are only in rare cases questioned by the courts or overturned because it

¹⁹⁴ An example of the type of powers given to the Governor during an emergency can be seen in Mont. Code Ann. §10-3-503 (2002), "Governor's powers and duties."

¹⁹⁵ Kellman, *supra* note 125, Ch. 3 p. 4 (2002).

¹⁹⁶ *Id.*, Ch. 3 p. 9.

¹⁹⁷ *Id.*, Ch. 3 p. 5.

¹⁹⁸ Ken Lerner, "Legal Issues in Mass Casualty Decontamination," May 14, 2002, pg. 7

is assumed initial action was taken in the public interest.¹⁹⁹ For those people displaced during an emergency situation, shelter is normally provided at local public buildings such as schools. Generally, private property may be used during an emergency situation without permission if it is not volunteered, but compensation must be awarded to the owner.²⁰⁰

An example of a type of State legislation being employed by many states in response to new types of emergencies and threats that could involve evacuation or quarantine is the Model State Emergency Health Power Act (MSEHPA). The MSEHPA has served as the basis for several of the legislative bills pertaining to State authority during a public health emergency that have been passed since September 11, 2001. The MSEHPA, which stresses the need for State governments to have a better ability to protect the public, sets about defining and establishing more comprehensive responses to public health emergencies at the State level that are more in line with the types of potential emergencies arising from a terrorist attack involving a WMD.²⁰¹ As a result, states such as Connecticut have included bio-terrorism in its version of the MSEHPA.²⁰²

The Model Act gives greater authority to governors and public health officials when dealing with public health emergencies with the intent to keep as much of the public safe as possible during a decisions must be made quickly and effectively. As with other State procedures during an emergency, certain civil rights and liberties may be withheld in order to serve the greater public, a facet of the MSEHPA that has caused controversy. As of August 11, 2003, 33 states have enacted a resolution or legislation using the MSEHPA as a guide. It must be noted, however, that although these states have used the MSEHPA as a guide, there are still important differences with regards to the powers of states during public health emergencies and each State has adopted its own form of the bill.²⁰³

C. State Militias

State militias are an important component of a State's ability to respond and manage emergency situations. Some State militias are made of different units and can be classified as either "organized" or "unorganized." In the case of New York, the organized militia is made up of the different branches of the Army National Guard, Navy National Guard, Air National Guard, inactive reserves, and other State defense forces.²⁰⁴ Many State Governors are able to authorize the organization of a State guard, which is distinct from the National Guard, and can be used as a supplemental force to protect the State as part of the militia.²⁰⁵ Governors can also call into action the unorganized militia in times of emergencies. Unorganized militias are typically composed of able-bodied citizens who are not already enlisted in the State military forces that make up the militia. New Hampshire defines the unorganized militia as "all able-bodied residents of the State who are 18 years of age or older, who are, or have declared their intention to become, citizens of the United States, and who are not serving in the national guard or the

¹⁹⁹ Kellman, *supra* note 125 at 11.

²⁰⁰ See, e.g., Mississippi Code 33-15-13 (2002) (detailing the emergency powers of the Governor).

²⁰¹ A copy of the MSEHPA can be found at <http://www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf>.

²⁰² 2003 Conn. Pub. Acts 03-236.

²⁰³ "The Model State Emergency Health Powers Act State Legislative Activity as of August 11, 2003," found at http://www.publichealthlaw.net/MSEHPA/MSEHPA_Legis_Activity.pdf on October 31, 2003.

²⁰⁴ NYS Mil. L. §1.2 (Consol. 2002), "The Militia of the State: Division and composition."

²⁰⁵ S.D. Codified Laws Ann. §33-14-1 "Authorization to organize state guard."

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State guard."²⁰⁶ The composition of State military forces, however, can vary. For instance, Tennessee's State military forces are organized into the army, which includes the Tennessee National Guard and the Tennessee State Guard; the Navy; and the militia, which is defined as able bodied men between the ages of 18 and 45 who are not already members of the State army or navy.²⁰⁷

Every State and territory in the United States maintains its own defense forces. State governors are the commanders-in-chiefs of these forces, which are also overseen by the State's Adjutant General. The cases in which a State military force might be called into action could include emergencies arising from foreign invasion, riots, disasters, and other threats to peace and security. Essentially, State military forces are used in all types of emergency situations and States can pass laws that specifically enlist these forces for service in emergency responses and management. To illustrate, Colorado has passed legislation that explicitly gives the Governor the ability to use the National Guard to implement the Emergency Management Assistance Compact.²⁰⁸ Another important use of State militias is as an auxiliary to national defense forces that can be designated to serve under the authority of the Federal U.S. armed forces. For example, the Governor of New York can order the organized militia to be given to the command of the U.S. armed forces in the case of invasion or attack.²⁰⁹

D. Emergency Management and Assistance Compacts

Although each State has the ability to establish its own emergency guidelines, most have codes and statutes that are similar in nature and explicitly list the duties and responsibilities of State governments and officials during times of emergencies. A comprehensive table of these codes and statutes can be found in Appendix B. In some cases, States have added and amended their existing statutes and regulations pertaining to emergency management and repealed those that appeared to be outdated in response to the terrorist attacks of September 11, 2001, and the growing awareness of potentially new type of threats, such as those posed by weapons of mass destruction.

States also have institutionalized procedures for mutual assistance and cooperation due to the understanding that few States can fully respond to emergency situations independently and as part of their need to make emergency preparedness and responses more effective. One such agreement between States for mutual assistance during an emergency is the Emergency Management Assistance Compact (EMAC). The EMAC relates to providing aid and assistance to States in their management of emergency or disaster situations. It also include articles and provisions for evacuations, sharing equipment and personnel, and issues regarding liability and reimbursements along with other areas in which cooperation between States might be necessary during an emergency. These areas might include State functions such as firefighting, police enforcement, or search and rescue assistance. There are also provisions for joint training operations and planning.²¹⁰ The District of Columbia and all States, except California and Hawaii, are members of the EMAC. National Guard soldiers can only be used to support the EMAC in their State active duty status.

²⁰⁶ N.H. Rev. Stat. §110:B-1 (2002), "Composition of the Militia."

²⁰⁷ Tenn. Code §58-1-104 (2002), "Military Forces – Division and composition."

²⁰⁸ Colo. Rev. Stat. §28.3.104 (2002), "National Guard: Commander in chief."

²⁰⁹ NYS Mil. L. §1.6 (Consol. 2002), "The Militia of the State: Ordering organized militia into active state service."

²¹⁰ Information on the EMAC can be found at <http://www.emacweb.org/EMAC/Index.cfm>.

A widespread State responsibility is adherence to the Emergency Planning and Community Right-to-Know Act (EPCRA), which calls for the establishment of State emergency response commissions to be appointed by the Governor of each State. A primary purpose of these emergency response commissions is to establish emergency planning districts and local emergency planning committees.²¹¹ The primary role of the local emergency planning committees is to develop emergency response plans in relation to possible incidents involving hazardous substances.²¹² The EPCRA makes this information available to the public by mandating reporting requirements for the different types of potentially hazardous substances handled in local communities must be made available to the public upon request.²¹³

Appendix B includes is a comprehensive listing of current State statutes applicable to WMD incident response considerations.

²¹¹ 42 U.S.C. §11001 (2002), "Emergency Planning and Notification: Establishment of state commissions, planning districts, and local committees."

²¹² 42 U.S.C. §11003 (2002), "Emergency Planning and Notification: Comprehensive emergency response plans."

²¹³ 42 U.S.C. §11021, *et seq.* (2002), "Reporting Requirements."

V. Appendix: Citation Excerpts

United States Constitution (1787)

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

Article I

Section. 8.

Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Clause 3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Clause 11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Clause 12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Clause 13: To provide and maintain a Navy;

Clause 14: To make Rules for the Government and Regulation of the land and naval Forces;

Clause 15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Clause 16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Clause 17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article II

Clause 1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States...

Section. 3.

...he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Article IV

Section. 3.

Clause 2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Source: <http://www.house.gov/Constitution/Constitution.html>

UPDATE

Amendment X, Rights Reserved to States, 1791

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment IV, 1868

Article XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Executive Order 12382 (1982)
President's National Security Telecommunications Advisory Committee
<i>This document is included in its entirety on the Deskbook CD-ROM.</i>
<p>By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on National Security Telecommunications, it is hereby ordered as follows:</p> <p>Section 1. Establishment. (a) There is established the President's National Security Telecommunications Advisory Committee which shall be composed of no more than 30 members. These members shall have particular knowledge and expertise in the field of telecommunications and represent elements of the Nation's telecommunications industry. Members of the Committee shall be appointed by the President.</p> <p>(b) The President shall annually designate a Chairman and a Vice Chairman from among the members of the Committee.</p> <p>(c) To assist the Committee in carrying out its functions, the Committee may establish appropriate subcommittees or working groups composed, in whole or in part, of individuals who are not members of the Committee.</p> <p>Sec. 2. Functions. (a) The Committee shall provide to the President, among other things, information and advice from the perspective of the telecommunications industry with respect to the implementation of Presidential Directive 53 (PD/NSC - 53), National Security Telecommunications Policy.</p> <p>(b) The Committee shall provide information and advice to the President regarding the feasibility of implementing specific measures to improve the telecommunications aspects of our national security posture.</p> <p>(c) The Committee shall provide technical information and advice in the identification and solution of problems which the Committee considers will affect national security telecommunications capability.</p> <p>(d) In the performance of its advisory duties, the Committee shall conduct reviews and assessments of the effectiveness of the implementation of PD/NSC - 53, National Security Telecommunications Policy.</p> <p>(e) The Committee shall periodically report on matters in this Section to the President and to the Secretary of Defense in his capacity as Executive Agent for the National Communications System.</p> <p>Sec. 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to national security telecommunications matters as it may require for the purpose of carrying out its functions. Information supplied to the Committee shall not, to the extent permitted by law, be available for public inspection.</p> <p>(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, to the extent permitted by law, they shall be entitled to travel expenses, including per diem in lieu of subsistence.</p> <p>(c) Any expenses of the Committee shall, to the extent permitted by law, be paid from funds available to the Secretary of Defense.</p> <p>Sec. 4. General. (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Secretary of Defense, in accord with guidelines and procedures established by the Administrator of General Services.</p> <p>(b) In accordance with the Federal Advisory Committee Act, as amended, the Committee shall terminate on December 31, 1982, unless sooner extended.</p>
UPDATE
Executive Order 13286 (February 28, 2003)
Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security
<p>Sec. 47. Executive Order 12382 of September 13, 1982 ("President's National Security Telecommunications Advisory Committee"), as amended, is further amended by:</p> <p>(a) inserting "through the Secretary of Homeland Security," after "the President," in sections 2(a) and 2(b);</p> <p>(b) striking "and to the Secretary of Defense" in section 2(e) and inserting ", through the Secretary of Homeland Security," in lieu thereof; and</p> <p>(c) striking "the Secretary of Defense" in sections 3(c) and 4(a) and inserting "the Secretary of Homeland Security" in lieu thereof.</p>
Executive Order 13316 (September 17, 2003)
Continuance of Certain Federal Advisory Committees
President's National Security Telecommunications Advisory Committee until September 30, 2005

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Executive Order 12472 (1984)

Assignment of National Security and Emergency Preparedness Telecommunications Functions

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

.Source: The provisions of Executive Order 12472 of Apr. 3, 1984, appear at 49 FR 13471, 3 CFR, 1984 Comp., p. 193, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.1), and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.2), and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

Section 1. The National Communications System.

(a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) the exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and
(2) the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;
(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;
(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and
(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and
(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Defense is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;
(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

Executive Order 12472 (1984)

- (3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency;
- (4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:
 - a. The assignment of implementation or other responsibilities to NCS member entities;
 - b. New initiatives to assist in the exercise of the functions specified in Section 2; and
 - c. Changes in the composition or structure of the NCS;
- (5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;
- (6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended; and
- (7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

UPDATE

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

- 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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Executive Order 12580 (1987)
Superfund Implementation
<i>This document is included in its entirety on the Deskbook CD-ROM.</i>
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 counterpart to the NRT for planning and coordination of regional preparedness and response actions. (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. (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 island or coastal zone, unless otherwise agreed upon by the EPA and United States Coast Guard representatives. (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.
UPDATE
Executive Order 13016 (August 28,1996)
Amendment to Executive Order No. 12580, Superfund Implementation
Section 1. A new subsection (c)(3) is added to read as follows: "(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."
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
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).

Executive Order 12656 (1988)

Assignment of Emergency Preparedness Responsibilities

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

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 otherwise assigned by Executive Order 12472. Sec. 104. Management of National Security Emergency Preparedness.

UPDATE

Executive Order 13228 (October 8, 2001)

Establishing the Office of Homeland Security and the Homeland Security Council

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

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Executive Order 12656 (1988)
Assignment of Emergency Preparedness Responsibilities
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 (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
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 12742 (January 8, 1991)

National Security Industrial Responsiveness

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

Section 101. Policy The United States must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products, and materials to meet national security requirements, the Government may place orders and require priority performance of these orders.

Section 102. Delegation of Authority under 50 U.S.C. App. 468.

(a) Subject to paragraph (b) of this section, the authorities vested in the President, under 50 U.S.C. App. 468, with respect to the placing of orders for prompt delivery of articles or materials, except for the taking authority under 50 U.S.C. App. 468 (c), are hereby delegated to:

- (1) the Secretary of Agriculture with respect to all food resources;
- (2) the Secretary of Energy with respect to all forms of energy;
- (3) the Secretary of Transportation with respect to all forms of civil transportation; and
- (4) the Secretary of Commerce with respect to all other articles and materials, including construction materials.

(b) The authorities delegated by paragraph (a) of this section shall be exercised only after:

- (1) a determination by the Secretary of Defense that prompt delivery of the articles or materials for the exclusive use of the armed forces of the United States in the interest of national security, or
- (2) a determination by the Secretary of Energy that the prompt delivery of the articles or materials for the Department of Energy's atomic energy programs is in the interest of national security.

(c) All determinations of the type described in paragraph (b) of this section and all delegations -- made prior to the effective date of this order under the Defense Production Act of 1950, as amended, and under its implementing rules and regulation

Section 103. Delegation of Authority under 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82.

(a) Subject to paragraph (b) of this section, the authorities vested in the President under 10 U.S.C. 4501 and 9501 with respect to the placing of orders for necessary products or materials, and under 50 U.S.C. 82 with respect to the placing of orders for ships or war materials, except for the taking authority vested in the President by these acts, are hereby delegated to:

- (1) the Secretary of Agriculture with respect to all food resources;
- (2) the Secretary of Energy with respect to all forms of energy;
- (3) the Secretary of Transportation with respect to all forms of civil transportation; and
- (4) the Secretary of Commerce with respect to all other products and materials, including construction materials.

(b) The authorities delegated in paragraph (a) of this section may be exercised only after the President has made the statutorily required determination.

Section 104. Implementation. (a) The authorities delegated under sections 102 and 103 of this order shall include the power to redelegate such authorities, and the power of successive redelegation of such authorities, to departments and agencies, officers, and employees of the Government. The authorities delegated in this order may be implemented by regulations promulgated and administered by the Secretaries of Agriculture, Defense, Energy, Transportation, and Commerce, and the Director of the Federal Emergency Management Agency, as appropriate.

(b) All departments and agencies delegated authority under this order are hereby directed to amend their rules delegated herein that are to be relied upon to carry out their functions. To the extent authorized by law, including 50 U.S.C. App. 486, 10 U.S.C. 4501 and 9501, and 50 U.S.C. 82, all rules and regulations issued under the Defense Production Act of 1950, as amended, with respect to the placing of priority orders for articles, products, ships, and materials, including war materials, shall be deemed, where appropriate, to implement the authorities delegated by section 102 and 103 of this order, and shall remain in effect until amended or revoked by the respective Secretary. All orders, regulations, and other forms of administrative actions pursuant to the Defense Production Act of 1950, as amended, shall, until amended or revoked by the respective Secretaries or the Director of the Federal Emergency Management Agency, as appropriate, remain in full force and effect, to the extent supported by any law or any authority delegated to the respective Secretary or the Director pursuant to this order.

(c) Upon the request of the Secretary of Defense with respect to particular articles, products, or materials that are determined to be needed to meet national security requirements, and other official receiving a delegation of authority under this Executive order to place orders or to enforce precedence of such orders, shall exercise such authority within 10 calendar days of the receipt of the request; provided, that if the head of any department or agency having delegated responsibilities hereunder disagrees with a request of the Secretary of Defense, such department or agency head shall, within 10 calendar days from the receipt of the request, refer the issue to the Assistant to the President for National Security Affairs, who shall ensure expeditious resolution of the issue.

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(d) Proposed department and agency regulations and procedures to implement the delegated authority under this order, and any new determinations made under sections 102 (b)(1) or (2), shall be coordinated by the Director of the Federal Emergency Management Agency with all appropriate departments and agencies.

Section 105. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

UPDATE

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

Sec. 36. Executive Order 12742 of January 8, 1991 ("National Security Industrial Responsiveness"), is amended by:

(a) inserting "Homeland Security," after "Transportation," in section 104(a); and

(b) striking "the Director of the Federal Emergency Management Agency" in section 104(d) and inserting "the Secretary of Homeland Security" in lieu thereof.

Executive Order 12919 (1994)

National Defense Industrial Resources Preparedness

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

PART I-PURPOSE, POLICY AND IMPLEMENTATION

Section 101. Purpose. This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended ("the Act"), except for the amendments to Title III of the Act in the Energy Security Act of 1980 and telecommunication authorities under Executive Order No. 12472. Sec. 102. Policy. The United States must have an industrial and technology base capable of meeting national defense requirements, and capable of contributing to the technological superiority of its defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States. Sec. 103. General Functions. Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall:

- (a) Identify requirements for the full spectrum of national security emergencies, including military, industrial, and essential civilian demand;
- (b) Assess continually the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of adequate industrial resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;
- (c) Be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate industrial resources and production capability, including services and critical technology for national defense requirements;
- (d) Improve the efficiency and responsiveness, to defense requirements, of the domestic industrial base; and
- (e) Foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment to enhance industrial base efficiency and responsiveness.

Sec. 104. Implementation.

- (a) The National Security Council is the principal forum for consideration and resolution of national security resource preparedness policy.
- (b) The Director, Federal Emergency Management Agency ("Director, FEMA") shall:
 - (1) Serve as an advisor to the National Security Council on issues of national security resource preparedness and on the use of the authorities and functions delegated by this order;
 - (2) Provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance and procedures approved by the Assistant to the President for National Security Affairs to the Federal departments and agencies under this order;
 - (3) Establish procedures, in consultation with Federal departments and agencies assigned functions under this order, to resolve in a timely and effective manner conflicts and issues that may arise in implementing the authorities and functions delegated under this order; and
 - (4) Report to the President periodically concerning all program activities conducted pursuant to this order.
- (c) The head of every Federal department and agency assigned functions under this order shall ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

UPDATE: None

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

- 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.

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Executive Order 13010 (July 15, 1996)

Critical Infrastructure Protection

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

Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States. These critical infrastructures include telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (including medical, police, fire, and rescue), and continuity of government. Threats to these critical infrastructures fall into two categories: physical threats to tangible property ("physical threats"), and threats of electronic, radio-frequency, or computer-based attacks on the information or communications components that control critical infrastructures ("cyber threats"). Because many of these critical infrastructures are owned and operated by the private sector, it is essential that the government and private sector work together to develop a strategy for protecting them and assuring their continued operation. NOW, THEREFORE, 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. There is hereby established the President's Commission on Critical Infrastructure Protection ("Commission").

(a) Chair. A qualified individual from outside the Federal Government shall be appointed by the President to serve as Chair of the Commission. The Commission Chair shall be employed on a full-time basis.

(b) Members. The head of each of the following executive branch departments and agencies shall nominate not more than two full-time members of the Commission:

(i) Department of the Treasury; (ii) Department of Justice; (iii) Department of Defense; (iv) Department of Commerce; (v) Department of Transportation; (vi) Department of Energy; (vii) Central Intelligence Agency; (viii) Federal Emergency Management Agency; (ix) Federal Bureau of Investigation; (x) National Security Agency. One of the nominees of each agency may be an individual from outside the Federal Government who shall be employed by the agency on a fulltime basis. Each nominee must be approved by the Steering Committee.

Sec. 2. The Principals Committee. The Commission shall report to the President through a Principals Committee ("Principals Committee"), which shall review any reports or recommendations before submission to the President. The Principals Committee shall comprise the:

(i) Secretary of the Treasury; (ii) Secretary of Defense; (iii) Attorney General; (iv) Secretary of Commerce; (v) Secretary of Transportation; (vi) Secretary of Energy; (vii) Director of Central Intelligence; (viii) Director of the Office of Management and Budget; (ix) Director of the Federal Emergency Management Agency; (x) Assistant to the President for National Security Affairs; (xi) Assistant to the Vice President for National Security Affairs.

Sec. 3. The Steering Committee of the President's Commission on Critical Infrastructure Protection. A Steering Committee ("Steering Committee") shall oversee the work of the Commission on behalf of the Principals Committee. The Steering Committee shall comprise four members appointed by the President. One of the members shall be the Chair of the Commission and one shall be an employee of the Executive Office of the President. The Steering Committee will receive regular reports on the progress of the Commission's work and approve the submission of reports to the Principals Committee.

Sec. 4. Mission. The Commission shall: (a) within 30 days of this order, produce a statement of its mission objectives, which will elaborate the general objectives set forth in this order, and a detailed schedule for addressing each mission objective, for approval by the Steering Committee;

(b) identify and consult with: (i) elements of the public and private sectors that conduct, support, or contribute to infrastructure assurance; (ii) owners and operators of the critical infrastructures; and (iii) other elements of the public and private sectors, including the Congress, that have an interest in critical infrastructure assurance issues and that may have differing perspectives on these issues;

(c) assess the scope and nature of the vulnerabilities of, and threats to, critical infrastructures;

(d) determine what legal and policy issues are raised by efforts to protect critical infrastructures and assess how these issues should be addressed;

(e) recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures from physical and cyber threats and assuring their continued operation;

(f) propose any statutory or regulatory changes necessary to effect its recommendations; and

(g) produce reports and recommendations to the Steering Committee as they become available; it shall not limit itself to producing one final report.

Sec. 5. Advisory Committee to the President's Commission on Critical Infrastructure Protection. (a) The Commission shall receive advice from an advisory committee ("Advisory Committee") composed of no more than ten individuals appointed by the President from the private sector who are knowledgeable about critical infrastructures. The Advisory Committee shall advise the Commission on the subjects of the Commission's mission in whatever manner the Advisory Committee, the Commission Chair, and the Steering Committee deem appropriate.

(b) A Chair shall be designated by the President from among the members of the Advisory Committee.

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(c) The Advisory Committee shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Department of Defense shall perform the functions of the President under the Federal Advisory Committee Act for the Advisory Committee, except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 6. Administration. (a) All executive departments and agencies shall cooperate with the Commission and provide such assistance, information, and advice to the Commission as it may request, to the extent permitted by law.

(b) The Commission and the Advisory Committee may hold open and closed hearings, conduct inquiries, and establish subcommittees, as necessary.

(c) Members of the Advisory Committee shall serve without compensation for their work on the Advisory Committee. While engaged in the work of the Advisory Committee, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Commission and the Advisory Committee with administrative services, staff, other support services, and such funds as may be necessary for the performance of its functions and shall reimburse the executive branch components that provide representatives to the Commission for the compensation of those representatives.

(e) In order to augment the expertise of the Commission, the Department of Defense may, at the Commission's request, contract for the services of nongovernmental consultants who may prepare analyses, reports, background papers, and other materials for consideration by the Commission. In addition, at the Commission's request, executive departments and agencies shall request that existing Federal advisory committees consider and provide advice on issues of critical infrastructure protection, to the extent permitted by law.

(f) The Commission, the Principals Committee, the Steering Committee, and the Advisory Committee shall terminate 1 year from the date of this order, unless extended by the President prior to that date.

Sec. 7. Interim Coordinating Mission. (a) While the Commission is conducting its analysis and until the President has an opportunity to consider and act on its recommendations, there is a need to increase coordination of existing infrastructure protection efforts in order to better address, and prevent, crises that would have a debilitating regional or national impact. There is hereby established an Infrastructure Protection Task Force ("IPTF") within the Department of Justice, chaired by the Federal Bureau of Investigation, to undertake this interim coordinating mission.

(b) The IPTF will not supplant any existing programs or organizations.

(c) The Steering Committee shall oversee the work of the IPTF.

(d) The IPTF shall include at least one full-time member each from the Federal Bureau of Investigation, the Department of Defense, and the National Security Agency. It shall also receive part-time assistance from other executive branch departments and agencies.

Members shall be designated by their departments or agencies on the basis of their expertise in the protection of critical infrastructures.

IPTF members' compensation shall be paid by their parent agency or department.

(e) The IPTF's function is to identify and coordinate existing expertise, inside and outside of the Federal Government, to:

(i) provide, or facilitate and coordinate the provision of, expert guidance to critical infrastructures to detect, prevent, halt, or confine an attack and to recover and restore service;

(ii) issue threat and warning notices in the event advance information is obtained about a threat;

(iii) provide training and education on methods of reducing vulnerabilities and responding to attacks on critical infrastructures; (iv) conduct after-action analysis to determine possible future threats, targets, or methods of attack; and

(v) coordinate with the pertinent law enforcement authorities during or after an attack to facilitate any resulting criminal investigation.

(f) All executive departments and agencies shall cooperate with the IPTF and provide such assistance, information, and advice as the IPTF may request, to the extent permitted by law.

(g) All executive departments and agencies shall share with the IPTF information about threats and warning of attacks, and about actual attacks on critical infrastructures, to the extent permitted by law.

(h) The IPTF shall terminate no later than 180 days after the termination of the Commission, unless extended by the President prior to that date.

Sec. 8. General. (a) This order is not intended to change any existing statutes or Executive orders.

(b) This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

UPDATE: None

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Executive Order 13016 (August 28, 1996)

Amendment to Executive Order No. 12580, Superfund Implementation

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

Section 1. A new subsection (c)(3) is added to read as follows:

"(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."

Section. 2. A new subsection (d) (3) is added to section 4 to read as follows:

"(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."

UPDATE: None

Executive Order 13228 (October 8, 2001)

Establishing the Office of Homeland Security and the Homeland Security Council

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

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.

(i) In performing these functions, the Office shall work with Federal, State, and local agencies, as appropriate, to:

(A) facilitate collection from State and local governments and private entities of information pertaining to terrorist threats or activities within the United States;

(B) coordinate and prioritize the requirements for foreign intelligence relating to terrorism within the United States of executive departments and agencies responsible for homeland security and provide these requirements and priorities to the Director of Central Intelligence and other agencies responsible for collection of foreign intelligence;

(C) coordinate efforts to ensure that all executive departments and agencies that have intelligence collection responsibilities have sufficient technological capabilities and resources to collect intelligence and data relating to terrorist activities or possible terrorist acts within the United States, working with the Assistant to the President for National Security Affairs, as appropriate;

(D) coordinate development of monitoring protocols and equipment for use in detecting the release of biological, chemical, and radiological hazards; and

(E) ensure that, to the extent permitted by law, all appropriate and necessary intelligence and law enforcement information relating to homeland security is disseminated to and exchanged among appropriate executive departments and agencies responsible for homeland security and, where appropriate for reasons of homeland security, promote exchange of such information with and among State and local governments and private entities.

(ii) Executive departments and agencies shall, to the extent permitted by law, make available to the Office all information relating to terrorist threats and activities 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

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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 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.

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- (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 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.
- (l) Budget Review. The Assistant to the President for Homeland Security, in consultation with the Director of the Office of Management and Budget (the "Director") and the heads of executive departments and agencies, shall identify programs that contribute to the Administration's strategy for homeland security and, in the development of the President's annual budget submission, shall review and provide advice to the heads of departments and agencies for such programs. The Assistant to the President for Homeland Security shall provide advice to the Director on the level and use of funding in departments and agencies for homeland security-related activities and, prior to the Director's forwarding of the proposed annual budget submission to the President for transmittal to the Congress, shall certify to the Director the funding levels that the Assistant to the President for Homeland Security believes are necessary and appropriate for the homeland security-related activities of the executive branch.

UPDATE

Executive Order 13284 (January 23, 2003)

Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security

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.

Executive Order 13286 (February 28, 2003)

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

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.

**Domestic WMD Incident Management
Legal Deskbook**

Executive Order 13231 (October 16, 2001)

Critical Infrastructure Protection in the Information Age

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

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.

(a) 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. The protection program authorized by this order shall consist of continuous efforts to secure information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. Protection of these systems is essential to the telecommunications, energy, financial services, manufacturing, water, transportation, health care, and emergency services sectors.

(b) 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. Scope.

To achieve this policy, there shall be a senior executive branch board to coordinate and have cognizance of Federal efforts and programs that relate to protection of information systems and involve:

- (a) cooperation with and protection of private sector critical infrastructure, State and local governments' critical infrastructure, and supporting programs in corporate and academic organizations;
- (b) protection of Federal departments' and agencies' critical infrastructure; and
- (c) related national security programs.

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

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:

Executive Order 13295 (April 4, 2003)

Revised List of Quarantinable Communicable Diseases

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 section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

Section 1. Based upon the recommendation of the Secretary of Health and Human Services (the "Secretary"), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

Sec. 2. The Secretary, in the Secretary's discretion, shall determine whether a particular condition constitutes a communicable disease of the type specified in section 1 of this order.

Sec. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

Sec. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

Sec. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.

UPDATE: None

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.

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.

UPDATE: None

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

Management of Domestic Incidents

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

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.

UPDATE: None

Presidential Decision Directive 39 (June 21, 1995)

United States Policy on Counterterrorism

This unclassified synopsis is included in its entirety on the Deskbook CD-ROM.

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.

Presidential Decision Directive 39 (June 21, 1995)

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 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.

UPDATE: None

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Presidential Decision Directive 62 (May 22, 1998)

Combating Terrorism

This unclassified fact sheet is included in its entirety on the Deskbook CD-ROM.

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.

UPDATE: None

Presidential Decision Directive 63 (May 22, 1998)

Protecting America's Critical Infrastructures

This unclassified fact sheet is included in its entirety on the Deskbook CD-ROM.

This Presidential Directive builds on the recommendations of the President's Commission on Critical Infrastructure Protection. In October 1997 the Commission issued its report, calling for a national effort to assure the security of the United States' increasingly vulnerable and interconnected infrastructures, such as telecommunications, banking and finance, energy, transportation, and essential government services.

Presidential Decision Directive 63 is the culmination of an intense, interagency effort to evaluate those recommendations and produce a workable and innovative framework for critical infrastructure protection. The President's policy:

- Sets a goal of a reliable, interconnected, and secure information system infrastructure by the year 2003, and significantly increased security for government systems by the year 2000, by:
 - Immediately establishing a national center to warn of and respond to attacks.
 - Building the capability to protect critical infrastructures from intentional acts by 2003.
- Addresses the cyber and physical infrastructure vulnerabilities of the Federal government by requiring each department and agency to work to reduce its exposure to new threats;
- Requires the Federal government to serve as a model to the rest of the country for how infrastructure protection is to be attained;
- Seeks the voluntary participation of private industry to meet common goals for protecting our critical systems through public-private partnerships;
- Protects privacy rights and seeks to utilize market forces. It is meant to strengthen and protect the nation's economic power, not to stifle it.

- Seeks full participation and input from the Congress.
- PDD-63 sets up a new structure to deal with this important challenge:
- a *National Coordinator* whose scope will include not only critical infrastructure but also foreign terrorism and threats of domestic mass destruction (including biological weapons) because attacks on the US may not come labeled in neat jurisdictional boxes;
 - The *National Infrastructure Protection Center (NIPC)* at the FBI which will fuse representatives from FBI, DOD, USSS, Energy, Transportation, the Intelligence Community, and the private sector in an unprecedented attempt at information sharing among agencies in collaboration with the private sector. The NIPC will also provide the principal means of facilitating and coordinating the Federal Government's response to an incident, mitigating attacks, investigating threats and monitoring reconstitution efforts;
 - An *Information Sharing and Analysis Center (ISAC)* is encouraged to be set up by the private sector, in cooperation with the Federal government;
 - A *National Infrastructure Assurance Council* drawn from private sector leaders and State/local officials to provide guidance to the policy formulation of a National plan
 - The *Critical Infrastructure Assurance Office* will provide support to the National Coordinator's work with government agencies and the private sector in developing a national plan. The office will also help coordinate a national education and awareness program, and legislative and public affairs.

UPDATE: None

7 U.S.C. §450 (2001)

Agriculture

Section 450. Cooperation with State agencies in administration and enforcement of laws relating to marketing of agricultural products and control or eradication of plant and animal diseases and pests; coordination of administration of Federal and State laws

In order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.

Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restrictions of law upon such cooperation.

UPDATE: None

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7 U.S.C. §612c (2002)

Agriculture

Sec. 612c. Appropriation to encourage exportation and domestic consumption of agricultural products

There is appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to

(1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption;

(2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; and (

3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final. The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section.

Notwithstanding any other provision of this section, the amount that may be devoted, during any fiscal year after June 30, 1939, to any one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year. The sums appropriated under this section shall be devoted principally to perishable nonbasic agricultural commodities (other than those receiving price support under section 1446 of this title) and their products. The sums appropriated under this section shall, notwithstanding the provisions of any other law, continue to remain available for the purposes of this section until expended; but any excess of the amount remaining unexpended at the end of any fiscal year over \$300,000,000 shall, in the same manner as though it had been appropriated for the service of such fiscal year, be subject to the provisions of section 3690 of the Revised Statutes, and section 5 of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes". A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

UPDATE

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002

Amended by Pub. L. 107-171, sec. 10602, 116 Stat. 511.

Note amended by Pub. L. 107-171, secs. 4201(a), 4201(b), 4202(a)(1), and 4202(a)(2),

New note added by Pub. L. 107-171, secs. 4201(c), 4201(d), 4202(b), and 10901

7 U.S.C. §1427 (2002)

Agriculture

Sec. 1427. Commodity Credit Corporation sales price restrictions

(a) In general The Commodity Credit Corporation may sell any farm commodity owned or controlled by the Corporation at any price not prohibited by this section.

(b) Inventories In determining sales policies for basic agricultural commodities or storable nonbasic commodities, the Corporation should consider the establishment of such policies with respect to prices, terms, and conditions as the Corporation determines will not discourage or deter manufacturers, processors, and dealers from acquiring and carrying normal inventories of the commodity of the current crop.

(c) Sales price restrictions

(1) In general

Except as otherwise provided in this section, the Corporation shall not sell any basic agricultural commodity or storable nonbasic commodity at less than 115 percent of the lower of -

(A) the current national average price support loan rate for the commodity adjusted for the current market differentials reflecting grade, quality, location, reasonable carrying charges, and other factors determined appropriate by the Corporation; or

(B) the loan repayment level.

(2) Extra long staple cotton

The Corporation may sell extra long staple cotton for unrestricted use at such price as the Corporation determines is appropriate to maintain and expand export and domestic markets.

(3) Oilseeds

The Corporation shall not sell oilseeds at less than the lower of -

(A) 105 percent of the current national average price support loan rate for the oilseed, adjusted for the current market differentials reflecting grade, quality, location, reasonable carrying charges, and other factors determined appropriate by the Corporation; or

(B) 115 percent of the loan repayment level.

(4) Wheat and feed grains

Whenever the producer reserve program for wheat and feed grains established under section 1445e of this title is in effect, the Corporation may not sell any of its stocks of wheat or feed grains at a level that is less than 150 percent of the then current loan rate for wheat or feed grains.

(5) Upland cotton

The Commodity Credit Corporation shall sell upland cotton for unrestricted use at the same price the Corporation sells upland cotton for export, but in no event at less than the amount provided for in paragraph (1).

(d) Nonapplication of sales price restrictions

The foregoing restrictions of this section shall not apply to -

(1) sales for new or byproduct uses;

(2) sales of peanuts and oilseeds for the extraction of oil;

(3) sales for seed or feed if the sales will not substantially impair any price support program;

(4) sales of commodities that have substantially deteriorated in quality or as to which there is a danger of loss or waste through deterioration or spoilage;

(5) sales for the purpose of establishing claims arising out of contract or against persons who have committed fraud, misrepresentation, or other wrongful acts with respect to the commodity;

(6) sales for export (excluding sales of upland cotton for export);

(7) sales of wool; and

(8) sales for other than primary uses.

(e) Distress, disaster, and livestock emergency areas

(1) In general Notwithstanding the foregoing provisions of this section, the Corporation, on such terms and conditions as the Secretary may consider in the public interest, may -

(A) make available any farm commodity or product thereof owned or controlled by the Corporation for use in relieving distress -

(i) in any area in the United States (including the Virgin Islands) declared by the President to be an acute distress area because of unemployment or other economic cause, if the President finds that the use will not displace or interfere with normal marketing of agricultural commodities; and

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7 U.S.C. §1427 (2002)

- (ii) in connection with any major disaster determined by the President to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act (42 U. S.C. 5121 et seq.); and
- (B) donate or sell commodities in accordance with subchapter V of this chapter.
- (2) Costs Except on a reimbursable basis, the Corporation shall not bear any costs in connection with making the commodity available under this subsection beyond the cost of the commodities to the Corporation in -
- (A) the storage of the commodity; and
- (B) the handling and transportation costs in making delivery of the commodity to designated agencies at one or more central locations in each State or other area.
- (f) Efficient operations
- (1) In general Subject to paragraph (2), the foregoing restrictions of this section shall not apply to sales of commodities the disposition of which is desirable in the interest of the effective and efficient conduct of the operations of the Corporation because of the small quantities involved, or because of age, location or questionable continued storability of the commodity.
- (2) Offsets The sales shall be offset (if necessary) by the purchases of commodities as the Corporation determines is appropriate to prevent the sales from substantially impairing any price support program or unduly affecting market prices, except that the purchase price shall not exceed the Corporation's minimum sales price for the commodities for unrestricted use.
- (3) Competitive bid basis Subject to the sales price restrictions contained in this section, the Corporation may sell any basic agricultural commodity or storable nonbasic commodity on a competitive bid basis, if the sale is determined to be appropriate by the Secretary.
- (g) Sales for export For the purposes of this section, sales for export shall include -
- (1) sales made on condition that the identical commodities sold be exported; and
- (2) sales made on condition that commodities of the same kind and of comparable value or quantity be exported, either in raw or processed form.

UPDATE: None

7 U.S.C. §1431 (2002)

Agricultural Act of 1949

Sec. 1431. Disposition of commodities to prevent waste

- (a) Eligible recipients; barter; estimates; reprocessing and other charges In order to prevent the waste of commodities whether in private stocks or acquired through price-support operations by the Commodity Credit Corporation before they can be disposed of in normal domestic channels without impairment of the price-support program or sold abroad at competitive world prices, the Commodity Credit Corporation is authorized, on such terms and under such regulations as the Secretary of Agriculture may deem in the public interest:
- (1) upon application, to make such commodities available to any Federal agency for use in making payment for commodities not produced in the United States;
- (2) to barter or exchange such commodities for strategic or other materials as authorized by law;
- (3) in the case of food commodities to donate such commodities to the Bureau of Indian Affairs and to such State, Federal, or private agency or agencies as may be designated by the proper State or Federal authority and approved by the Secretary, for use in the United States in nonprofit school-lunch programs, in nonprofit summer camps for children, in the assistance of needy persons, and in charitable institutions, including hospitals and facilities, to the extent that they serve needy persons (including infants and children).
- In the case of clause (3) the Secretary shall obtain such assurance as he deems necessary that the recipients thereof will not diminish their normal expenditures for food by reason of such donation. In order to facilitate the appropriate disposal of such commodities, the Secretary may from time to time estimate and announce the quantity of such commodities which he anticipates will become available for distribution under clause (3).
- The Commodity Credit Corporation may pay, with respect to commodities disposed of under this subsection, reprocessing, packaging, transporting, handling, and other charges accruing up to the time of their delivery to a Federal agency, or to the designated State or private agency. In addition, in the case of food commodities disposed of under this subsection, the Commodity Credit Corporation may pay the cost of processing such commodities into a form suitable for home or institutional use, such processing to be accomplished through private trade facilities to the greatest extent possible. For the purpose of this subsection the terms "State" and "United States" include the District of Columbia and any Territory or possession of the United States. Dairy products acquired by the Commodity Credit Corporation through price support operations may, insofar as they can be used in the United States in nonprofit school lunch and other nonprofit child feeding programs, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that

7 U.S.C. §1431 (2002)

needy persons are served, be donated for any such use prior to any other use or disposition. Notwithstanding any other provision of law, such dairy products may be donated for distribution to needy households in the United States and to meet the needs of persons receiving nutrition assistance under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

(b) Furnishing of eligible commodities for carrying out programs of assistance in developing and friendly countries; availability of eligible commodities for nonprofit and voluntary agencies and cooperatives

(1) The Secretary, subject to the requirements of paragraph (10), may furnish eligible commodities for carrying out programs of assistance in developing countries and friendly countries under titles II and III of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq., 1727 et seq.) And under the Food for Progress Act of 1985 (7 U.S.C. 1736o), as approved by the Secretary, and for such purposes as are approved by the Secretary. To ensure that the furnishing of commodities under this subsection is coordinated with and complements other United States foreign assistance, assistance under this subsection shall be coordinated through the mechanism designated by the President to coordinate assistance under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.).

(2) As used in this subsection, the term "eligible commodities" means -

(A) dairy products, wheat, rice, feed grains, and oilseeds acquired by the Commodity Credit Corporation through price support operations, and the products thereof, that the Secretary determines meet the criteria specified in subsection (a) of this section; and (B) such other edible agricultural commodities as may be acquired by the Secretary or the Commodity Credit Corporation in the normal course of operations and that are available for disposition under this subsection, except that no such commodities may be acquired for the purpose of their use under this subsection.

(3)

(A) Commodities may not be made available for disposition under this subsection in amounts that (i) will, in any way, reduce the amounts of commodities that traditionally are made available through donations to domestic feeding programs or agencies, or (ii) will prevent the Secretary from fulfilling any agreement entered into by the Secretary under a payment-in-kind program under this Act or other Acts administered by the Secretary.

B) (i) The requirements of section 403(a) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1733(a)) shall apply with respect to commodities furnished under this subsection. Commodities may not be furnished for disposition to any country under this subsection except on determinations by the Secretary that -

(I) the receiving country has the absorptive capacity to use the commodities efficiently and effectively; and

(II) such disposition of the commodities will not interfere with usual marketings of the United States, nor disrupt world prices of agricultural commodities and normal patterns of commercial trade with developing countries.

(ii) The requirement for safeguarding usual marketings of the United States shall not be used to prevent the furnishing under this subsection of any eligible commodity for use in countries that

(I) have not traditionally purchased the commodity from the United States; or

(II) do not have adequate financial resources to acquire the commodity from the United States through commercial sources or through concessional sales arrangements.

(C) The Secretary shall take reasonable precautions to ensure that -

(i) commodities furnished under this subsection will not displace or interfere with sales that otherwise might be made; and

(ii) sales or barter under paragraph (7) will not unduly disrupt world prices of agricultural commodities nor normal patterns of commercial trade with friendly countries.

(D) If eligible commodities are made available under this subsection to a friendly country, nonprofit and voluntary agencies and cooperatives shall also be eligible to receive commodities for food aid programs in the country.

(4) Agreements may be entered into under this subsection to provide eligible commodities in installments over an extended period of time. In agreements with recipients of eligible commodities under this subsection (including nonprofit and voluntary agencies or cooperatives), subject to the availability of commodities each fiscal year, the Secretary, on request, shall approve multiyear agreements to make agricultural commodities available for distribution or sale by the recipients if the agreements otherwise meet the requirements of this subsection.

(5) (A) Section 406 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736) shall apply to the commodities furnished under this subsection. (B) The Commodity Credit Corporation may pay the processing and domestic handling costs incurred, as authorized under this subsection, in the form of eligible commodities, as defined in paragraph (2)(A), if the Secretary determines that such in-kind payment will not disrupt domestic markets.

(6) The cost of commodities furnished under this subsection, and expenses incurred under section 406 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736) in connection with those commodities, shall be in addition to the level of assistance programmed under that Act (7 U.S.C. 1691 et seq.) And shall not be considered expenditures for international affairs and finance.

(7) Eligible commodities furnished under this subsection may be sold or bartered only with the approval of the Secretary and solely as

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7 U.S.C. §1431 (2002)

follows:

- (A) Sales and barter that are incidental to the donation of the commodities or products.
- (B) Sales and barter to finance the distribution, handling, and processing costs of the donated commodities or products in the importing country or in a country through which such commodities or products must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people.
- (C) Sales and barter of commodities and products furnished to intergovernmental agencies or organizations, insofar as they are consistent with normal programming procedures in the distribution of commodities by those agencies or organizations.
- (D) (i) Sales of commodities and products furnished to nonprofit and voluntary agencies, or cooperatives, for food assistance under agreements that provide for the use, by the agency or cooperative, of foreign currency proceeds generated from such sale of commodities or products for the purposes established in clause (ii) of this subparagraph.
(ii) Foreign currencies generated from partial or full sales or barter of commodities by a nonprofit and voluntary agency or cooperative shall be used -
 - (I) to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under this section; and
 - (II) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities. In addition, foreign currency proceeds generated in Poland may also be used by governmental and nongovernmental agencies or cooperatives for eligible activities approved by the joint commission established pursuant to section 2226 of the American Aid to Poland Act of 1988 and by the United States chief of diplomatic mission in Poland that would improve the quality of life of the Polish people and would strengthen and support the activities of governmental or private, nongovernmental independent institutions in Poland. Activities eligible under the preceding sentence include -
 - (I) any project undertaken in Poland under the auspices of the Charitable Commission of the Polish Catholic Episcopate for the benefit of handicapped or orphaned children;
 - (II) any project for the reconstruction, renovation, or maintenance of the Research Center on Jewish History and Culture of the Jagiellonian University of Krakow, Poland, established for the study of events related to the Holocaust in Poland;
 - (III) any other project or activity which strengthens and supports private and independent sectors of the Polish economy, especially independent farming and agriculture; and
 - (IV) the Polish Catholic Episcopate's Rural Water Supply Foundation.
 - (iii) Except as otherwise provided in clause (v), such agreements, taken together for each fiscal year, shall provide for sales of commodities and products for foreign currency proceeds in amounts that are, in the aggregate, not less than 10 percent of the aggregate value of all commodities and products furnished, or the minimum tonnage required, whichever is greater, for carrying out programs of assistance under this subsection in such fiscal year. The minimum allocation requirements of this clause apply with respect to commodities and products made available under this subsection for carrying out programs of assistance under titles II and III of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq., 1727 et seq.), and not with respect to commodities and products made available to carry out the Food for Progress Act of 1985 (7 U. S.C. 1736o).
 - (iv) Foreign currency proceeds generated from the sale of commodities or products under this subparagraph shall be expended within the country of origin within a reasonable length of time, as determined by the Secretary, except that the Secretary may permit the use of proceeds in a country other than the country of origin -
 - (I) as necessary to expedite the transportation of commodities and products furnished under this subsection; or
 - (II) if the proceeds are generated in a currency generally accepted in the other country.
 - (v) The provisions of clause (iii) of this subparagraph establishing minimum annual allocations for sales and use of proceeds shall not apply to the extent that there have not been sufficient requests for such sales and use of proceeds nor to the extent required under paragraph (3).
- (E) Sales and barter to cover expenses incurred under paragraph (5) (a).
- (F) The provisions of sections 403(i) and 407(c) (FOOTNOTE 1) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1733(i), 1736a(c)) shall apply to donations, sales and barter of eligible commodities under this subsection. (FOOTNOTE 1) See References in Text note below. The Secretary may approve the use of proceeds or services realized from the sale or barter of a commodity furnished under this subsection by a nonprofit voluntary agency, cooperative, or intergovernmental agency or organization to meet administrative expenses incurred in connection with activities undertaken under this subsection.
- (8) (A) To the maximum extent practicable, expedited procedures shall be used in the implementation of this subsection.
(B) The Secretary shall be responsible for regulations governing sales and barter, and the use of foreign currency proceeds, under paragraph (7) of this subsection that will provide reasonable safeguards to prevent the occurrence of abuses in the conduct of activities provided for in paragraph (7).
- (9) (A) Each recipient of commodities and products approved for sale or barter under paragraph (7) shall report to the Secretary information with respect to the items required to be included in the Secretary's report pursuant to clauses (i) through (iv) of subparagraph (B).
(B). Reports pursuant to this subparagraph shall be submitted in accordance with regulations of the Secretary. Such regulations shall

7 U.S.C. §1431 (2002)

require at least one report annually, to be submitted not later than December 31 following the end of the fiscal year in which the commodities and products are received; except that a report shall not be required with respect to fiscal year 1985.
(B) Omitted.

UPDATE

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002

SEC. 3009. SALE PROCEDURE

(b) CONFORMING AMENDMENTS-

(1) Section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) is amended by adding at the end the following:

(10) SALE PROCEDURE- In approving sales of commodities under this subsection, the Secretary shall follow the sale procedure described in section 403(l) of the Agricultural Trade Development and Assistance Act of 1954.'

SEC. 3201. SURPLUS COMMODITIES FOR DEVELOPING OR FRIENDLY COUNTRIES

a) USE OF CURRENCIES- Section 416(b)(7)(D) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)(7)(D)) is amended--

(1) in clauses (i) and (iii), by striking 'foreign currency' each place it appears; (2) in clause (ii)--

(A) by striking 'Foreign currencies' and inserting 'Proceeds'; and (B) by striking 'foreign currency'; and (3) in clause (iv)--

(A) by striking 'Foreign currency proceeds' and inserting 'Proceeds'; (B) by striking 'country of origin' the second place it appears and all that follows through 'as necessary to expedite' and inserting 'country of origin as necessary to expedite'; (C) by striking '; or' and inserting a period; and (D) by striking subclause (II).

(b) IMPLEMENTATION OF AGREEMENTS- Section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) (as amended by section 3009(b)) is amended--

(1) in paragraph (8), by striking '(8)(A)' and all that follows through '(B) The Secretary' and inserting the following:

'(8) ADMINISTRATIVE PROVISIONS-

'(A) EXPEDITED PROCEDURES- To the maximum extent practicable, expedited procedures shall be used in the implementation of this subsection.

'(B) ESTIMATE OF COMMODITIES- The Secretary shall publish in the Federal Register, not later than October 31 of each fiscal year, an estimate of the types and quantities of commodities and products that will be available under this section for the fiscal year.

'(C) FINALIZATION OF AGREEMENTS- The Secretary is encouraged to finalize program agreements under this section not later than December 31 of each fiscal year.

'(D) REGULATIONS- The Secretary'; and

(2) by adding at the end the following:

'(11) REQUIREMENTS-

'(A) IN GENERAL- Not later than 270 days after the date of enactment of this subparagraph, the Secretary shall review and, as necessary, make changes in regulations and internal procedures designed to streamline, improve, and clarify the application, approval, and implementation processes pertaining to agreements under this section.

'(B) CONSIDERATIONS- In conducting the review, the Secretary shall consider--

'(i) revising procedures for submitting proposals;

'(ii) developing criteria for program approval that separately address the objectives of the program;

'(iii) pre-screening organizations and proposals to ensure that the minimum qualifications are met;

'(iv) implementing e-government initiatives and otherwise improving the efficiency of the proposal submission and approval processes;

'(v) upgrading information management systems;

'(vi) improving commodity and transportation procurement processes; and

'(vii) ensuring that evaluation and monitoring methods are sufficient.

'(C) CONSULTATIONS- Not later than 1 year after the date of enactment of this subparagraph, the Secretary shall consult with the Committee on Agriculture, and the Committee on International Relations, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on changes made in regulations and procedures under this paragraph.'

Pub. L. 107-206, 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States

Sec. 105. Section 416(b)(7)(D)(iv) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)(7)(D)(iv)) is amended by striking "'subsection.'" and inserting in lieu thereof the following: "'subsection, or to otherwise carry out the purposes of this subsection.'"

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7 U.S.C. §1926a (2002)

Consolidated Farm and Rural Development Act

Sec. 1926a. Emergency community water assistance grant program

(a) In general The Secretary shall provide grants in accordance with this section to assist the residents of rural areas and small communities to secure adequate quantities of safe water -

(1) after a significant decline in the quantity or quality of water available from the water supplies of such rural areas and small communities; or

(2) when repairs, partial replacement, or significant maintenance efforts on established water systems would remedy -

(A) an acute shortage of quality water; or

(B) a significant decline in the quantity or quality of water that is available.

(b) Priority In carrying out subsection (a) of this section, the Secretary shall -

(1) give priority to projects described in subsection (a)(1) of this section; and

(2) provide at least 70 percent of all such grants to such projects.

(c) Eligibility To be eligible to obtain a grant under this section, an applicant shall -

(1) be a public or private nonprofit entity; and

(2) in the case of a grant made under subsection (a)(1) of this section, demonstrate to the Secretary that the decline referred to in such subsection occurred within 2 years of the date the application was filed for such grant.

(d) Uses

(1) In general Grants made under this section may be used for waterline extensions from existing systems, laying of new waterlines, repairs, significant maintenance, digging of new wells, equipment replacement, hook and tap fees, and any other appropriate purpose associated with developing sources of, or treating, storing, or distributing water, and to assist communities in complying with the requirements of the Federal Water Pollution Control Act (33 U. S.C. 1251 et seq.) Or the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(2) Joint proposals Nothing in this section shall preclude rural communities from submitting joint proposals for emergency water assistance, subject to the restrictions contained in subsection (e) of this section. Such restrictions should be considered in the aggregate, depending on the number of communities involved.

(e) Restrictions

(1) Maximum population and income No grant provided under this section shall be used to assist any rural area or community that -

(A) includes any area in any city or town with a population in excess of 10,000 inhabitants according to the most recent decennial census of the United States; or

(B) has a median household income in excess of the State nonmetropolitan median household income according to the most recent decennial census of the United States.

(2) Set-aside for smaller communities Not less than 50 percent of the funds allocated under this section shall be allocated to rural communities with populations that do not exceed 3,000 inhabitants.

(f) Maximum grants made under this section may not exceed -

(1) in the case of each grant made under subsection (a)(1) of this section, \$500,000; and

(2) in the case of each grant made under subsection (a)(2) of this section, \$75,000.

(g) Full funding Subject to subsection (e) of this section, grants under this section shall be made in an amount equal to 100 percent of the costs of the projects conducted under this section.

(h) Application

(1) Nationally competitive application process The Secretary shall develop a nationally competitive application process to award grants under this section. The process shall include criteria for evaluating applications, including population, median household income, and the severity of the decline in quantity or quality of water.

(2) Timing

The Secretary shall make every effort to review and act on applications within 60 days of the date that such applications are submitted.

(i) Authorization of appropriations There are authorized to be appropriated to carry out this section \$35,000,000 for each of fiscal years 1996 through 2002.

UPDATE

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002

Amended by Pub. L. 107-171, sec. 6009, 116 Stat. 356.

7 U.S.C. §1961, et seq. (2002)

Consolidated Farm and Rural Development Act

Section 1961. Eligibility for loans

(a) Persons eligible The Secretary shall make and insure loans under this subchapter only to the extent and in such amounts as provided in advance in appropriation Acts to

(1) established farmers, ranchers, or persons engaged in aquaculture, who are citizens of the United States and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms, and

(2) farm cooperatives, private domestic corporations, partnerships, or joint operations (A) that are engaged primarily in farming, ranching, or aquaculture, and (B) in which a majority interest is held by individuals who are citizens of the United States and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms (or in the case of such cooperatives, corporations, partnerships, or joint operations in which a majority interest is held by individuals who are related by blood or marriage, as defined by the Secretary, such individuals must be either owners or operators of not larger than a family farm and at least one such individual must be an operator of not larger than a family farm), where the Secretary finds that the applicants' farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.): Provided, That they have experience and resources necessary to assure a reasonable prospect for successful operation with the assistance of such loan and are not able to obtain sufficient credit elsewhere. In addition to the foregoing requirements of this subsection, in the case of farm cooperatives, private domestic corporations, partnerships, and joint operations, the family farm requirement of the preceding sentence shall apply as well to all farms in which the entity has an ownership and operator interest (in the case of loans for a purpose under subchapter I of this chapter) or an operator interest (in the case of loans for a purpose under subchapter II of this chapter). The Secretary shall accept applications from, and make or insure loans pursuant to the requirements of this subchapter to, applicants, otherwise eligible under this subchapter, that conduct farming, ranching, or aquaculture operations in any county contiguous to a county where the Secretary has found that farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief and Emergency Assistance Act. The Secretary shall accept applications for assistance under this subchapter from persons affected by a natural disaster at any time during the eight-month period beginning (A) on the date on which the Secretary determines that farming, ranching, or aquaculture operations have been substantially affected by such natural disaster or (B) on the date the President makes the major disaster or emergency designation with respect to such natural disaster, as the case may be.

(b) Hazard insurance requirement

(1) In general After the Secretary makes the determination required by paragraph (2), the Secretary may not make a loan to a farmer or rancher under this subchapter to cover a property loss unless the farmer or rancher had hazard insurance that insured the property at the time of the loss.

(2) Determination Not later than 180 days after April 4, 1996, the Secretary shall determine the appropriate level of insurance to be required under paragraph (1).

(3) Loans to poultry farmers(A) Inability to obtain insurance

(i) In general Notwithstanding any other provision of this subchapter, the Secretary may make a loan to a poultry farmer under this subchapter to cover the loss of a chicken house for which the farmer did not have hazard insurance at the time of the loss, if the farmer -

(I) applied for, but was unable, to obtain hazard insurance for the chicken house;

(II) uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the farmer submits an application for the loan (referred to in this paragraph as "current industry standards");

(III) obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(IV) meets the other requirements for the loan under this subchapter.

(ii) Amount Subject to the limitation contained in section 1964(a)(2) of this title, the amount of a loan made to a poultry farmer under clause (i) shall be an amount that will allow the farmer to rebuild the chicken house in accordance with current industry standards.

(B) Loans to comply with current industry standards

(i) In general Notwithstanding any other provision of this subchapter, the Secretary may make a loan to a poultry farmer under this subchapter to cover the loss of a chicken house for which the farmer had hazard insurance at the time of the loss, if -

(I) the amount of the hazard insurance is less than the cost of rebuilding the chicken house in accordance with current industry standards;

(II) the farmer uses the loan to rebuild the chicken house in accordance with current industry standards;

(III) the farmer obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

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7 U.S.C. §1961, et seq. (2002)

(IV) the farmer meets the other requirements for the loan under this subchapter.
(ii) Amount Subject to the limitation contained in section 1964(a)(2) of this title, the amount of a loan made to a poultry farmer under clause (i) shall be the difference between -
(I) the amount of the hazard insurance obtained by the farmer; and
(II) the cost of rebuilding the chicken house in accordance with current industry standards.

(c) Family farm system The Secretary shall conduct the emergency loan program under this subchapter in a manner that will foster and encourage the family farm system of agriculture, consistent with the reaffirmation of policy and declaration of the intent of Congress contained in section 2266(a) of this title.

(d) Definitions For the purposes of this subchapter -
(1) "aquaculture" means the husbandry of aquatic organisms under a controlled or selected environment; and
(2) "able to obtain sufficient credit elsewhere" means able to obtain sufficient credit elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

Update

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002 (2002)

Amended by Pub. L. 107-171, secs. 5201(a), 5302 and 5501(a)

7 U.S.C. §2014(h) (2002)

Food Stamp Act

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

Sec. 2014. Eligible households

(h) Temporary emergency standards of eligibility; Food Stamp Disaster Task Force; direct assistance to State and local officials
(1) The Secretary shall, after consultation with the official empowered to exercise the authority provided for by sections 5170a and 5192 of title 42, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 2013(c) of this title or the procedures set forth in section 553 of title 5.

(2) The Secretary shall -
(A) establish a Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and the regular food stamp program in the disaster area; and
(B) if the Secretary, in the Secretary's discretion, determines that it is cost-effective to send members of the Task Force to the disaster area, the Secretary shall send them to such area as soon as possible after the disaster occurs to provide direct assistance to State and local officials.

(3) (A) The Secretary shall provide, by regulation, for emergency allotments to eligible households to replace food destroyed in a disaster. The regulations shall provide for replacement of the value of food actually lost up to a limit approved by the Secretary not greater than the applicable maximum monthly allotment for the household size.
(B) The Secretary shall adjust reporting and other application requirements to be consistent with what is practicable under actual conditions in the affected area. In making this adjustment, the Secretary shall consider the availability of the State agency's offices and personnel and any damage to or disruption of transportation and communication facilities.

UPDATE

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002

Amended by Pub. L. 107-171, sec. 4101-4108(a), 4112(b)(2), and 4401(b)(2)(C), 116 Stat. 305-309.

New note added by Pub. L. 107-171, sec. 4108(b), and 4401(b)(3)

7 U.S.C. §2273 (2001)

Department of Agriculture

Sec. 2273. Local search and rescue operations

The Secretary of Agriculture may assist, through the use of Soil Conservation Service personnel, vehicles, communication equipment, and other equipment or materials available to the Secretary, in local search and rescue operations when requested by responsible local public authorities. Such assistance may be provided in emergencies caused by tornadoes, fires, floods, snowstorms, earthquakes, and similar disasters.

UPDATE: None

7 U.S.C. §7701, et seq. (2001)

Plant Protection Act

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

Section 7701. Findings

Congress finds that -

- (1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;
- (2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other Federal agencies, and States whenever feasible;
- (3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds;
- (4) decisions affecting imports, exports, and interstate movement of products regulated under this chapter shall be based on sound science;
- (5) the smooth movement of enterable plants, plant products, biological control organisms, or other articles into, out of, or within the United States is vital to the United State's economy and should be facilitated to the extent possible;
- (6) export markets could be severely impacted by the introduction or spread of plant pests or noxious weeds into or within the United States;
- (7) the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds;
- (8) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could constitute a threat to crops and other plants or plant products of the United States and burden interstate commerce or foreign commerce; and
- (9) all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests or noxious weeds regulated under this chapter are in or affect interstate commerce or foreign commerce.

Section 7715. Declaration of extraordinary emergency and resulting authorities

(a) Authority to declare If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, the Secretary may -

- (1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;
- (2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant

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7 U.S.C. §7701, et seq. (2001)

products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(3) quarantine any State or portion of a State in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; and

(4) prohibit or restrict the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(b) Required finding of emergency The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the State affected, that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(c) Notification procedures

(1) In general Except as provided in paragraph (2), before any action is taken in any State under this section, the Secretary shall notify the Governor or other appropriate official of the State affected, issue a public announcement, and file for publication in the Federal Register a statement of -

(A) the Secretary's findings;

(B) the action the Secretary intends to take;

(C) the reasons for the intended action; and

(D) where practicable, an estimate of the anticipated duration of the extraordinary emergency.

(2) Time sensitive actions If it is not possible to file for publication in the Federal Register prior to taking action, the filing shall be made within a reasonable time, not to exceed 10 business days, after commencement of the action.

(d) Application of least drastic action No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

(e) Payment of compensation The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to be paid under this subsection shall be final and shall not be subject to judicial review.

UPDATE

Pub. L. 107-171, Farm Security and Rural Investment Act of 2002

Section 7715. Amended by Pub. L. 107-171, sec. 7504(a).

10 U.S.C. §331, et seq. (2001)

Armed Forces

Section 331 Federal aid for State governments

Whenever there is an insurrection 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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Legal Deskbook**

10 U.S.C. §371, et seq. (2002)

Military Support for Civilian Law Enforcement Agencies

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

Section 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.

Section 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.

Section 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.

Section 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.
 - (C) Aerial reconnaissance.

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(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.

Section 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.

Section 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.

Section 377. Reimbursement

(a) To the extent otherwise required by section 1535 of title 31 (popularly known as the "Economy Act") or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b) An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support -

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

Section 378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

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Section 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 (FOOTNOTE 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 - (FOOTNOTE 1) See References in Text note below.

(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 -

(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 (FOOTNOTE 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 (FOOTNOTE 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.

(f) Delegations of Authority. - (1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) Relationship to Other Authority. - Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.

Update

Pub. L. 108-87, Department of Defense Appropriations Act, 2004

Section 374. New note added by Pub. L. 108-87, sec. 8057(a).

Pub. L. 107-248, Department of Defense Appropriations Act, 2003

Section 374. New note added by Pub. L. 107-248, sec. 8058(a).

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

Section 379. Amended by Pub. L. 107-296, sec. 1704(b)(1).

10 U.S.C. §2538 (2002)
Miscellaneous Technology Base Policies and Programs
Section 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations
<p>(a) Ordering Authority. - In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry. (b) Compliance With Order Required. - A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection. (c) Seizure of Manufacturing Plants Upon Noncompliance. - In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses - (1) to give precedence to the order as prescribed in subsection (b); (2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or (3) to furnish them at a reasonable price as determined by the head of such department. (d) Use of Seized Plant. - The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c). (e) Compensation Required. - Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental. (f) Criminal Penalty. - Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.</p>
UPDATE
Pub. L. 103-337, To Amend the Immigration and Nationality Act to Authorize Appropriations for Refugee Assistance for Fiscal Years 1993 and 1994, June 8, 1993
Sec. 811(1), substituted "head of any department" for "Secretary of Defense".

10 U.S.C. §2644 (2002)
Armed Forces – Transportation
SEC 2644. Control of transportation systems in time of war
In time of war, the President, through the Secretary of Defense, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.
UPDATE: None

10 U.S.C. §12301 et seq., (2002)
Armed Forces
<i>This document is available in its entirety on the Deskbook CD-ROM.</i>
<p>Sec. 12301. Reserve components generally</p> <p>(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.</p> <p>Sec. 12302. Ready Reserve</p> <p>(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.</p>

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(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to -

- (1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;
- (2) family responsibilities; and
- (3) employment necessary to maintain the national health, safety, or interest. The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.

Sec. 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) Authority. - Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty (other than for training) for not more than 270 days.

(b) Support for Responses to Certain Emergencies. - The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving a use or threatened use of a weapon of mass destruction.

(c) Limitations. - (1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 12406 of this title or, except as provided in subsection (b), to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe. (2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(d) Exclusion From Strength Limitations. - Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) Policies and Procedures. - The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) Notification of Congress. - Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(g) Termination of Duty. - Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by - (1) order of the President, or (2) law.

(h) Relationship to War Powers Resolution. - Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(i) Definitions. - In this section: (1) The term "Individual Ready Reserve mobilization category" means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title. (2) The term "weapon of mass destruction" has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

UPDATE

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

Section 12304. Amended by Pub. L. 107-296, sec. 1704(b)(1).

Pub. L. 107-314, National Defense Authorization Act for Fiscal Year 2003, December 2, 2002

10 U.S.C. §12301 et seq., (2002)
Section 12304. Amended by Pub. L. 107-314, sec. 514(a).

14 U.S.C. §3 (2002)
Coast Guard
Sec. 3. Relationship to Navy Department
Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by Executive order, transfers the Coast Guard back to the Department of Transportation. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy who may order changes in Coast Guard operations to render them uniform, to the extent he deems advisable, with Navy operations.
UPDATE
Pub. L. 107-296, The Homeland Security Act
Amended by Pub. L. 107-296, sec. 1704(a).

14 U.S.C. §89 (2002)
Coast Guard
Sec. 89. Law enforcement
<p>(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel, liable to forfeiture, or so as to render such vessel liable to a fine or penalty and if necessary to secure such fine or penalty, such vessel or such merchandise, or both, shall be seized.</p> <p>(b) The officers of the Coast Guard insofar as they are engaged, pursuant to the authority contained in this section, in enforcing any law of the United States shall:</p> <p>(1) be deemed to be acting as agents of the particular executive department or independent establishment charged with the administration of the particular law; and</p> <p>(2) be subject to all the rules and regulations promulgated by such department or independent establishment with respect to the enforcement of that law.</p> <p>(c) The provisions of this section are in addition to any powers conferred by law upon such officers, and not in limitation of any powers conferred by law upon such officers, or any other officers of the United States.</p> <p>Source (Aug. 4, 1949, ch. 393, 63 Stat. 502; Aug. 3, 1950, ch. 536, Sec.1, 64 Stat. 406.)</p>
UPDATE: None

16 U.S.C. §575 (2002)
Conservation
Sec. 575. Search for lost persons, and transportation of sick, injured, or dead persons, within national forests; authorization to incur expense The Secretary of Agriculture is authorized in cases of emergency to incur such expenses as may be necessary in searching for persons

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lost in the national forests and in transporting persons seriously ill, injured, or who die within the national forests to the nearest place where the sick or injured person, or the body, may be transferred to interested parties or local authorities.

UPDATE: None

16 U.S.C. §2106 (2002)

Conservation

Sec. 2106. Rural fire prevention and control

a) Congressional findings Congress finds that -

- (1) significant accomplishments have been made by the Secretary and cooperating States in the prevention and control of fires on forest lands and on nonforested watersheds for more than fifty years;
- (2) progress is being made by the Secretary and cooperating States and rural communities in the protection of human lives, agricultural crops and livestock, property and other improvements, and natural resources from fires in rural areas;
- (3) notwithstanding the accomplishments and progress that have been made, fire prevention and control on rural lands and in rural communities are of continuing high priority to protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;
- (4) the effective cooperative relationships between the Secretary and the States regarding fire prevention and control on rural lands and in rural communities should be retained and improved;
- (5) efforts in fire prevention and control in rural areas should be coordinated among Federal, State, and local agencies; and
- (6) in addition to providing assistance to State and local rural fire prevention and control programs, the Secretary should provide prompt and adequate assistance whenever a rural fire emergency overwhelms, or threatens to overwhelm, the firefighting capability of the affected State or rural area.

(b) Implementation of provisions Notwithstanding the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) The Secretary is authorized, under whatever conditions the Secretary may prescribe, to -

- (1) cooperate with State foresters or equivalent State officials in developing systems and methods for the prevention, control, suppression, and prescribed use of fires on rural lands and in rural communities that will protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;
- (2) provide financial, technical, and related assistance to State foresters or equivalent State officials, and through them to other agencies and individuals, for the prevention, control, suppression, and prescribed use of fires on non-Federal forest lands and other non-Federal lands;
- (3) provide financial, technical, and related assistance to State foresters or equivalent State officials in cooperative efforts to organize, train, and equip local firefighting forces, including those of Indian tribes or other native groups, to prevent, control, and suppress fires threatening human lives, crops, livestock, farmsteads or other improvements, pastures, orchards, wildlife, rangeland, woodland, and other resources in rural areas. As used herein, the term "rural areas" shall have the meaning set out in the first clause of section 1926(a)(7) of title 7; and
- (4) provide financial, technical, and related assistance to State foresters or equivalent State officials, and through them to other agencies and individuals, including rural volunteer fire departments, to conduct preparedness and mobilization activities, including training, equipping, and otherwise enabling State and local firefighting agencies to respond to requests for fire suppression assistance.

(c) Encouragement of use of excess personal property by State and local fire forces receiving assistance; cooperation and assistance of Administrator of General Services The Secretary, with the cooperation and assistance of the Administrator of General Services, shall encourage the use of excess personal property (within the meaning of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)) by State and local fire forces receiving assistance under this section.

(d) Coordination of assistance with assistance of Secretary of Commerce under Federal fire prevention and control provisions To promote maximum effectiveness and economy, the Secretary shall seek to coordinate the assistance the Secretary provides under this section with the assistance provided by the Secretary of Commerce under the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.).

(e) Authorization of appropriations for implementation of provisions

16 U.S.C. §2106 (2002)

(1) There are hereby authorized to be appropriated annually such sums as may be needed to implement paragraphs (1), (2), and (3) of subsection (b) of this section.

(2) (A) There are hereby authorized to be appropriated annually \$70,000,000 to carry out subsection (b)(4) of this section. Of the total amount appropriated to carry out subsection (b)(4) of this section -

(i) one-half shall be available only for State foresters or equivalent State officials, and through them to other agencies and individuals, of which not less than \$100,000 shall be made available to each State; and

(ii) one-half shall be available only for rural volunteer fire departments.

(B) The Federal share of the cost of any activity carried out with funds made available pursuant to this paragraph may not exceed 50 percent of the cost of that activity. The non-Federal share for such activity may be in the form of cash, services, or in kind contributions.

(f) Special rural fire disaster fund; establishment, appropriations, etc. There shall be established in the Treasury a special rural fire disaster fund that shall be immediately available to and used by the Secretary to supplement any other money available to carry out this section with respect to rural fire emergencies, as determined by the Secretary. The Secretary shall determine that State and local resources are fully used or will be fully used before expending money in the disaster fund to assist a State in which one or more rural fire emergencies exist. There are hereby authorized to be appropriated such sums as may be needed to establish and replenish the disaster fund established by this subsection.

(g) Definitions As used in this section -

(1) the term "rural volunteer fire department" means any organized, not for profit, fire protection organization that provides service primarily to a community or city with a population of 10,000 or less or to a rural area, as defined by the Secretary, whose firefighting personnel is 80 percent or more volunteer, and that is recognized as a fire department by the laws of the State; and

(2) the term "mobilization" means any activity in which one firefighting organization assists another that has requested assistance.

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18 U.S.C. §112 (2002)

Crimes and Criminal Procedure

Sec. 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined under this title or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon, or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever willfully -

(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

(3) within the United States and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by -

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest; congregates with two or more other persons with intent to violate any other provision of this section; shall be fined under this title or imprisoned not more than six months, or both.

(c) For the purpose of this section "foreign government", "foreign official", "internationally protected person", "international organization", "national of the United States", and "official guest" shall have the same meanings as those provided in section 1116(b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection

(a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.

UPDATE: None

18 U.S.C. §175, et seq. (2002)

Biological Weapons

Section 175. Prohibitions with respect to biological weapons

(a) In General. - Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

(b) Definition. - For purposes of this section, the term "for use as a weapon" does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.

Section 175a. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

Sec. 175b. Possession by restricted persons

(a) No restricted person described in subsection (b) shall ship or transport (FOOTNOTE 1) interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(l) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations. (FOOTNOTE 1) So in original. Probably should be followed by "in".

(b) In this section:

(1) The term "select agent" does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

(2) The term "restricted person" means an individual who -

(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(C) is a fugitive from justice;

(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U. S.C. 802));

(E) is an alien illegally or unlawfully in the United States;

(F) has been adjudicated as a mental defective or has been committed to any mental institution;

(G) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism; or

(H) has been discharged from the Armed Services of the United States under dishonorable conditions.

(3) The term "alien" has the same meaning as in section 1010(a)(3) (FOOTNOTE 2) of the Immigration and Nationality Act (8 U. S.C. 1101(a)(3)). (FOOTNOTE 2) So in original. Probably should be section "101(a)(3)".

(4) The term "lawfully admitted for permanent residence" has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(c) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.

Section 176. Seizure, forfeiture, and destruction

(a) In General. -

(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that -

(A) exists by reason of conduct prohibited under section 175 of this title; or

(B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A)

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18 U.S.C. §175, et seq. (2002)

and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.

(b) Procedure. - Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

(c) Affirmative Defense. - It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that -
(1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and
(2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose

Section 177. Injunctions

(a) In General. - The United States may obtain in a civil action an injunction against -

(1) the conduct prohibited under section 175 of this title;
(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under section 175 of this title; or
(3) the development, production, stockpiling, transferring, acquisition, retention, or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention, or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(b) Affirmative Defense. - It is an affirmative defense against an injunction under subsection (a)(3) of this section that -

(1) the conduct sought to be enjoined is for a prophylactic, protective, or other peaceful purpose; and
(2) such biological agent, toxin, or delivery system is of a type and quantity reasonable for that purpose.

Section 178. Definitions

As used in this chapter -

(1) the term "biological agent" means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing -

(A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
(B) deterioration of food, water, equipment, supplies, or material of any kind; or
(C) deleterious alteration of the environment;

(2) the term "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including -

(A) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
(B) any poisonous isomer or biological product, homolog, or derivative of such a substance;

(3) the term "delivery system" means -

(A) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or
(B) any vector;

(4) the term "vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host; and

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

UPDATE

Pub. L. 107-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Section 175. Amended by Pub. L. 107-188, sec. 231(c)(1).

Section 175b. Amended by Pub. L. 107-188, sec. 231(a), (b)(1).

Amended by Pub. L. 107-188, sec. 231(c)(2).

Section 176. Amended by Pub. L. 107-188, sec. 231(c)(3).

Section 178. Amended by Pub. L. 107-188, sec. 231(c)(4).

Pub. L. 107-273, 21st Century Department of Justice Appropriations Authorization Act, 2002

Section 175b. Amended by Pub. L. 107-273, sec. 4005(g), 116 Stat. 1813.

18 U.S.C. §§229 – 229f (2002)

Chemical Weapons

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

Section 229. Prohibited activities

(a) Unlawful Conduct. - Except as provided in subsection (b), it shall be unlawful for any person knowingly –

(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or

(2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

(b) Exempted Agencies and Persons. -

(1) In general. - Subsection (a) does not apply to the retention, ownership, possession, transfer, or receipt of a chemical weapon by a department, agency, or other entity of the United States, or by a person described in paragraph (2), pending destruction of the weapon.

(2) Exempted persons. - A person referred to in paragraph (1) is -

(A) any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess, transfer, or receive the chemical weapon; or

(B) in an emergency situation, any otherwise nonculpable person if the person is attempting to destroy or seize the weapon.

(c) Jurisdiction. - Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct -

(1) takes place in the United States;

(2) takes place outside of the United States and is committed by a national of the United States;

(3) is committed against a national of the United States while the national is outside the United States; or

(4) is committed 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 the United States.

Regulations

For authority to issue regulations under this chapter, see section 3 of Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, set out as a note under section 6711 of Title 22, Foreign Relations and Intercourse.

Revocations of Export Privileges

Pub. L. 105-277, div. I, title II, Sec. 211, Oct. 21, 1998, 112 Stat. 2681-872, provided that: "If the President determines, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that any person within the United States, or any national of the United States located outside the United States, has committed any violation of section 229 of title 18, United States Code, the President may issue an order for the suspension or revocation of the authority of the person to export from the United States any goods or technology (as such terms are defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415))."

(For authority of Secretary of Commerce to suspend or revoke export privileges pursuant to section 211 of Pub. L. 105-277, set out above, see section 4 of Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, set out as a note under section 6711 of Title 22, Foreign Relations and Intercourse.)

Section Referred to in Other Sections

This section is referred to in sections 229A, 229D, 229E of this title.

Section 229B. Criminal forfeitures; destruction of weapons

(a) Property Subject to Criminal Forfeiture. - Any person convicted under section 229A(a) shall forfeit to the United States irrespective of any provision of State law -

(1) any property, real or personal, owned, possessed, or used by a person involved in the offense;

(2) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(3) any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to section 229A(a), that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by section 229A(a), a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Procedures. -

(1) General. - Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsections (b) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except that any reference under those subsections to

(A) "this subchapter or subchapter II" shall be deemed to be a reference to section 229A(a); and

(B) "subsection (a)" shall be deemed to be a reference to subsection (a) of this section.

(2) Temporary restraining orders. -

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(A) In general. - For the purposes of forfeiture proceedings under this section, a temporary restraining order may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if, in addition to the circumstances described in section 413(e)(2) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2)), the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

(B) Warrant of seizure. - If the court enters a temporary restraining order under this paragraph, it shall also issue a warrant authorizing the seizure of such property.

(C) Applicable procedures. - The procedures and time limits applicable to temporary restraining orders under section 413(e)(2) and (3) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2) and (3)) shall apply to temporary restraining orders under this paragraph.

(c) Affirmative Defense. - It is an affirmative defense against a forfeiture under subsection (b) that the property -

(1) is for a purpose not prohibited under the Chemical Weapons Convention; and

(2) is of a type and quantity that under the circumstances is consistent with that purpose.

(d) Destruction or Other Disposition. - The Attorney General shall provide for the destruction or other appropriate disposition of any chemical weapon seized and forfeited pursuant to this section.

(e) Assistance. - The Attorney General may request the head of any agency of the United States to assist in the handling, storage, transportation, or destruction of property seized under this section.

(f) Owner Liability. - The owner or possessor of any property seized under this section shall be liable to the United States for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

Section 229E. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 229 of this title in an emergency situation involving a chemical weapon. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

Section 229F. Definitions

In this chapter:

(1) Chemical weapon. - The term "chemical weapon" means the following, together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter as long as the type and quantity is consistent with such a purpose.

(B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

(2) Chemical weapons convention; convention. - The terms "Chemical Weapons Convention" and "Convention" mean the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

(3) Key component of a binary or multicomponent chemical system. - The term "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

(4) National of the United States. - The term "national of the United States" has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(5) Person. - The term "person", except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

(6) Precursor. -

(A) In general. - The term "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

(B) List of precursors. - Precursors which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(7) Purposes not prohibited by this chapter. - The term "purposes not prohibited by this chapter" means the following:

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(A) Peaceful purposes. - Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity.

(B) Protective purposes. - Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

(C) Unrelated military purposes. - Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm.

(D) Law enforcement purposes. - Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

(8) Toxic chemical. -

(A) In general. - The term "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(B) List of toxic chemicals. - Toxic chemicals which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(9) United states. - The term "United States" means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including -

(A) any of the places within the provisions of paragraph (41) of section 40102 of title 49, United States Code;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (37), respectively, of section 40102 of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b)).

UPDATE: None

18 U.S.C. §351 (2002)

Crimes and Criminal Procedure

Sec. 351. Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties

(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.

(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(h) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an individual protected by this section.

(i) There is extraterritorial jurisdiction over the conduct prohibited by this section.

UPDATE: None

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18 U.S.C. §831 (2002)

Crimes and Criminal Procedure

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

Section 831. 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 -

(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

18 U.S.C. §831 (2002)

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.

UPDATE: None

18 U.S.C. §1116 (2002)

Crimes and Criminal Procedure

Sec. 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title.

(b) For the purposes of this section:

(1) "Family" includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) "Foreign government" means the government of a foreign country, irrespective of recognition by the United States.

(3) "Foreign official" means -

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) "Internationally protected person" means -

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or (B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

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(5) "International organization" means a public international organization designated as such pursuant to section 1 of the 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.

(6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(7) "National of the United States" has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(c) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

UPDATE: None

18 U.S.C. §1385 (2002)

Crimes and Criminal Procedure

Sec. 1385 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.

Source (Added Aug. 10, 1956, ch. 1041, Sec. 18(a), 70A Stat. 626; amended Pub. L. 86-70, Sec. 17(d), June 25, 1959, 73 Stat. 144; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

UPDATE: None

18 U.S.C. §1751 (2002)

Crimes and Criminal Procedure

Sec. 1751. Presidential and Presidential staff assassination, kidnapping, and assault; penalties

(a) Whoever kills (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or

18 U.S.C. §1751 (2002)

(2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a)(1) shall be fined under this title, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.

(f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed \$100,000 for information and services concerning a violation of subsection

(a) (1). Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(k) There is extraterritorial jurisdiction over the conduct prohibited by this section.

UPDATE: None

18 U.S.C. §2331 et seq. (2002)

Terrorism

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

Sec. 2332a. Use of certain weapons of mass destruction

(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) -

(1) against a national of the United States while such national is outside of the United States;

(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

(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.

(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.

(c) Definitions. - For purposes of this section -

(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.

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18 U.S.C. §2331 et seq. (2002)

Terrorism

1101(a)(22)); and

(2) the term "weapon of mass destruction" means -

(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.

Sec. 2332e. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 2332c (FOOTNOTE 1) of this title during an emergency situation involving a chemical weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10. (FOOTNOTE 1) See References in Text note below.

UPDATE

Pub. L. 107-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Section 2332a. Amended by Pub. L. 107-188, sec. 231(d).

National Guard Mobilization Act of 1933

The National Guard Mobilization Act of 1933 made the National Guard of the United States a component of the Army at all times, which could be ordered into active Federal service by the President whenever Congress declared a national emergency.

Source: <http://www.army.mil/history/Constitution/default.asp?ID=16>

UPDATE: None

32 U.S.C. §102 (2002)

National Guard

Sec. 102. General policy

In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed.

UPDATE: None

32 U.S.C. §105 (2002)

National Guard

Sec. 105. Inspection

(a) Under regulations prescribed by him, the Secretary of the Army shall have an inspection made by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether -

- (1) the amount and condition of property held by the Army National Guard are satisfactory;
- (2) the Army National Guard is organized as provided in this title;
- (3) the members of the Army National Guard meet prescribed physical and other qualifications;
- (4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;
- (5) Army National Guard records are being kept in accordance with this title;
- (6) the accounts and records of each property and fiscal officer are properly maintained; and
- (7) the units of the Army National Guard meet requirements for deployment. The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

(b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and to retain that property; and for determining which organizations and persons constitute units and members of the National Guard; and for determining which units of the National Guard meet deployability standards.

UPDATE: None

32 U.S.C. §112 (2002)

National Guard

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

Sec. 112. Drug interdiction and counter-drug activities

(b) Use of Personnel Performing Full-Time National Guard Duty. -

- (1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the

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32 U.S.C. §112 (2002)

National Guard

State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2) (A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

- (i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.
- (ii) National Guard personnel will not degrade their military skills as a result of performing the activities.
- (iii) The performance of the activities will not result in a significant increase in the cost of training.
- (iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if -

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

UPDATE: None

32 U.S.C. §325 (2002)

National Guard

Sec. 325. Relief from National Guard duty when ordered to active duty

(a) Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(b) So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.□

UPDATE: None

33 U.S.C. §1251, et seq. (2002)

Clean Water Act

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

Sec. 1321. Oil and hazardous substance liability

(c) Federal removal authority

(1) General removal requirement

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance -

- (i) into or on the navigable waters;
- (ii) on the adjoining shorelines to the navigable waters;
- (iii) into or on the waters of the exclusive economic zone; or
- (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may -

- (i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
- (ii) direct or monitor all Federal, State, and private actions to remove a discharge; and
- (iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) Discharge posing substantial threat to public health or welfare

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government -

- (i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge;
- and
- (ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(3) Actions in accordance with National Contingency Plan

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection

(j) of this section, or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

(4) Exemption from liability

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply -

- (i) to a responsible party;
- (ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);
- (iii) with respect to personal injury or wrongful death; or
- (iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

(5) Obligation and liability of owner or operator not affected

Nothing in this subsection affects -

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(6) "Responsible party" defined

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33 U.S.C. §1251, et seq. (2002)

Clean Water Act

For purposes of this subsection, the term "responsible party" has the meaning given that term under section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

(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, The Maritime Transportation Security Act of 2002

New note added by Pub. L. 107-295, sec. 440.

42 U.S.C. §§88-112 (2002)

Sanitation and Quarantine

Section 88 Discharge of cargo of vessel in quarantine

Whenever, by the health laws of any State, or by the regulations made pursuant thereto, any vessel arriving within a collection district of such State is prohibited from coming to the port of entry by law established for such district, and such health laws require or permit the cargo of the vessel to be unladen at some other place within or near to such district, the collector, after due report to him of the whole of such cargo, may grant his warrant or permit for the unloading and discharge thereof, under the care of the surveyor, or of one or more inspectors, at some other place where such health laws permit, and upon the conditions and restrictions which shall be directed by the Secretary of Health and Human Services, or which such collector may, for the time, deem expedient for the security of the public revenue.

Section 89 Quarantine warehouses; erection

There shall be purchased or erected, under the orders of the President, suitable warehouses, with wharves and inclosures, where merchandise may be unladen and deposited, from any vessel which shall be subject to a quarantine, or other restraint, pursuant to the health laws of any State, at such convenient places therein as the safety of the public revenue and the observance of such health laws may require.

Section 90 Deposit of goods in warehouses

Whenever the cargo of a vessel is unladen at some other place than the port of entry under sections 88 and 89 of this title, all the articles of such cargo shall be deposited, at the risk of the parties concerned therein, in such public or other warehouses or inclosures as the collector shall designate, there to remain under the joint custody of such collector and of the owner, or master, or other person having charge of such vessel, until the same are entirely unladen or discharged, and until the articles so deposited may be safely removed without contravening such health laws. And when such removal is allowed, the collector having charge of such articles may grant permits to the respective owners or consignees, their factors or agents, to receive all merchandise which has been entered, and the duties accruing upon which have been paid, upon the payment by them of a reasonable rate of storage; which shall be fixed by the Secretary of Health and Human Services for all public warehouses and inclosures.

Section 97 State health laws observed by United States officers

The quarantines and other restraints established by the health laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several Coast Guard vessels, and by the military officers commanding in any fort or station upon the seacoast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws, according to their respective powers and within their respective precincts, and as they shall be directed, from time to time, by the Secretary of Health and Human Services. But nothing in title 58 of the Revised Statutes shall enable any State to collect a duty of tonnage or impost without the consent of Congress.

Section 98 Vessels for quarantine officers

The Secretary of the Navy is authorized, in his discretion, at the request of the Secretary of Health and Human Services, to place gratuitously, at the disposal of the proper quarantine authorities, at any of the ports of the United States, to be used temporarily for quarantine purposes, such vessels or hulks belonging to the United States as are not required for other uses of the national government, subject to such restrictions and regulations as the Secretary of the Navy may deem necessary to impose for the preservation thereof.

Section 112 Removal of revenue officers from port during epidemic

Whenever, by the prevalence of any contagious or epidemic disease in or near the place by law established as the port of entry for any collection district, it becomes dangerous or inconvenient for the officers of the revenue employed therein to continue the discharge of their respective offices at such port, the Secretary of the Treasury, or, in his absence, the Undersecretary of the Treasury, may direct the removal of the officers of the revenue from such port to any other more convenient place, within, or as near as may be to, such collection district. And at such place such officers may exercise the same powers, and shall be liable to the same duties, according to existing circumstances, as in the port or district established by law. Public notice of any such removal shall be given as soon as may be.

UPDATE: None

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42 U.S.C. §§243, 264 – 268 (2002)

Public Health Service Act

Sec 243 General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases The Secretary [of Health & Human Services] is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

Section 264 Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General.

(c) Application of regulations to persons entering from foreign countries Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected On recommendation of the National Advisory Health Council, regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a communicable stage and (1) to be moving or about to move from a State to another State; or (2) to be a probable source of infection to individuals who, while infected with such disease in a communicable stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term "State" includes, in addition to the several States, only the District of Columbia.

Section 265 Suspension of entries and imports from designated places to prevent spread of communicable diseases

42 U.S.C. §§243, 264 – 268 (2002)

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

Section 266 Special quarantine powers in time of war To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 264 of this title, the Surgeon General, on recommendation of the National Advisory Health Council, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease in a communicable stage and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

Section 267 Quarantine stations, grounds, and anchorages

(a) Control and management Except as provided in title II of the Act of June 15, 1917, as amended (50 U.S.C. 191 et seq.), the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) Hours of inspection The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quarantine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

(c) Overtime pay for employees of Service The Surgeon General shall fix a reasonable rate of extra compensation for overtime services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land, water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as "employees of the Public Health Service", when required to be on duty between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (or between the hours of 7 o'clock postmeridian and 7 o'clock antemeridian at stations which have a declared workday of from 7 o'clock antemeridian to 7 o'clock postmeridian), or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term "basic hourly rate" shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

(d) Payment of extra compensation to United States; bond or deposit to assure payment; deposit of moneys to credit of appropriation (1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed during the period between the time the employees were ordered to report for duty and did so report, and the time they were notified that their services would not be required, and in any case as though their services had continued for not less than one hour. The Surgeon General with the approval of the Secretary of Health and Human Services may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties, or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection,

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42 U.S.C. §§243, 264 – 268 (2002)

which bond or deposit may cover one or more transactions or all transactions during a specified period: Provided, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive. (2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered.

Section 268 Quarantine duties of consular and other officers

- (a) Any consular or medical officer of the United States, designated for such purpose by the Secretary, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.
- (b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

Section 269 Bills of health

- (a) Detail of medical officer; conditions precedent to issuance; consular officer to receive fees Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c) of this section. Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.
- (b) Collectors of customs to receive originals; duplicate copies as part of ship's papers Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.
- (c) Regulations to secure sanitary conditions of vessels The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.
- (d) Vessels from ports near frontier The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.
- (e) Compliance with regulations It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) of this section have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

Section 270 Quarantine regulations governing civil air navigation and civil aircraft The Surgeon General is authorized to provide by regulations for the application to air navigation and aircraft of any of the provisions of sections 267 to 269 of this title and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

Section 271 Penalties for violation of quarantine laws

- (a) Penalties for persons violating quarantine laws Any person who violates any regulation prescribed under sections 264 to 266 of this title, or any provision of section 269 of this title or any regulation prescribed thereunder, or who enters or departs from the limits of any

42 U.S.C. §§243, 264 – 268 (2002)

quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

(b) Penalties for vessels violating quarantine laws Any vessel which violates section 269 of this title, or any regulations thereunder or under section 267 of this title, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than \$5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

(c) Remittance or mitigation of forfeitures With the approval of the Secretary, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

Section 272 Administration of oaths by quarantine officers

Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

UPDATE

Pub. L. 107-188, The Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Sec. 142 Streamlining and Clarifying Communicable Disease Quarantine Provisions

(a) ELIMINATION OF PREREQUISITE FOR NATIONAL ADVISORY HEALTH COUNCIL RECOMMENDATION BEFORE ISSUING QUARANTINE RULES-

(1) EXECUTIV ORDERS SPECIFYING DISEASES SUBJECT TO INDIVIDUAL DETENTIONS- Section 361(b) of the Public Health Act (42 U.S.C. 264(b)) is amended by striking 'Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General' and inserting 'Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,'.

(2) REGULATIONS PROVIDING FOR APPREHENSION OF INDIVIDUALS- Section 361(d) of the Public Health Act (42 U.S.C. 264(d)) is amended by striking 'On recommendation of the National Advisory Health Council, regulations' and inserting 'Regulations'.

(3) REGULATIONS PROVIDING FOR APPREHENSION OF INDIVIDUALS IN WARTIME- Section 363 of the Public Health Act (42 U.S.C. 266) is amended by striking 'the Surgeon General, on recommendation of the National Advisory Health Council,' and inserting 'the Secretary, in consultation with the Surgeon General,'.

(b) APPREHENSION AUTHORITY TO APPLY IN CASES OF EXPOSURE TO DISEASE-

(1) REGULATIONS PROVIDING FOR APPREHENSION OF INDIVIDUALS- Section 361(d) of the Public Health Act (42 U.S.C. 264(d)), as amended by subsection (a)(2), is further amended--

(A) by striking '(1)' and '(2)' and inserting '(A)' and '(B)', respectively; (B) by striking '(d)' and inserting '(d)(1)'; (C) in paragraph (1) (as designated by subparagraph (B) of this paragraph), in the first sentence, by striking 'in a communicable stage' each place such term appears and inserting 'in a qualifying stage'; and (D) by adding at the end the following paragraph:

'(2) For purposes of this subsection, the term 'qualifying stage', with respect to a communicable disease, means that such disease--

'(A) is in a communicable stage; or '(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.'.

(2) REGULATIONS PROVIDING FOR APPREHENSION OF INDIVIDUALS IN WARTIME- Section 363 of the Public Health Act (42 U.S.C. 266), as amended by subsection (a)(3), is further amended by striking 'in a communicable stage'.

(c) STATE AUTHORITY- Section 361 of the Public Health Act (42 U.S.C. 264) is amended by adding at the end the following:

'(e) Nothing in this section or section 363, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 363.'.

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42 U.S.C. §217 (2002)

The Public Health and Welfare

Sec 217. Use of Service in time of war or emergency

In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive order declare the commissioned corps of the Service to be a military service. Upon such declaration, and during the period of such war or such emergency or such part thereof as the President shall prescribe, the commissioned corps

- (a) shall constitute a branch of the land and naval forces of the United States,
- (b) shall, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice (10 U.S.C. 801 et seq.), and
- (c) shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

UPDATE: None

42 U.S.C. §247d (2002)

Public Health Emergencies

Section 247d Public health emergencies

(a) Determination of existence of emergency; authorization to act

If the Secretary determines, after consultation with the Director of the National Institutes of Health, the Administrator of the Substance Abuse and Mental Health Services Administration, the Commissioner of the Food and Drug Administration, the Administrator of Health Resources and Services, or the Director of the Centers for Disease Control and Prevention, that -

- (1) a disease or disorder presents a public health emergency, or
- (2) a public health emergency otherwise exists and the Secretary has the authority to take action with respect to such emergency,

the Secretary, acting through such Directors, Administrator, or Commissioner, may take such action as may be appropriate to respond to the public health emergency, including making grants and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder described in paragraph (1).

(b) Public Health Emergency Fund; authorization of appropriations; annual report to Congress

(1) There is established in the Treasury a fund designated the "Public Health Emergency Fund" to be available to the Secretary without fiscal year limitation to carry out subsection (a) of this section. There is authorized to be appropriated to the fund \$30,000,000 for fiscal year 1984. For fiscal year 1985 and each fiscal year thereafter there is authorized to be appropriated to the fund such sums as may be necessary to have \$45,000,000 in the fund at the beginning of such fiscal year.

(2) The Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than ninety days after the end of a fiscal year -

(A) on the expenditures made from the Public Health Emergency Fund in such fiscal year; and

(B) describing each public health emergency for which the expenditures were made and the activities undertaken with respect to each emergency which were conducted or supported by expenditures from the Fund.

UPDATE

Pub. L. 107-188, The Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Amended by Pub. L. 107-188, sec. 141.

Amended by Pub. L. 107-188, sec. 144(a).

Amended by Pub. L. 107-188, sec. 158.

New note added by Pub. L. 107-188, sec. 144(b).

42 U.S.C. §248 (2002)

Hospitals, Medical Examinations, and Medical Care

Sec. 248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment of burial expenses

The Surgeon General, pursuant to regulations, shall -

- (a) Control, manage, and operate all institutions, hospitals, and stations of the Service, including minor repairs and maintenance, and provide for the care, treatment, and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;
- (b) Provide for the transfer of Public Health Service patients, in the care of attendants where necessary, between hospitals and stations operated by the Service or between such hospitals and stations and other hospitals and stations in which Public Health Service patients may be received, and the payment of expenses of such transfer;
- (c) Provide for the disposal of articles produced by patients in the course of their curative treatment, either by allowing the patient to retain such articles or by selling them and depositing the money received therefor to the credit of the appropriation from which the materials for making the articles were purchased;
- (d) Provide for the disposal of money and effects, in the custody of the hospitals or stations, of deceased patients; and
- (e) Provide, to the extent the Surgeon General determines that other public or private funds are not available therefor, for the payment of expenses of preparing and transporting the remains of, or the payment of reasonable burial expenses for, any patient dying in a hospital or station.

UPDATE: None

42 U.S.C. §249 (2002)

Medical Care and Treatment of Quarantined and Detained Persons

Sec 249. Medical care and treatment of quarantined and detained persons

(a) Persons entitled to treatment

Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

(b) Temporary treatment in emergency cases

Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

(c) Authorization for outside treatment

Persons whose care and treatment is authorized by subsection (a) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made.

UPDATE: None

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42 U.S.C. §300i et seq. (2002)

Emergency Powers

Sec. 300i. Emergency Powers

(a) Actions authorized against imminent and substantial endangerment to health

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses

Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed \$15,000 for each day in which such violation occurs or failure to comply continues.

Sec. 300i-1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(b) Attempt or threat

Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

(c) Civil penalty

The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than \$50,000 for such tampering or not more than \$20,000 for such attempt or threat.

(d) "Tamper" defined

For purposes of this section, the term "tamper" means -(1) to introduce a contaminant into a public water system with the intention of harming persons; or (2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

UPDATE

Pub. L. 107-188, The Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Sec. 403(2).

(2) Section 1431 is amended by inserting in the first sentence after 'drinking water' the following: ', or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which'.

42 U.S.C. §1989 (2002)

United States Magistrate Judges; Appointment of Persons to Execute Warrants

Sec. 1989. United States magistrate judges; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrate judges, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrate judges are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrate judges are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrate judges may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

UPDATE: None

42 U.S.C. §2138 (2002)

Suspension of Licenses During War or National Emergency

Sec. 2138. Suspension of licenses during war or national emergency

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this chapter if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 2133 or 2134 of this title, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

UPDATE: None

43 U.S.C. §1065 (2002)

Public Lands

Sec. 1065. Summary removal of inclosures

The President is authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosure of any of the public lands mentioned in this chapter, and to employ civil or military force as may be necessary for that purpose.

UPDATE: None

MSEHPA (2001)

Model State Emergency Health Powers Act

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

UPDATE: None

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42 U.S.C. §11001, et seq. (2001)

Emergency Planning and Notification

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

Sec. 11001 Establishment of State Commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee

Sec. 11003. Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to

42 U.S.C. §11001, et seq. (2001)

the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan

UPDATE: None

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42 U.S.C. §11021 et seq. (2002)

The Public Health and Welfare

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

Subchapter II. Reporting Requirements.

Sec. 11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) And regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2) , to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) And regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) And regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of -

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) And regulations promulgated under that Act.

42 U.S.C. §11021 et seq. (2002)

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(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

UPDATE: None

42 U.S.C. §1856, et seq. (2001)

Reciprocal Fire Suppression Agreements

Section 1856. Definitions As used in this subchapter -

(a) The term "agency head" means the head of any executive department, military department, agency, or independent establishment in the executive branch of the Government;

(b) The term "fire protection" includes personal services and equipment required for fire prevention, the protection of life and property from fire, and fire fighting; and

(c) The term "fire organization" means any governmental entity or public or private corporation or association maintaining fire protection facilities within the United States, its Territories and possessions, and any governmental entity or public or private corporation or association which maintains fire protection facilities in any foreign country in the vicinity of any installation of the United States.

Section 1856a Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements

(a) Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

(b) Any agreement heretofore executed which would have been authorized by this subchapter, if this subchapter had been in effect on the date of execution thereof, is ratified and confirmed.

Section 1856a-1. Authority to enter into contracts with State and local governmental entities

Notwithstanding any other provision of law, in fiscal year 1992 and thereafter, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Smithsonian Institution are authorized to enter into contracts with State and local governmental entities, including local fire districts, for procurement of services in the presuppression, detection, and suppression of fires on any units within their jurisdiction.

Section 1856b Emergency assistance

In the absence of any agreement authorized or ratified by section 1856a of this title, each agency head is authorized to render emergency assistance in extinguishing fires and in preserving life and property from fire, within the vicinity of any place at which such agency maintains fire-protection facilities, when the rendition of such assistance is determined, under regulations prescribed by the agency head, to be in the best interest of the United States.

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42 U.S.C. §1856, et seq. (2001)

Section 1856c Service in line of duty

Any service performed under section 1856a or section 1856b of this title, by any officer or employee of the United States or any member of any armed force of the United States shall constitute service rendered in line of duty in such office, employment, or force. The performance of such service by any other individual shall not constitute such individual an officer or employee of the United States for the purposes of subchapter I of chapter 81 of title 5.

Section 1856d Funds

Funds available to any agency head for fire protection on installations or in connection with activities under the jurisdiction of such agency may be used to carry out the purposes of this subchapter. All sums received by any agency head for fire protection rendered pursuant to this subchapter shall be covered into the Treasury as miscellaneous receipts.

UPDATE: None

Pub. L. 107-188 (2002)

Public Health Security and Bioterrorism Preparedness and Response Act of 2002

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

SEC. 2801. NATIONAL PREPAREDNESS PLAN.

(a) IN GENERAL-

(1) PREPAREDNESS AND RESPONSE REGARDING PUBLIC HEALTH EMERGENCIES- The Secretary shall further develop and implement a coordinated strategy, building upon the core public health capabilities established pursuant to section 319A, for carrying out health-related activities to prepare for and respond effectively to bioterrorism and other public health emergencies, including the preparation of a plan under this section. The Secretary shall periodically thereafter review and, as appropriate, revise the plan.

(2) NATIONAL APPROACH- In carrying out paragraph (1), the Secretary shall collaborate with the States toward the goal of ensuring that the activities of the Secretary regarding bioterrorism and other public health emergencies are coordinated with activities of the States, including local governments.

(3) EVALUATION OF PROGRESS- The plan under paragraph (1) shall provide for specific benchmarks and outcome measures for evaluating the progress of the Secretary and the States, including local governments, with respect to the plan under paragraph (1), including progress toward achieving the goals specified in subsection (b).

(b) PREPAREDNESS GOALS- The plan under subsection (a) should include provisions in furtherance of the following:

(1) Providing effective assistance to State and local governments in the event of bioterrorism or other public health emergency.

(2) Ensuring that State and local governments have appropriate capacity to detect and respond effectively to such emergencies, including capacities for the following:

(A) Effective public health surveillance and reporting mechanisms at the State and local levels.

(B) Appropriate laboratory readiness.

(C) Properly trained and equipped emergency response, public health, and medical personnel.

(D) Health and safety protection of workers responding to such an emergency.

(E) Public health agencies that are prepared to coordinate health services (including mental health services) during and after such emergencies.

(F) Participation in communications networks that can effectively disseminate relevant information in a timely and secure manner to appropriate public and private entities and to the public.

(3) Developing and maintaining medical countermeasures (such as drugs, vaccines and other biological products, medical devices, and other supplies) against biological agents and toxins that may be involved in such emergencies.

(4) Ensuring coordination and minimizing duplication of Federal, State, and local planning, preparedness, and response activities, including during the investigation of a suspicious disease outbreak or other potential public health emergency.

(5) Enhancing the readiness of hospitals and other health care facilities to respond effectively to such emergencies.

(c) REPORTS TO CONGRESS-

(1) IN GENERAL- Not later than one year after the date of the enactment of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning progress with respect to the plan under subsection (a), including progress toward achieving the goals specified in subsection (b).

(2) ADDITIONAL AUTHORITY- Reports submitted under paragraph (1) by the Secretary (other than the first report) shall make recommendations concerning—

(A) any additional legislative authority that the Secretary determines is necessary for fully implementing the plan under subsection (a), including meeting the goals under subsection (b); and

(B) any additional legislative authority that the Secretary determines is necessary under section 319 to protect the public health in the event of an emergency described in section 319(a).

(d) RULE OF CONSTRUCTION- This section may not be construed as expanding or limiting any of the authorities of the Secretary that, on the day before the date of the enactment of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, were in effect with respect to preparing for and responding effectively to bioterrorism and other public health emergencies.

UPDATE: None

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42 U.S.C. §5121, et seq. (2001)

The Robert T. Stafford Disaster Relief And Emergency Assistance Act, As Amended

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

Section 5170. Procedure for declaration

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

Section 5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

Section 5191. Procedure for [emergency] declaration

(a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

Section 5201. Rules and regulations; acceptance of gifts

(a) (1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(2) Deadline for payment of assistance

Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this chapter to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

UPDATE: None

42 U.S.C. 9601 et seq. (2002)

Comprehensive Environmental Response, Compensation, and Liability (CERCLA)

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

Section 9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception.

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122 [42 USCS § 9622]. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) Removal action. Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122 [42 USCS § 9622]) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) Limitations on response. The President shall not provide for a removal or remedial action under this section in response to a release or threat of release--

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) Exception to limitations. Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner...

UPDATE: None

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44 U.S.C. §3501 et seq. (2002)

Coordination of Federal Information Policy

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Sec. 3501. Purposes

The purposes of this subchapter are to -

- (1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;
- (2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;
- (3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;
- (4) improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society;
- (5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;
- (6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;
- (7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;
- (8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to -
 - (A) privacy and confidentiality, including section 552a of title 5;
 - (B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and
 - (C) access to information, including section 552 of title 5;
- (9) ensure the integrity, quality, and utility of the Federal statistical system;
- (10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and
- (11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this subchapter.

UPDATE

Pub. L. 107-217, To Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Public Buildings, Property, and Works, as Title 40, United States Code, "Public Buildings, Property, And Works" (2002)

Section 3501 Amended by Pub. L. 107-217, sec. 3(l)(3).

Pub. L. 107-347

Section 3501.

New note added by Pub. L. 107-347, secs. 201-216; 301(c)(1)(A); 301(c)(2); and 501-526.

47 U.S.C. §308 (2002)

Telegraphs, Telephones, and Radiotelegraphs

Sec. 308. Requirements for license

(a) Writing; exceptions

The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: Provided, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds, in the nonbroadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant construction permits and station licenses, or modifications or renewals thereof, during the emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and without the filing of a formal application, but no authorization so granted shall continue in effect beyond the period of the emergency or war requiring it:

Provided further, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) Conditions

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

(c) Commercial communication

The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 35 of this title.

(d) Summary of complaints

Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commentator as constituting violent programming.

UPDATE: None

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47 U.S.C. §606 (2002)

Telegraphs, Telephones, and Radiotelegraphs

Section 606. War powers of President

(a) Priority communications

During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this chapter. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) Obstruction of interstate or foreign communications

It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: Provided, That nothing in this section shall be construed to repeal, modify, or affect either section 17 of title 15 or section 52 of title 29.

(c) Suspension or amendment of rules and regulations applicable to certain emission stations or devices

Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and equipment, by any department of the Government under such regulations as he may prescribe upon just compensation to the owners. The authority granted to the President, under this subsection, to cause the closing of any station or device and the removal therefrom of its apparatus and equipment, or to authorize the use or control of any station or device and/or its apparatus and equipment, may be exercised in the Canal Zone.

(d) Suspension or amendment of rules and regulations applicable to wire communications; closing of facilities; Government use of facilities

Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may, during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(e) Compensation

The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by section 1346 or Section 1491 of title 28.

(f) Affect on State laws and powers

Nothing in subsection (c) or (d) of this section shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by any communication system or systems.

47 U.S.C. §606 (2002)

(g) Limitations upon Presidential power

Nothing in subsection (c) or (d) of this section shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make; and nothing in subsection (d) of this section shall be construed to authorize the President to take any action the force and effect of which shall continue beyond the date after which taking of such action would not have been authorized.

(h) Penalties

Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than \$5,000, except that any person who commits such an offense with intent to injure the United States, or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.

UPDATE: None

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50 U.S.C. §82 (2002)

War and National Defense Act

Sec. 82. Procurement of ships and material during war

(a) Definitions

The word "person" as used in subsections (b) and (c) of this section shall include any individual, trustee, firm, association, company, or corporation.

The word "ship" shall include any boat, vessel, submarine, or any form of aircraft, and the parts thereof.

The words "war material" shall include arms, armament, ammunition, stores, supplies, and equipment for ships and airplanes, and everything required for or in connection with the production thereof.

The word "factory" shall include any factory, workshop, engine works, building used for manufacture, assembling, construction, or any process, and any shipyard or dockyard.

The words "United States" shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

(b) Presidential powers

In time of war the President is authorized and empowered, in addition to all other existing provisions of law:

First. Within the limits of the amounts appropriated therefore, to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give to the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships or war material so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Second. Within the limit of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limit of the amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof without taking possession of the entire factory, whether the United States has or has not any contract or agreement with the owner or occupier of such factory.

(d) Compensation for commandeered material

Whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of subsection (b) of this section, it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section 1346 or section 1491 of title 28.

UPDATE: None

50 U.S.C. §1601, et seq. (2002)

National Emergencies Act

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

Section 1601. Termination of Existing Declared Emergencies

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act¹ are terminated two years from the date of such enactment. Such termination shall not affect_

- (1) any action taken or proceeding pending not finally concluded or determined on such date;
- (2) any action or proceeding based on any act committed prior to such date; or
- (3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

Section 1621. Declaration of National Emergency By President; Publication in Federal Register; Effect on Other Laws; Superseding Legislation

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this chapter. No law enacted after September 14, 1976, shall supersede this subchapter unless it does so in specific terms, referring to this subchapter, and declaring that the new law supersedes the provisions of this subchapter.

UPDATE: None

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50 U.S.C. App. §2061 et seq. (2002)

Defense Production Act

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

Functions of President under act Sept. 8, 1950 (section 2061 et seq. Of this Appendix), relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, eff. June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade. For delegation of certain authority of President under act Sept. 8, 1950 (section 2061 et seq. Of this Appendix) relating to national defense industrial resource preparedness and statement of related policy, see Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29525, set out as a note under section 2153 of this Appendix.

Sec. 2062. Declaration of policy

(a) Findings The Congress finds that -

(1) the vitality of the industrial and technology base of the United States is a foundation of national security that provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency;

(2) in peacetime, the health of the industrial and technological base contributes to the technological superiority of United States defense equipment, which is a cornerstone of the national security strategy, and the efficiency with which defense equipment is developed and produced;

(3) in times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency;

(4) in view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, the United States defense mobilization preparedness effort continues to require the development of -

(A) preparedness programs;

(B) domestic defense industrial base improvement measures;

(C) provisions for a graduated response to any threatening international or military situation;

(D) the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand; and

(E) some diversion of certain materials and facilities from civilian use to military and related purposes. So in original. The period probably should be a semicolon.

(5) to meet the requirements referred to in this subsection, this Act (sections 2061 to 2171 of this Appendix) affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to maintain and enhance the defense industrial and technological base;

(6) the activities referred to in this subsection are needed in order to -

(A) improve domestic defense industrial base efficiency and responsiveness;

(B) reduce the time required for industrial mobilization in the event of an attack on the United States; or

(C) to respond to actions occurring outside of the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect the national defense preparedness of the United States;

(7) in order to ensure national defense preparedness, which is essential to national security, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

(8) to further assure the adequate maintenance of the defense industrial base, to the maximum extent possible, such supplies should be augmented through reliance on renewable fuels, including solar, geothermal, and wind energy and ethanol and its derivatives, and on energy conservation measures;

(9) the domestic defense industrial base is a component part of the core industrial capacity of the Nation;

(10) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by -

50 U.S.C. App. §2061 et seq. (2002)

(A) the overall competitiveness of the United States industrial economy; and

(B) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production;

(11) the domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for the national defense;

(12) such dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation; and

(13) the inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain United States Armed Forces in combat for longer than a short period.

(b) Statement of policy It is the policy of the United States that -

(1) in order to ensure productive capacity in the event of an attack on the United States, the United States should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographic areas which are vulnerable to attack by an enemy of the United States;

(2) to ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible;

(3) in the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographic dispersal of such facilities in the interest of national defense, except that nothing in this paragraph shall preclude the use of existing industrial facilities;

(4) to ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition should continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(5) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment; and

(6) plans and programs to carry out this section shall be undertaken with due consideration for promoting efficiency and competition.

UPDATE: None

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Pub. L. 107-56 (2001)
Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America <<NOTE: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.>> in Congress assembled,
SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.
(a) Short Title.--This Act may be cited as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001".
UPDATE: None
Pub. L. 107-188, The Public Health Security and Bioterrorism Preparedness and Response Act (2002)
Amended by Pub. L. 107-188, sec. 231(d).

Pub. L. 107-296 (2002), §211 et seq.
Homeland Security Act
<i>This document is included in its entirety in the Deskbook CD-ROM.</i>
SEC. 211. SHORT TITLE. This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".
SEC. 212. DEFINITIONS. In this subtitle:
(1) AGENCY.-The term "agency" has the meaning given it in section 551 of title 5, United States Code. 6 USC 131. 116 STAT. 2151 PUBLIC LAW 107-296-NOV. 25, 2002
(2) COVERED FEDERAL AGENCY.-The term "covered Federal agency" means the Department of Homeland Security.
(3) CRITICAL INFRASTRUCTURE INFORMATION.-The term "critical infrastructure information" means information not customarily in the public domain and related to the security of critical infrastructure or protected systems- (A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer- based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety; (B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or (C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.
(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.-The term "critical infrastructure protection program" means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.
(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.- The term "Information Sharing and Analysis Organization" means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of- (A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof; (B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and (C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).
(6) PROTECTED SYSTEM.-The term "protected system"- (A) means any service, physical or computer-based system, process, or

Pub. L. 107-296 (2002), §211 et seq.

procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and (B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.- (A) IN GENERAL.-The term "voluntary", in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members. (B) EXCLUSIONS.-The term "voluntary"- (i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 8c(a)(47))-

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U. S.C. 781(I)); and (II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and (ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

- (1) The President.
- (2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.-

(1) IN GENERAL.-Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)-(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act); 6 USC 133. 6 USC 132. (B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official; (C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith; (D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except- (i) in furtherance of an investigation or the prosecution of a criminal act; or (ii) when disclosure of the information would be- (I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or (II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office. (E) shall not, if provided to a State or local government or government agency- (i) be made available pursuant to any State or local law requiring disclosure of information or records; (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or (iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and (F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.-For purposes of paragraph (1), the term "express statement", with respect to information or records, means- (A) in the case of written information or records, a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002."; or (B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication. (b) LIMITATION.-No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.-Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.- The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

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Pub. L. 107-296 (2002), §211 et seq.

(e) PROCEDURES.-

(1) IN GENERAL.-The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.-The procedures established under paragraph (1) shall include mechanisms regarding-

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.-Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.-The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public Deadline. 116 STAT. 2155 PUBLIC LAW 107-296-NOV. 25, 2002 regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure-

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.-The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U. S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

UPDATE: None

DoD Directive 3025.1 (1993)

Military Support to Civil Authorities (MSCA)

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
 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)). DODD 3025.1, January 15, 1993 2
 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.) DODD 3025.1, January 15, 1993

UPDATE: None

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DoD Directive 3025.1-M (1994)

Manual for Civil Emergencies

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

RESPONSIBILITIES AND PROCEDURES

C1.1. GENERAL AND PURPOSE

C1.1.1. This Manual assigns responsibilities, prescribes procedures, and provides guidance by which the Department of Defense responds to ALL HAZARDS in accordance with 42 U.S.C. 5121, et seq., as amended (hereafter referred to as the Stafford Act, reference (f)). Under the authority of the Civil Defense Act of 1950, 50 U. S.C. App. 2251, et seq., (reference (a)) and National Security Directive 66 (dated March 16, 1992) (reference (m)) this Manual supports the National civil defense policy and Federal and State civil defense programs in cooperation with the Federal Emergency Management Agency (FEMA).

C1.1.2. The procedures established in this Manual constitute a single system for Military Support to Civil Authorities (MSCA) for use by the DoD Components to plan for, and respond to, requests from civil government agencies for military support in dealing with actual or anticipated civil emergencies requiring Federal response (including National security emergencies as defined in E.O. 12656, reference (l)).

C1.2. SCOPE

This Manual:

C1.2.1. Governs MSCA activities of all DoD Components in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the former Trust Territory of the Pacific Islands (hereafter, non-CONUS, non-State entities are referred to as U.S. possessions and territories).

C1.2.2. Provides an ALL HAZARDS focus on the assignment and allocation of DoD resources to support civil authorities during civil emergencies arising during peace, war, or transition to war. ALL HAZARDS refers to any number of natural or man-made disasters or emergencies such as hurricanes, earthquakes, forest fires, floods, oil spills, radiological contamination, power outages, nuclear attack, or sabotage emergencies and major disasters as defined by 42 U.S.C. 5122, reference (f), are included. 34 CHAPTER 1

C1.2.3. Establishes procedures for the Emergency Preparedness Liaison Officers (EPLO) program for ALL HAZARDS. The EPLO program support is designed to augment CINC support to MSCA.

C1.2.4. Does not integrate MSCA planning with contingency war planning and does not impinge on the authority of the Chairman of the Joint Chiefs of Staff to supervise contingency planning.

C1.2.5. Does not include military support to law enforcement, which is addressed in DoD Directive 3025.12, reference (b).

C1.2.6. Does not apply to DoD support during foreign disasters, which is covered by DoD Directive 5100.46, reference (e).

C1.2.7. Does not include equipping Reserve components (RC), which is covered in DoD Directive 1215.6, reference (n).

UPDATE: None

DoD Directive 3025.12 (1994)

Military Assistance for Civil Disturbances (MACDIS)

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

1. REISSUANCE AND PURPOSE This Directive reissues reference (a) to:

1. 1. Update policy and responsibilities governing planning and response by the DoD 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, 1 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.

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, the Combatant 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 U.S. Coast Guard (USCG) (when it is operating, or planning for operations, as a Service of the Navy).
2. 2. Shall govern MACDIS activities of all the DoD Components in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.
2. 3. Normally, shall be applied separately from DoD Directives 5525.5 and 5030. 46 (references (f) and (g)). It may be applied with either or both references (f) and (g) under certain circumstances, as determined by the DoD Executive Agent. DODD 3025.12, February 4, 1994
2. 4. Governs all planning and response by the DoD Components for MACDIS. Where applicable in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. territories and possessions, contingency war plans also shall provide for use of the DoD Executive Agency established in paragraph 4.3.1., this Directive, until otherwise directed by the Secretary of Defense.
2. 5. Shall not include responsibility for response to aircraft piracy or counter drug operations that are governed by other legal authorities and DoD Directives. Responsibilities of the DoD Components for aircraft piracy and counter drug operations shall be communicated by the Chairman of the Joint Chiefs of Staff for the Secretary of Defense under authorities other than this Directive. DODD 3025.12, February 4, 1994

UPDATE: None

Domestic WMD Incident Management Legal Deskbook

DoD Directive 3025.15 (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.
1. 2. Supersedes reference (a).
1. 3. Cancels references (b) and (c).

2. APPLICABILITY AND SCOPE This Directive: 1

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. DODD 3025.15, Feb 18, 97

UPDATE: None

DoD Directive 5525.5 (1986)

DoD Cooperation with Civilian Law Enforcement Officials

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

SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials References: (a) through (ll), see enclosure E1.

1. REISSUANCE AND PURPOSE 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.

2. APPLICABILITY AND SCOPE

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.

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.

3. DEFINITIONS

3. 1. Civilian Agency. An agency of one of the following jurisdictions:

3. 1.1. The United States (other than the Department of Defense, but 1 including the U.S. Coast Guard). This includes U.S. agencies in international areas dealing with U.S. flag vessels or aircraft in violation of U.S. law.

3. 1.2. A State (or political subdivision of it) of the United States.

3. 1.3. Commonwealth, Territory, or Possession (or political subdivision of it) of the United States.

3. 2. Civilian Law Enforcement Official. An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

3. 3. DoD Intelligence Component. An organization listed in subsection 3.4. of DoD Directive 5240.1 (reference (b)).

4. POLICY It is DoD policy to cooperate with civilian law enforcement officials to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law, as developed in enclosures E2. Through E7.

UPDATE: None

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CJCSI 3125.01 (2001)

Military Assistance to Domestic Consequence Management Operations in Response to a Chemical, Biological, Radiological, Nuclear, or High-Yield Explosive Situation

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

1. Purpose

a. This instruction provides operational and policy guidance and instructions for US military forces supporting domestic consequence management (CM) operations to prepare for and respond to the effects of a threatened or actual chemical, biological, radiological, nuclear, or high-yield explosives (CBRNE) situation. Domestic CBRNE CM support encompasses both deliberate and inadvertent CBRNE situations including terrorism, acts of aggression, industrial accidents, and acts of nature. Domestic CBRNE CM may be conducted by US military forces under immediate response authority and in support of the designated lead Federal agency (LFA).

B. Domestic CM operations are those conducted in the continental United States (CONUS) (including the District of Columbia), Alaska, Hawaii, the Commonwealth of Puerto Rico, the US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Two former trust territories (but now independent countries) are also deemed eligible for assistance under the Compact of Free Association -- the Republic of the Marshall Islands (until 21 October 2001) and the Federated States of Micronesia (until 3 November 2001).

C. This instruction does not apply to foreign CM operations. CJCSI 3214.01, "Military Support to Foreign Consequence Management Operations," dated 30 June 1998, provides guidance for the planning and conduct of foreign CM operations.

UPDATE: None

Proclamation 7463 of September 14, 2001

Declaration of National Emergency by Reason of Certain Terrorist Attacks

A national emergency exists by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States. NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, I hereby declare that the national emergency has existed since September 11, 2001, and, pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), I intend to utilize the following statutes: sections 123, 123a, 527, 2201(c), 12006, and 12302 of title 10, United States Code, and sections 331, 359, and 367 of title 14, United States Code. This proclamation immediately shall be published in the Federal Register or disseminated through the Emergency Federal Register, and transmitted to the Congress. This proclamation is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.

UPDATE: None

Conn. Pub. Acts 03-236 (2003)

An Act Concerning Public Health Emergency Response Authority

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

(2) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease or other biological malfunction in a human, animal, plant or another living organism in order to influence the conduct of government or to harm, intimidate or coerce a civilian population;

UPDATE: None

NYS Mil. L. §1.2 (2002)

Militia of the State

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

S 2. Militia of the state; division and composition. 1. The militia of the state shall be divided into the organized militia, the state reserve list, the state retired list and the unorganized militia. The organized militia shall be composed of the New York army national guard; the New York air national guard; the inactive national guard; the New York naval militia; the New York guard whenever such a state force shall be duly organized and such additional forces as may be created by the governor.

2. The unorganized militia shall consist of all able-bodied male residents of the state between the ages of seventeen and forty-five who are not serving in any force of the organized militia or who are not on the state reserve list or the state retired list and who are or who have declared their intention to become citizens of the United States, subject, however, to such exemptions from military duty as are created by the laws of the United States.

3. The state reserve list and the state retired list shall include the persons who are lawfully carried thereon on the effective date of this act and such persons who may be transferred thereto or placed thereon by the governor in accordance with the provisions of this chapter.

4. The terms "organized militia," "all or any part of the organized militia," "organized militia or any part thereof" and "organized militia or any force thereof," whenever used in this chapter, unless a different meaning is plainly required by the context, shall be deemed to include any unit, command, component, element, headquarters, staff or cadre thereof as well as any member or members.

UPDATE: None

S.D. Codified Laws Ann. §33-14-1 (2003)

South Dakota State Guard

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

33-14-1. Authorization to organize state guard -- State guard as distinct from national guard. The Governor is hereby authorized, in his discretion, to organize and maintain within this state such military forces as he may deem necessary to protect life and property in this state. Such forces shall be additional to and distinct from the national guard and shall be known as the South Dakota State Guard.

UPDATE: None

N.H. Rev. Stat. §110:B-1 (2002)

The Militia

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

110-B:1 Composition of the Militia. –

- I. The militia shall be divided into 3 classes, namely the national guard, the state guard, and the unorganized militia.
- II. The national guard shall consist of an army national guard, an air national guard, and an inactive national guard. As used in this chapter, the term "national guard" shall mean and refer to the army national guard and the air national guard unless otherwise indicated.
- III. The state guard shall consist of those persons serving in accordance with the provisions of RSA 111.
- IV. The unorganized militia shall consist of all able-bodied residents of the state who are 18 years of age or older, who are, or have declared their intention to become, citizens of the United States, and who are not serving in the national guard or the state guard.
- V. When authorized by the laws and regulations of the United States, there shall be an additional section of the state guard to be known as the New Hampshire naval militia.

UPDATE: None

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Tenn. Code §58-1-104 (2003)

Military forces - Division and composition

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

(b) The army shall be composed of an army national guard and an air national guard, which forces, together with an inactive national guard, when such is authorized by the laws of the United States and regulations issued pursuant thereto, shall comprise the Tennessee national guard; and the Tennessee state guard, whenever such a state force shall be duly organized, and its reserve.

UPDATE: None

Colo. Rev. Stat., §28-3-104, et seq. (2003)

Commander in Chief - Staff

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

The governor shall be the commander in chief of the military forces except so much thereof as may be in the actual service of the United States and may employ the same for the defense or relief of the state, the enforcement of its laws, the protection of life and property therein, the implementation of the Emergency Management Assistance Compact, and for the training of the military forces for all appropriate state missions. He or she shall make and publish regulations not inconsistent with law and enforce the provisions of this article. He or she may appoint a staff, consisting of an adjutant general as chief of staff and such other officers as he or she deems necessary if all such officers are federally recognized officers in their respective ranks in the national guard of the state.

History

Source: L. 55: p. 609, § 4. CRS 53: § 94-9-4. C.R.S. 1963: § 94-1-4. L. 2002: Entire section amended, pp. 585, 593, §§ 5, 27, effective May 24.

Source: <http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>

UPDATE: None

Mont. Code Ann. §10-3-101, et seq. (2002)

Disaster and Emergency Services

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

10-3-503. Governor's powers and duties.

- (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.
- (2) In performing his duties under this part, the governor may cooperate with the Federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.
- (3) In performing his duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon him, with due consideration of the emergency resources management plans of the Federal government.

UPDATE: None

42 CFR Part 34 (2002)

Medical Examination of Aliens

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

Sec. 34.1 Applicability.

The provisions of this part shall apply to the medical examination of:

- (a) Aliens applying for a visa at an embassy or consulate of the United States;
- (b) Aliens arriving in the United States;
- (c) Aliens required by the INS to have a medical examination in connection with determination of their admissibility into the United States; and
- (d) Aliens applying for adjustment status.

UPDATE: None

National Plan for Information Systems Protection (2000)

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

1. THE THREAT TO AMERICA'S CRITICAL INFRASTRUCTURES

We are at risk. The United States depends more on computers today than ever before. The pace of the technological drive to install computer controls in every critical infrastructure far outstrips our potential to design computer security software, train information technology security personnel, or develop and promulgate computer security recommended practices and standards. We have created a gaping vulnerability in our national security and economic stability. This affects not only our computer-controlled systems for electrical power, telecommunications, and nearly every utility, but also the vital databases that maintain our medical data, criminal records, and proprietary information. We are vulnerable to mischief-making hackers, hardware and software failures, cyber criminals and, most alarmingly, to deliberate attack from nation states and terrorists.

UPDATE: None

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15 CFR Part 700 (2003)

Commerce and Foreign Trade

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

PART 700--DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

Sec. 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U. S.C. App. 2061, et seq.) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials, services, and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials, equipment, and services in order to assure domestic energy supplies for national defense needs.

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U. S.C. 2538, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms "national defense" and "defense" as used in the Defense Production Act includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act. The definition of "national defense" in Section 702(13) of the Defense Production Act provides that this term includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act.

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

(e) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B--Overview. The full text of the DPAS is found in subparts D through L.

Subpart B--Overview

Sec. 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule 1 to this part.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix II. They set forth the authorities delegated and those retained by Commerce.

UPDATE: None

21 CFR Part 1240 (2003)

Food and Drugs

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

Part 1240. Control of Communicable Diseases

Sec. 1240.3 General definitions.

As used in this part, terms shall have the following meaning:

(a) Bactericidal treatment. The application of a method or substance for the destruction of pathogens and other organisms as set forth in Sec. 1240.10.

(b) Communicable diseases. Illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) Communicable period. The period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.

(d) Contamination. The presence of a certain amount of undesirable substance or material, which may contain pathogenic microorganisms.

(e) Conveyance. Conveyance means any land or air carrier, or any vessel as defined in paragraph (n) of this section.

(f) Garbage. (1) The solid animal and vegetable waste, together with the natural moisture content, resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, and similar establishments, or (2) any other food waste containing pork.

(g) Incubation period. The period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestation of the disease.

(h) Interstate traffic.

(1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation which is entirely within a State or possession,

(i) From a point of origin in any State or possession to a point of destination in any other State or possession, or

(ii) Between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or loading persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.

(i) Milk. Milk is the product defined in Sec. 131.110 of this chapter.

(j) Milk products. Food products made exclusively or principally from the lacteal secretion obtained from one or more healthy milk-producing animals, e.g., cows, goats, sheep, and water buffalo, including, but not limited to, the following: low fat milk, skim milk, cream, half and half, dry milk, nonfat dry milk, dry cream, condensed or concentrated milk products, cultured or acidified milk or milk products, kefir, eggnog, yogurt, butter, cheese (where not specifically exempted by regulation), whey, condensed or dry whey or whey products, ice cream, ice milk, other frozen dairy desserts and products obtained by modifying the chemical or physical characteristics of milk, cream, or whey by using enzymes, solvents, heat, pressure, cooling, vacuum, genetic engineering, fractionation, or other similar processes, and any such product made by the addition or subtraction of milk fat or the addition of safe and suitable optional ingredients for the protein, vitamin, or mineral fortification of the product.

(k) Minimum heat treatment. The causing of all particles in garbage to be heated to a boiling temperature and held at that temperature for a period of not less than 30 minutes.

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21 CFR Part 1240 (2003)

- (l) Possession. Any of the possessions of the United States, including Puerto Rico and the Virgin Islands.
- (m) Potable water. Water which meets the standards prescribed in the Environmental Protection Agency's Primary Drinking Water Regulations as set forth in 40 CFR part 141 and the Food and Drug Administration's sanitation requirements as set forth in this part and part 1250 of this chapter.
- (n) State. Any State, the District of Columbia, Puerto Rico and the Virgin Islands.
- (o) Utensil. Includes any kitchenware, tableware, glassware, cutlery, containers, or equipment with which food or drink comes in contact during storage, preparation, or serving.
- (p) Vessel. Any passenger-carrying, cargo, or towing vessel exclusive of:
- (1) Fishing boats including those used for shell-fishing;
 - (2) Tugs which operate only locally in specific harbors and adjacent waters;
 - (3) Barges without means of self-propulsion;
 - (4) Construction-equipment boats and dredges; and
 - (5) Sand and gravel dredging and handling boats.
- (q) Watering point. The specific place or water boat from which potable water is loaded on a conveyance.
- (r) Molluscan shellfish. Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the product consists entirely of the shucked adductor muscle.
- (s) Certification number means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish processor.
- (t) Shellfish control authority means a Federal, State, or foreign agency, or sovereign tribal government, legally responsible for the administration of a program that includes activities such as classification of molluscan shellfish growing areas, enforcement of molluscan shellfish harvesting controls, and certification of molluscan shellfish processors.
- (u) Tag means a record of harvesting information attached to a container of shellstock by the harvester or processor.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983; 57 FR 57344, Dec. 4, 1992; 60 FR 65201, Dec. 18, 1995]

UPDATE: None

21 CFR Part 1250 (2003)

Food and Drugs

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

Sec. 1250. Interstate Conveyance Sanitation

Sec. 1250.20 Applicability.

All conveyances engaged in interstate traffic shall comply with the requirements prescribed in this subpart and Sec. 1240.20 of this chapter.

Sec. 1250.21 Inspection.

The Commissioner of Food and Drugs may inspect such conveyance to determine compliance with the requirements of this subpart and Sec. 1240.20 of this chapter.

Sec. 1250.22 General requirements.

All food and drink served on conveyances shall be clean, wholesome, and free from spoilage, and shall be prepared, stored, handled, and served in accordance with the requirements prescribed in this subpart and Sec. 1240.20 of this chapter.

Sec. 1250.25 Source identification and inspection of food and drink.

(a) Operators of conveyances shall identify, when requested by the Commissioner of Food and Drugs, the vendors, distributors or dealers from whom they have acquired or are acquiring their food supply, including milk, fluid milk products, ice cream and other frozen desserts, butter, cheese, bottled water, sandwiches and box lunches.

(b) The Commissioner of Food and Drugs may inspect any source of such food supply in order to determine whether the requirements of the regulations in this subpart and in Sec. 1240.20 of this chapter are being met, and may utilize the results of inspections of such sources made by representatives of State health departments or of the health authorities of contiguous foreign nations.

UPDATE: None

Domestic WMD Incident Management Legal Deskbook

40 CFR Part 300 (2003)

National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

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

§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.

§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.

§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.

UPDATE: None

42 CFR Part 70 (2002)

Interstate Quarantine

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

Section 70.1 General definitions. As used in this part, terms shall have the following meaning:

- (a) Communicable diseases means illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.
- (b) Communicable period means the period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.
- (c) Conveyance means any land or air carrier, or any vessel as defined in paragraph (h) of this section.
- (d) Incubation period means the period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestation of the disease.
- (e) Interstate traffic means:
 - (1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a State or possession --
 - (i) From a point of origin in any State or possession to a point of destination in any other State or possession; or
 - (ii) Between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.
 - (2) Interstate traffic does not include the following:
 - (i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or loading persons or property for transportation to a foreign country.
 - (ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.
- (f) Possession means any of the possessions of the United States, including Puerto Rico and the Virgin Islands.
- (g) State means any State, the District of Columbia, Puerto Rico, and the Virgin Islands.
- (h) Vessel means any passenger-carrying, cargo, or towing vessel exclusive of:
 - (1) Fishing boats including those used for shell-fishing;
 - (2) Tugs which operate only locally in specific harbors and adjacent waters;
 - (3) Barges without means of self-propulsion;
 - (4) Construction-equipment boats and dredges; and
 - (5) Sand and gravel dredging and handling boats.

§70.2 Measures in the event of inadequate local control. Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.

§70.3 All communicable diseases. A person who has a communicable disease in the communicable period shall not travel from one State or possession to another without a permit from the health officer of the State, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stop-overs other than those necessary for transportation connections shall be considered as places of destination.

UPDATE: None

Domestic WMD Incident Management Legal Deskbook

42 CFR Part 71 (2002)

Foreign Quarantine

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

Section 71.1 Scope and definitions.

(a) The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or possessions of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250.

(b) As used in this part the term: Carrier means a ship, aircraft, train, road vehicle, or other means of transport, including military. Communicable disease means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly, or indirectly through an intermediate animal host, vector, or the inanimate environment. Contamination means the presence of undesirable substances or material which may contain infectious agents or their toxic products. Controlled Free Pratique means permission for a carrier to enter a U.S. port, disembark, and begin operation under certain stipulated conditions. Deratting Certificate means a certificate issued under the instructions of the Director, in the form prescribed by the International Health Regulations, recording the inspection and deratting of the ship. Deratting Exemption Certificate means a certificate issued under the instructions of the Director, in the form prescribed by the International Health Regulations, recording the inspection and exemption from deratting of the ship which is rodent free. Detention means the temporary holding of a person, ship, aircraft, or other carrier, animal, or thing in such place and for such period of time as may be determined by the Director. Director means the Director, Centers for Disease Control, Public Health Service, Department of Health and Human Services, or his/her authorized representative. Disinfection means the killing of infectious agents or inactivation of their toxic products outside the body by direct exposure to chemical or physical agents. Disinfestation means any chemical or physical process serving to destroy or remove undesired small animal forms, particularly arthropods or rodents, present upon the person, the clothing, or the environment of an individual, or upon animals and carriers. Disinsection means the operation in which measures are taken to kill the insect vectors of human disease present in carriers and containers. Educational purpose means use in the teaching of a defined educational program at the university level or equivalent. Exhibition purpose means use as a part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely scheduled for multiple performances each week and open to the general public except for reasonable vacation and retraining periods. Ill person means a person who:

(1) Has a temperature of 100 °F. (or 38 °C.) Or greater, accompanied by a rash, glandular swelling, or jaundice, or which has persisted for more than 48 hours; or

(2) Has diarrhea, defined as the occurrence in a 24-hour period of three or more loose stools or of a greater than normal (for the person) amount of loose stools. International Health Regulations means the International Health Regulations of the World Health Organization, adopted by the Twenty-Second World Health Assembly in 1969, as amended by the Twenty-Sixth World Health Assembly in 1973, the Thirty-Fourth World Health Assembly in 1981, and as may be further amended. International voyage means: (1) In the case of a carrier, a voyage between ports or airports of more than one country, or a voyage between ports or airports of the same country if the ship or aircraft stopped in any other country on its voyage; or (2) in the case of a person, a voyage involving entry into a country other than the country in which that person begins his/her voyage. Isolation means: (1) When applied to a person or group of persons, the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner as to prevent the spread of infection; or (2) when applied to animals, the separation of an animal or group of animals from persons, other animals, or vectors of disease in such a manner as to prevent the spread of infection. Military services means the U.S. Army, the U.S. Air Force, the U.S. Navy, and the U.S. Coast Guard. Scientific purpose means use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products. Surveillance means the temporary supervision of a person who may have or has been exposed to a communicable disease.

U. S. port means any seaport, airport, or border crossing point under the control of the United States. United States means the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Vector means an animal (including insects) or thing which conveys or is capable of conveying infectious agents from a person or animal to another person or animal.

UPDATE: None

FRERP (1996)

Federal Radiological Emergency Response Plan

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.

B. Participating Federal Agencies Each participating agency has responsibilities and/or capabilities that pertain to various types of radiological emergencies. The following Federal agencies participate in the FRERP:

1. Department of Agriculture (USDA)
2. Department of Commerce (DOC)
3. Department of Defense (DOD)
4. Department of Energy (DOE)
5. Department of Health and Human Services (HHS)
6. Department of Housing and Urban Development (HUD)
7. Department of the Interior (DOI)
8. Department of Justice (DOJ)
9. Department of State (DOS)
10. Department of Transportation (DOT)
11. Department of Veterans Affairs (VA)
12. Environmental Protection Agency (EPA)
13. Federal Emergency Management Agency (FEMA)
14. General Services Administration (GSA)
15. National Aeronautics and Space Administration (NASA)
16. National Communications System (NCS) and
17. Nuclear Regulatory Commission (NRC).

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.)

UPDATE: None

**Domestic WMD Incident Management
Legal Deskbook**

The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets (2003)

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

Introduction

On July 16, 2002, President Bush issued the National Strategy for Homeland Security, an overarching strategy for mobilizing and organizing our Nation to secure the U. S. homeland from terrorist attacks. It communicates a comprehensive approach based on the principles of shared responsibility and partnership with Congress, state and local governments, the private sector, and the American people truly national effort, not merely a Federal one.

The National Strategy for Homeland Security defines "homeland security" and identifies a strategic framework based on three national objectives. In order of priority, these are: (1) preventing terrorist attacks within the United States, (2) reducing America's vulnerability to terrorism, and (3) minimizing the damage and recovering from attacks that do occur.

To attain these objectives, the National Strategy for Homeland Security aligns our homeland security efforts into six critical mission areas: intelligence and warning, border and transportation security, domestic counterterrorism, protecting critical infrastructures and key assets, defending against catastrophic terrorism, and emergency preparedness and response.

UPDATE: None

National Strategy to Secure Cyberspace (2003)

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

Introduction

A Nation in Cyberspace Our Nation's critical infrastructures consist of the physical and cyber assets of public and private institutions in several sectors: agriculture, food, water, public health, emergency services, government, defense industrial base, information and telecommunications, energy, transportation, banking and finance, chemicals and hazardous materials, and postal and shipping. Cyberspace is the nervous system of these infrastructures—the control system of our country. Cyberspace comprises hundreds of thousands of interconnected computers, servers, routers, switches, and fiber optic cables that make our critical infrastructures work. Thus, the healthy functioning of cyberspace is essential to our economy and our national security. Unfortunately, recent events have highlighted the existence of cyberspace vulnerabilities and the fact that malicious actors seek to exploit them. (See, Cyberspace Threats and Vulnerabilities.)

This National Strategy to Secure Cyberspace is part of an overall effort to protect the Nation. It is an implementing component of the National Strategy for Homeland Security and is complemented by the National Strategy for the Physical Protection of Critical Infrastructures and Key Assets. The purpose of this document is to engage and empower Americans to secure the portions of cyberspace that they own, operate, or control, or with which they interact. Securing Introduction

Cyberspace is a difficult strategic challenge that requires coordinated and focused effort from our entire society—the federal government, state and local governments, the private sector, and the American people.

UPDATE: None

Chandler v. United States

171 F. 2d 921, (1948)

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

UNITED STATES COURT OF APPEALS, FIRST CIRCUIT
Chandler V. United States
171 F. 2d 921

OPINION given my Mr. Justice McGruder

'It shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, [**42] except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding \$ 10,000 or imprisonment not exceeding two years or by both such fine and imprisonment. Provided, This section shall not be construed to apply to the District of Alaska.' The foregoing was originally a section inserted into an Army Appropriation Act as a backwash of the Reconstruction period following the Civil War. Its legislative history, as set forth in Lieber, *The Use of the Army in Aid of the Civil Power*, n4 indicates that the immediate objective of the legislation was to put an end to the use of federal troops to police state elections in the ex-Confederate states where the civil power had been reestablished. In contrast to the criminal statute denouncing the crime of treason, this is the type of criminal statute which is properly presumed to have no extraterritorial application in the absence of statutory language indicating a contrary intent. See the quotation [**43] from *United States v. Bowman*, supra. Particularly, it would be unwarranted to assume that such a statute was intended to be applicable to occupied enemy territory, where the military power is in control and Congress has not set up a civil regime. Cf. *Ex parte Milligan*, 1866, 4 Wall. 2, 141, 142, 18 L.Ed. 281; *MacLeod v. United States*, 1913, 229 U.S. 416, 33 S.Ct. 955, 57 L.Ed. 1260; *Hirabayashi v. United States*, 1943, 320 U.S. 81, 93, 63 S.Ct. 1375, 87 L.Ed. 1774. The turning up of this obscure and all-but-forgotten statute is a credit to the industry of counsel; but we know perfectly well that if the members of the Armed Forces who took Chandler into custody were prosecuted for a criminal offense under 10 U.S.C.A. § 15, such prosecution would surely fail. Counsel for appellant have not suggested any alternative procedure which in their view properly could have been employed to bring Chandler to trial; in fact, all their arguments involve the conclusion, which we deem unacceptable, that there was no way in which a court of the United States could obtain lawful jurisdiction over Chandler unless he should choose to relinquish his asylum in Germany and voluntarily return to the United States.

**Domestic WMD Incident Management
Legal Deskbook**

Ex Parte Milligan

71 U.S. 2 (1866), U.S. Supreme Court

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

EX PARTE MILLIGAN,
71 U.S. 2 (Wall.)

The controlling question in the case is this: Upon the facts stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it jurisdiction, legally, to try and sentence him? Milligan, not a resident of one of the rebellious states, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole [71 U.S. 2, 119] people; for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is, alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers. or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggle to preserve liberty and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle; and secured in a written constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct, to leave room for misconstruction or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution which says, 'That the trial of all crimes, except in case of impeachment, shall be by jury;' and in the fourth, fifth, and sixth articles of the amendments. The fourth proclaims the right to be secure in person and effects against unreasonable search and seizure; and directs that a judicial warrant shall not issue 'without proof of probable cause supported by oath or affirmation.' The fifth declares 'that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor be deprived [71 U.S. 2, 120] of life, liberty, or property, without due process of law.' And the sixth guarantees the right of trial by jury, in such manner and with such regulations that with upright judges, impartial juries, and an able bar, the innocent will be saved and the guilty punished. It is in these words: 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.' These securities for personal liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption it encountered severe opposition; and, but for the belief that it would be so amended as to embrace them, it would never have been ratified.

Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrevocable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, [71 U.S. 2, 121] and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

Have any of the rights guaranteed by the Constitution been violated in the case of Milligan? and if so, what are they?

Ex Parte Milligan

Every trial involves the exercise of judicial power; and from what source did not military commission that tried him derive their authority? Certainly no part of judicial power of the country was conferred on them; because the Constitution expressly vests it 'in one supreme court and such inferior courts as the Congress may from time to time ordain and establish,' and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President; because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make, the laws; and there is 'no unwritten criminal code to which resort can be had as a source of jurisdiction.'

But it is said that the jurisdiction is complete under the 'laws and usages of war.'

It can serve no useful purpose to inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be applied to citizens in states which have upheld the authority of the government, and where the courts are open and their process unobstructed. This court has judicial knowledge that in Indiana the Federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances; and no usage of war could sanction a military trial there for any offence whatever of a citizen in civil life, in nowise [71 U.S. 2, 122] connected with the military service. Congress could grant no such power; and to the honor of our national legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress, and not composed of judges appointed during good behavior.

Why was he not delivered to the Circuit Court of Indiana to be proceeded against according to law? No reason of necessity could be urged against it; because Congress had declared penalties against the offences charged, provided for their punishment, and directed that court to hear and determine them. And soon after this military tribunal was ended, the Circuit Court met, peacefully transacted its business, and adjourned. It needed no bayonets to protect it, and required no military aid to execute its judgments. It was held in a state, eminently distinguished for patriotism, by judges commissioned during the Rebellion, who were provided with juries, upright, intelligent, and selected by a marshal appointed by the President. The government had no right to conclude that Milligan, if guilty, would not receive in that court merited punishment; for its records disclose that it was constantly engaged in the trial of similar offences, and was never interrupted in its administration of criminal justice. If it was dangerous, in the distracted condition of affairs, to leave Milligan unrestrained of his liberty, because he 'conspired against the government, afforded aid and comfort to rebels, and incited the people to insurrection,' the law said arrest him, confine him closely, render him powerless to do further mischief; and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done, the Constitution would have been vindicated, the law of 1863 enforced, and the securities for personal liberty preserved and defended.

Domestic WMD Incident Management Legal Deskbook

Gibbons v. Ogden

22 U.S. 1 (1824), U.S. Supreme Court

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

GIBBONS, Appellant, v. OGDEN, Respondent.

March 2, 1824

The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation, is as expressly granted, as if that term had been added to the word 'commerce.'

To what commerce does this power extend? The constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes.'

It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be [22 U.S. 1, 194] carried on between this country and any other, to which this power does not extend. It has been truly said, that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term.

If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it.

The subject to which the power is next applied, is to commerce 'among the several States.' The word 'among' means intermingled with. A thing which is among others, is intermingled with them. Commerce among the States, cannot stop at the external boundary line of each State, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce, to which the power was to be extended, would not have been made, had the intention [22 U.S. 1, 195] been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power, if it could not pass those lines. The commerce of the United States with foreign nations, is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction, pass through the interior of almost every State in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State.

This principle is, if possible, still more clear, when [22 U.S. 1, 196] applied to commerce 'among the several States.' They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other States lie between them. What is commerce 'among' them; and how is it to be conducted? Can a trading expedition between two adjoining States, commence and terminate outside of each? And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the States must, of necessity, be commerce with the States. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a State. The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of

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the several States. The sense of the nation on this subject, is unequivocally manifested by the provisions made in the laws for transporting goods, by land, between Baltimore and Providence, between New- York and Philadelphia, and between Philadelphia and Baltimore.

We are now arrived at the inquiry-What is this power?

It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the [22 U.S. 1, 197] questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often they solely, in all representative governments.

The power of Congress, then, comprehends navigation, within the limits of every State in the Union; so far as that navigation may be, in any manner, connected with 'commerce with foreign nations, or among the several States, or with the Indian tribes.' It may, of consequence, pass the jurisdictional line of New-York, and act upon the very waters to which the prohibition now under consideration applies.

But it has been urged with great earnestness, that, although the power of Congress to regulate commerce with foreign nations, and among the several States, be co-extensive with the subject itself, and have no other limits than are prescribed in the constitution, yet the States may severally [22 U.S. 1, 198] exercise the same power, within their respective jurisdictions. In support of this argument, it is said, that they possessed it as an inseparable attribute of sovereignty, before the formation of the constitution, and still retain it, except so far as they have surrendered it by that instrument; that this principle results from the nature of the government, and is secured by the tenth amendment; that an affirmative grant of power is not exclusive, unless in its own nature it be such that the continued exercise of it by the former possessor is inconsistent with the grant, and that this is not of that description.

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**Domestic WMD Incident Management
Legal Deskbook**

Luther v. Borden

48 U.S. 1 (1849), U.S. Supreme Court

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

LUTHER v. BORDEN, 48 U.S. 1 (1849)

48 U.S. 1 (How.)

Mr. Chief Justice TANEY delivered the opinion of the court.

So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. [48 U.S. 1, 43] It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. They might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide when the contingency had happened which required the federal government to interfere. But Congress thought otherwise, and no doubt wisely; and by the act of February 28, 1795, provided, that, 'in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State or of the executive (when the legislature cannot be convened), to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection.'

By this act, the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President. He is to act upon the application of the legislature or of the executive, and consequently he must determine what body of men constitute the legislature, and who is the governor, before he can act. The fact that both parties claim the right to the government cannot alter the case, for both cannot be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must, of necessity, decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the act of Congress.

After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right? Could the court, while the parties were actually contending in arms for the possession of the government, call witnesses before it and inquire which party represented a majority of the people? If it could, then it would become the duty of the court (provided it came to the conclusion that the President had decided incorrectly) to discharge those who were arrested or detained by the troops in the service of the United States or the government which the President was endeavoring to maintain. If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order. Yet if this right does not reside in the courts when the conflict is raging, if the judicial power is at that time bound to follow the decision of the political, it must be equally bound when the contest is over. It cannot, when peace is restored, punish as offences and crimes the acts which it before recognized, and was bound to recognize, as lawful. [48 U.S. 1, 44] It is true that in this case the militia were not called out by the President. But upon the application of the governor under the charter government, the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority if it should be found necessary for the general government to interfere; and it is admitted in the argument, that it was the knowledge of this decision that put an end to the armed opposition to the charter government, and prevented any further efforts to establish by force the proposed constitution. The interference of the President, therefore, by announcing his determination, was as effectual as if the militia had been assembled under his orders. And it should be equally authoritative. For certainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government; or in treating as wrongdoers or insurgents the officers of the government which the President had recognized, and was prepared to support by an armed force. In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice. And this principle has been applied by the act of Congress to the sovereign States of the Union.

It is said that this power in the President is dangerous to liberty, and may be abused. All power may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the same time equally effectual. When citizens of the same State are in arms against each other, and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt, or it is of little value. The ordinary course of proceedings in courts of justice would be utterly unfit for the crisis. And the elevated office of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a willful abuse of power as human prudence and foresight could well provide. At all events, it is conferred upon him by the Constitution and laws of the United States, and must therefore be respected and enforced in its judicial tribunals.

Luther v. Borden

A question very similar to this arose in the case of *Martin v. Mott*, 12 Wheat. 29-31. The first clause of the first section of the act of February 28, 1795, of which we have been speaking, authorizes the President to call out the militia to repel invasion. It is the second clause in the same section which authorizes the call to suppress an insurrection against a State [48 U.S. 1, 45] government. The power given to the President in each case is the same,- with this difference only, that it cannot be exercised by him in the latter case, except upon the application of the legislature or executive of the State. The case above mentioned arose out of a call made by the President, by virtue of the power conferred by the first clause; and the court said, that, 'whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.' The grounds upon which that opinion is maintained are set forth in the report, and we think are conclusive. The same principle applies to the case now before the court. Undoubtedly, if the President in exercising this power shall fall into error, or invade the rights of the people of the State, it would be in the power of Congress to apply the proper remedy. But the courts must administer the law as they find it.

The remaining question is whether the defendants, acting under military orders issued under the authority of the government, were justified in breaking and entering the plaintiff's house. In relation to the act of the legislature declaring martial law, it is not necessary in the case before us to inquire to what extent, nor under what circumstances, that power may be exercised by a State. Unquestionably a military government, established a the permanent government of the State, would not be a republican government, and it would be the duty of Congress to overthrow it. But the law of Rhode Island evidently contemplated no such government. It was intended merely for the crisis, and to meet the peril in which the existing government was placed by the armed resistance to its authority. It was so understood and construed by the State authorities. And, unquestionably, a State may use its military power to put down an armed insurrection, too strong to be controlled by the civil authority. The power is essential to the existence of every government, essential to the preservation of order and free institutions, and is as necessary to the States of this Union as to any other government. The State itself must determine what degree of force the crisis demands. And if the government of Rhode Island deemed the armed opposition so formidable, and so ramified throughout the State, as to require the use of its military force and the declaration of martial law, we see no ground upon which this court can question its authority. It was a state of war; and the established government resorted to the rights and usages of war to maintain itself, and to overcome the unlawful opposition. And in that state of things the officers engaged in its military service [48 U.S. 1, 46] might lawfully arrest any one, who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection; and might order a house to be forcibly entered and searched, when there were reasonable grounds for supposing he might be there concealed. Without the power to do this, martial law and the military array of the government would be mere parade, and rather encourage attack than repel it. No more force, however, can be used than is necessary to accomplish the object. And if the power is exercised for the purposes of oppression, or any injury willfully done to person or property, the party by whom, or by whose order, it is committed would undoubtedly be answerable.

....

Much of the argument on the part of the plaintiff turned upon political rights and political questions, upon which the [48 U.S. 1, 47] court has been urged to express an opinion. We decline doing so. The high power has been conferred on this court of passing judgment upon the acts of the State sovereignties, and of the legislative and executive branches of the federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums. No one, we believe, has ever doubted the proposition, that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that they may alter and change their form of government at their own pleasure. But whether they have changed it or not by abolishing an old government, and establishing a new one in its place, is a question to be settled by the political power. And when that power has decided, the courts are bound to take notice of its decision, and to follow it.

The judgment of the Circuit Court must therefore be affirmed.

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Houston v. Moore

18 U.S. 1 (1820), U.S. Supreme Court

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HOUSTON v. MOORE, 18 U.S. 1 (1820)
18 U.S. 1 (Wheat.)

Upon the subject of the militia, Congress has exercised the powers conferred on that body by the constitution, as fully as was thought right, and has thus excluded the power of legislation by the States on these subjects, except so far as it has been permitted by Congress; although it should be conceded, that important provisions have been omitted, or that others which have been made might have been more extended, or more wisely devised.

There still remains another question to be considered, which more immediately involves the merits of this cause. Admit that the legislature of Pennsylvania could not constitutionally legislate in respect to delinquent militia men, and to prescribe the punishment to which they should be subject, had the State Court Martial jurisdiction over the subject, so as to enforce the laws of Congress against these delinquents?

This, it will be seen, is a different question from that which has been just examined. That respects the power of a State legislature to legislate upon a subject, on which Congress has declared its will. This concerns the jurisdiction of a State military tribunal [18 U.S. 1, 25] to adjudicate in a case which depends on a law of Congress, and to enforce it.

It has been already shown that Congress has prescribed the punishment to be inflicted on a militia man detached and called forth, but who has refused to march; and has also provided that Courts Martial for the trial of such delinquents, to be composed of militia officers only, shall be held and conducted in the manner pointed out by the rules and articles of war.

That Congress might have vested the exclusive jurisdiction in Courts Martial to be held and conducted as the laws of the United States have prescribed, will, I presume, hardly be questioned. The offence to be punished grows out of the constitution and laws of the United States, and is, therefore, clearly a case which might have been withdrawn from the concurrent jurisdiction of the State tribunals. But an exclusive jurisdiction is not given to Courts Martial, deriving their authority under the national government, by express words:-the question then (and I admit the difficulty of it) occurs, is this a case in which the State Courts Martial could exercise jurisdiction?

I can discover, I confess, nothing unreasonable in this doctrine; nor can I perceive any inconvenience which can grow out of it, so long as the power of Congress to withdraw the whole, or any part of those cases, from the jurisdiction of the State Courts, is, as I think it must be, admitted.

The practice of the general government seems strongly to confirm this doctrine; for at the first session of Congress which commenced after the adoption of the constitution, the judicial system was formed; and the exclusive and concurrent jurisdiction conferred upon the Courts created by that law, were clearly distinguished and marked; showing that, in the opinion of that body, it was not sufficient to vest an exclusive jurisdiction, where it was deemed proper, merely by a grant of jurisdiction generally. In particular, this law grants exclusive jurisdiction to the Circuit Courts of all crimes and offences cognizable under the authority of the United States, except where the laws of the United States should otherwise provide; and this will account for the proviso in the act of the 24th of February, 1807, ch. 75., concerning the forgery of the notes of the Bank of the United States, 'that nothing in that act contained should be construed to deprive the courts of the individual States of jurisdiction under the laws of the several States over offences made punishable by that act.' A similar proviso is to be found in the act of the 21st of April,

j Letters of Publius, or the Federalist. No. 82. [18 U.S. 1, 27] 1806, ch. 49., concerning the counterfeiters of the current coin of the United States. It is clear that, in the opinion of Congress, this saving was necessary in order to authorize the exercise of concurrent jurisdiction by the State Courts over those offences; and there can be very little doubt but that this opinion was well founded. The judiciary act had vested in the federal courts exclusive jurisdiction of all offences cognizable under the authority of the United States, unless where the laws of the United States should otherwise direct. The States could not, therefore, exercise a concurrent jurisdiction in those cases, without coming into direct collision with the laws of Congress. But by these savings Congress did provide, that the jurisdiction of the federal Courts in the specified cases should not be exclusive; and the concurrent jurisdiction of the State Courts was instantly restored, so far as, under State authority, it could be exercised by them.

There are many other acts of Congress which permit jurisdiction over the offences therein described, to be exercised by State

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magistrates and Courts; not, I presume, because such permission was considered to be necessary under the constitution, in order to vest a concurrent jurisdiction in those tribunals; but because, without it, the jurisdiction was exclusively vested in the national Courts by the judiciary act, and consequently could not be otherwise exercised by the State Courts. For I hold it to be perfectly clear, that Congress cannot confer jurisdiction upon any Courts, but such as exist under the constitution and laws of the United States, although the State Courts [18 U.S. 1, 28] may exercise jurisdiction on cases authorized by the laws of the State, and not prohibited by the exclusive jurisdiction of the federal Courts.

What, then, is the real object of the law of Pennsylvania which we are considering? I answer, to confer authority upon a State Court Martial to enforce the laws of the United States against delinquent militia men, who had disobeyed the call of the President to enter into the service of the United States; for, except the provisions for vesting this jurisdiction in such a Court, this act is, in substance, a re-enactment of the acts of Congress, as to the description of the offence, the nature and extent of the punishment, and the collection and appropriation of the fines imposed.

Why might not this Court Martial exercise the authority thus vested in it by this law? As to crimes and offences against the United States, the law of Congress had vested the cognizance of them exclusively in the federal Courts. The State Courts, therefore, could exercise no jurisdiction whatever over such offences, unless where, in particular cases, other laws of the United States had otherwise provided; and wherever such provision was made, the claim of exclusive jurisdiction to the particular cases was withdrawn by the United States, and the concurrent jurisdiction of the State Courts was instantly restored, not by way of grant from the national government, but by the removal of a disability before imposed upon the State tribunals.

But military offences are not included in the act of Congress, conferring jurisdiction upon the Circuit [18 U.S. 1, 29] and District Courts; no person has ever contended that such offences are cognizable before the common law Courts. The militia laws have, therefore, provided, that the offence of disobedience to the President's call upon the militia, shall be cognizable by a Court Martial of the United States; but an exclusive cognizance is not conferred upon that Court, as it had been upon the common law Courts as to other offences, by the judiciary act. It follows, then, as I conceive, that jurisdiction over this offence remains to be concurrently exercised by the national and State Courts Martial, since it is authorized by the laws of the State, and not prohibited by those of the United States. Where is the repugnance of the one law to the other? The jurisdiction was clearly concurrent over militia men, not engaged in the service of the United States; and the acts of Congress have not disturbed this state of things, by asserting an exclusive jurisdiction. They certainly have not done so in terms; and I do not think that it can be made out by any fair construction of them. The act of 1795 merely declares, that this offence shall be tried by a Court Martial. This was clearly not exclusive; but, on the contrary, it would seem to import, that such Court might be held under national, or State authority.

The act of 1814 does not render the jurisdiction necessarily exclusive. It provides, that Courts Martial for the trial of militia, drafted and called forth, shall, when necessary, be appointed, held, and conducted, in the manner prescribed by the rules of war.

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Martin v. Mott, February 2, 1827

25 U.S. 19 (1827), U.S. Supreme Court

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MARTIN v. MOTT, 25 U.S. 19 (1827)

25 U.S. 19 (Wheat.)

Mr. Justice STORY delivered the opinion of the Court.

This is a writ of error to the judgment of the Court for the Trial of Impeachments and the Correction of Errors of the State of New-York, being the highest Court of that State, and is brought here in virtue of the 25th section of the Judiciary Act of 1789, ch. 20. The original action was a replevin for certain goods and chattels, to which the original defendant put in an avowry, and to that avowry there was a demurrer, assigning nineteen distinct and special causes of demurrer. Upon a joinder in demurrer, the Supreme Court of the State gave judgment against the avowant; and that judgment was affirmed by the high Court to which the present writ of error is addressed.

The avowry, in substance, asserts a justification of the taking of the goods and chattels to satisfy a fine and forfeiture imposed upon the original plaintiff by a Court Martial, for a failure to enter the service of the United States as a militia-man, when thereto required by the President of the United States, in pursuance of the act of the 28th of February, 1795, c. 101. It is argued that this avowry is defective, both in substance and form; and it will be our business to discuss the most material of these objections; and as to others, of which no particular notice is taken, it is to be understood that the Court are of opinion, that they are either unfounded in fact or in law, and do not require any separate examination.

For the more clear and exact consideration of the subject, it may be necessary to refer to the constitution of the United States, and some of the provisions of the act of 1795. The constitution declares that Congress shall have power 'to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions:' [25 U.S. 19, 29] and also 'to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.' In pursuance of this authority, the act of 1795 has provided, 'that whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the State or States most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper.' And like provisions are made for the other cases stated in the constitution. It has not been denied here, that the act of 1795 is within the constitutional authority of Congress, or that Congress may not lawfully provide for cases of imminent danger of invasion, as well as for cases where an invasion has actually taken place. In our opinion there is no ground for a doubt on this point, even if it had been relied on, for the power to provide for repelling invasions includes the power to provide against the attempt and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasion is to provide the requisite force for action before the invader himself has reached the soil.

The power thus confided by Congress to the President, is, doubtless, of a very high and delicate nature. A free people are naturally jealous of the exercise of military power; and the power to call the militia into actual service is certainly felt to be one of no ordinary magnitude. But it is not a power which can be executed without a correspondent responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, or of imminent danger of invasion. If it be a limited power, the question arises, by whom is the exigency to be judged of and decided? Is the President the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question, upon which every officer to whom the orders of the [25 U.S. 19, 30] President are addressed, may decide for himself, and equally open to be contested by every militia-man who shall refuse to obey the orders of the President? We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union. A prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object. The service is a military service, and the command of a military nature; and in such cases, every delay, and every obstacle to an efficient and immediate compliance, necessarily tend to jeopardize the public interests. While subordinate officers or soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the facts upon which the commander in chief exercises the right to demand their services, the hostile enterprise may be accomplished without the means of resistance. If 'the power of regulating the militia, and of commanding its services in times of insurrection and invasion, are (as it has been emphatically said they are) natural incidents to the duties of superintending the common defence, and of watching over the internal peace of the confederacy these powers must be so construed as to the modes of their

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exercise as not to defeat the great end in view. If a superior officer has a right to contest the orders of the President upon his own doubts as to the exigency having arisen, it must be equally the right of every inferior officer and soldier; and any act done by any person in furtherance of such orders would subject him to responsibility in a civil suit, in which his defence must finally rest upon his ability to establish the facts by competent proofs. Such a course would be subversive of all discipline, and expose the best disposed officers to the chances of ruinous litigation. Besides, in many instances, the evidence upon which the President might decide that there is imminent danger of invasion, might be of a nature not constituting strict technical proof, or the disclosure of the evidence might reveal important secrets of state, which the public interest, and even safety, might imperiously demand to be kept in concealment.

If we look at the language of the act of 1795, every conclusion drawn from the nature of the power itself, is strongly fortified. The words are, 'whenever the United States shall be invaded, or be in imminent danger of invasion, &c. it shall be lawful for the President, &c. to call forth such number of the militia, &c. as he may judge necessary to repel such invasion.' The power itself is confided to the Executive of the Union, to him who is, by the constitution, 'the commander in chief of the militia, when called into the actual service of the United States,' whose duty it is to 'take care that the laws be faithfully executed,' and whose responsibility for an honest discharge of his official obligations is secured by the highest sanctions. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for this purpose are in strict conformity with the provisions of the law; and it would seem to follow as a necessary consequence, that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such circumstances, orders shall be given to carry the power into effect; and it cannot therefore be a correct inference that any other person has a just right to disobey them. The law does not provide for any appeal from the judgment of the President, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, [25 U.S. 19, 32] that the statute constitutes him the sole and exclusive judge of the existence of those facts. And, in the present case, we are all of opinion that such is the true construction of the act of 1795. It is no answer that such a power may be abused, for there is no power which is not susceptible of abuse. The remedy for this, as well as for all other official misconduct, if it should occur, is to be found in the constitution itself. In a free government, the danger must be remote, since in addition to the high qualities which the Executive must be presumed to possess, of public virtue, and honest devotion to the public interests, the frequency of elections, and the watchfulness of the representatives of the nation, carry with them all the checks which can be useful to guard against usurpation or wanton tyranny.

This doctrine has not been seriously contested upon the present occasion. It was indeed maintained and approved by the Supreme Court of New-York, in the case of Vanderheyden v. Young, (11 Johns. Rep. 150.) where the reasons in support of it were most ably expounded by Mr. Justice Spencer, in delivering the opinion of the Court.

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Moyer v. Peabody

212 U.S. 78 (1909), U.S. Supreme Court

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MOYER v. PEABODY, 212 U.S. 78 (1909)
212 U.S. 78

This is an action brought by the plaintiff in error against the former governor of the state of Colorado, the former adjutant general of the national guard of the same state, and a captain of a company of the national guard, for an imprisonment of the plaintiff by them while in office. The complaint was dismissed on demurrer, and the case comes here on a certificate that the demurrer was sustained solely on the ground that there was no jurisdiction in the circuit court. 148 Fed. 870.

The complaint alleges that the imprisonment was continued from the morning of March 30, 1904, to the afternoon of June 15, and that the defendants justified under the Constitution of Colorado, making the governor commander in chief of the state forces, and giving him power to call them out to execute laws, suppress insurrection, and repel invasion. It alleges that his imprisonment was without probable cause, that no complaint was filed against the plaintiff, and that (in that sense) he was prevented from having access to the courts of the state, although they were open during the whole time; but it sets out proceedings on habeas corpus, instituted by him before the supreme court of the state, in which that court refused to admit him to bail and ultimately discharged the writ. 35 Colo. 154, 91 Pac. 738, and 35 Colo. 159, 12 L.R.A.(N.S.) 979, 117 Am. St. Rep. 189, 85 Pac. 190. In those proceedings it appeared that the governor had declared a county to be in a state of insurrection, had called out troops to put down the trouble, and [212 U.S. 78, 83] had ordered that the plaintiff should be arrested as a leader of the outbreak, and should be detained until he could be discharged with safety, and that then he should be delivered to the civil authorities, to be dealt with according to law.

The jurisdiction of the circuit court, if it exists, is under Rev. Stat. 629, U. S. Comp. Stat. 1901, p. 506, Sixteenth. That clause gives original jurisdiction 'of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.' The complaint purports to be founded upon the Constitution and on Rev. Stat. 1979, U. S. Comp. Stat. 1901, p. 1262, which authorizes suit to be brought for such deprivation as above described. Therefore the question whether the complaint states a case upon the merits under 1979 in this instance is another aspect of the question whether it states a case within the jurisdiction of the court under 629, cl. 16. Taken either way, the question is whether this is a suit authorized by law, - that is, by 1979, or the Constitution, or both.

The plaintiff's position, stated in a few words, is that the action of the governor, sanctioned to the extent that it was by the decision of the supreme court, was the action of the state and therefore within the 14th Amendment; but that, if that action was unconstitutional, the governor got no protection from personal liability for his unconstitutional interference with the plaintiff's rights. It is admitted, as it must be, that the governor's declaration that a state of insurrection existed is conclusive of that fact. It seems to be admitted also that the arrest alone would not necessarily have given a right to bring this suit. *Luther v. Borden*, 7 How. 1, 45, 46, 12 L. ed. 581, 600, 601. But it is said that a detention for so many days, alleged to be without probable cause, at a time when the courts were open, without an attempt to bring the plaintiff before them, makes a case on which he has a right to have a jury pass. [212 U.S. 78, 84] We shall not consider all of the questions that the facts suggest, but shall confine ourselves to stating what we regard as a sufficient answer to the complaint, without implying that there are not others equally good. Of course, the plaintiff's position is that he has been deprived of his liberty without due process of law. But it is familiar that what is due process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation. Thus, summary proceedings suffice for taxes, and executive decisions for exclusion from the country. *Den ex dem. Murray v. Hoboken Land & Improv. Co.* 18 How. 272, 15 L. ed. 372; *United States v. Ju Toy*, 198 U.S. 253, 263, 49 S. L. ed. 1040, 1044, 25 Sup. Ct. Rep. 644. What, then, are the circumstances of this case? By agreement the record of the proceedings upon habeas corpus was made part of the complaint, but that did not make the averments of the petition for the writ averments of the complaint. The facts that we are to assume are that a state of insurrection existed and that the governor, without sufficient reason, but in good faith, in the course of putting the insurrection down, held the plaintiff until he thought that he safely could release him.

It would seem to be admitted by the plaintiff that he was president of the Western Federation of Miners, and that, whoever was to blame, trouble was apprehended with the members of that organization. We mention these facts not as material, but simply to put in more definite form the nature of the occasion on which the governor felt called upon to act. In such a situation we must assume that he had a right, under the state Constitution and laws, to call out troops, as was held by the supreme court of the state. The Constitution is supplemented by an act providing that 'when an invasion of or insurrection in the state is made or threatened, the governor shall order

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the national guard to repel or suppress the same.' Laws of 1897, chap. 63, art. 7, 2, p. 204. That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist, and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not nec- [212 U.S. 78, 85] necessarily for punishment, but are by way of precaution, to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office, on the ground that he had not reasonable ground for his belief. If we suppose a governor with a very long term of office, it may be that a case could be imagined in which the length of the imprisonment would raise a different question. But there is nothing in the duration of the plaintiff's detention or in the allegations of the complaint that would warrant submitting the judgment of the governor to revision by a jury. It is not alleged that his judgment was not honest, if that be material, or that the plaintiff was detained after fears of the insurrection were at an end.

No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact that he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But, even in that case, great weight is given to his determination, and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event. *Lawrence v. Minturn*, 17 How. 100, 110, 15 L. ed. 58, 62; *The Star of Hope*, 9 Wall. 203, 19 L. ed. 638; *The Germanic (Oceanic Steam Nav. Co. v. Aitken)* 196 U.S. 589, 594, 595 S., 49 L. ed. 610, 613, 25 Sup. Ct. Rep. 317. When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. See *Keely v. Sanders*, 99 U.S. 441, 446, 25 S. L. ed. 327, 328. This was admitted with regard to killing men in the actual clash of arms; and we think it obvious, although it was disputed, that the same is true of temporary detention to prevent apprehended harm. As no one would deny that there was immunity for ordering a company to fire upon a mob in insurrection, and that a state law authorizing the governor to deprive citizens of life under such circumstances was consistent with the 14th Amendment [212 U.S. 78, 86], we are of opinion that the same is true of a law authorizing by implication what was done in this case. As we have said already, it is unnecessary to consider whether there are other reasons why the circuit court was right in its conclusion. It is enough that, in our opinion, the declaration does not disclose a 'suit authorized by law to be brought to redress the deprivation of any right secured by the Constitution of the United States.' See *Dow v. Johnson*, 100 U.S. 158, 25 L. ed. 632.

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Perpich v. Department of Defense

496 U.S. 334 (1990), U.S. Supreme Court

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PERPICH, GOVERNOR OF MINNESOTA, ET AL. v. DEPARTMENT OF DEFENSE ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
496 U.S. 334 (1990)
No. 89-542.

JUSTICE STEVENS delivered the opinion of the Court.

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Two conflicting themes, developed at the Constitutional Convention and repeated in debates over military policy during the next century, led to a compromise in the text of the Constitution and in later statutory enactments. On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States, 5 while, on the other hand, there was a recognition of the danger of relying on inadequately trained soldiers as the primary means of providing for the common defense. 6 Thus, Congress was authorized both to raise and support a national Army and also to organize "the Militia." [496 U.S. 334, 341]

In the early years of the Republic, Congress did neither. In 1792, it did pass a statute that purported to establish "an Uniform Militia throughout the United States," but its detailed command that every able-bodied male citizen between the ages of 18 and 45 be enrolled therein and equip himself with appropriate weaponry 7 was virtually ignored for more than a century, during which time the militia proved to be a decidedly unreliable fighting force. 8 The statute was finally repealed in 1901. 9 It was in that year that President Theodore Roosevelt declared: "Our militia law is obsolete and worthless." 10 The process of transforming "the National [496 U.S. 334, 342] Guard of the several States" into an effective fighting force then began.

The Dick Act divided the class of able-bodied male citizens between 18 and 45 years of age into an "organized militia" to be known as the National Guard of the several States, and the remainder of which was then described as the "reserve militia," and which later statutes have termed the "unorganized militia." The statute created a table of organization for the National Guard conforming to that of the Regular Army, and provided that federal funds and Regular Army instructors should be used to train its members. 11 It is undisputed that Congress was acting pursuant to the Militia Clauses of the Constitution in passing the Dick Act. Moreover, the legislative history of that Act indicates that Congress contemplated that the services of the organized militia would "be rendered only upon the soil of the United States or of its Territories." H. R. Rep. No. 1094, 57th Cong., 1st Sess., 22 (1902). In 1908, however, the statute was amended to provide [496 U.S. 334, 343] expressly that the Organized Militia should be available for service "either within or without the territory of the United States." 12

When the Army made plans to invoke that authority by using National Guard units south of the Mexican border, Attorney General Wickersham expressed the opinion that the Militia Clauses precluded such use outside the Nation's borders. 13 In response to that opinion and to the widening conflict in Europe, in 1916 Congress decided to "federalize" the National Guard. 14 In addition to providing for greater federal control and federal funding of the Guard, the statute required every guardsman to take a dual oath - to support the Nation as well as the States and to obey the President as well as the Governor - and authorized the President to draft members of the Guard into federal service. The statute expressly provided that the Army of the United States should include not only "the Regular Army," but also "the National [496 U.S. 334, 344] Guard while in the service of the United States," 15 and that when drafted into federal service by the President, members of the Guard so drafted should "from the date of their draft, stand discharged from the militia, and shall from said date be subject to" the rules and regulations governing the Regular Army. 111, 39 Stat. 211.

During World War I, the President exercised the power to draft members of the National Guard into the Regular Army. That power, as well as the power to compel civilians to render military service, was upheld in the Selective Draft Law Cases, 245 U.S. 366 (1918). 16 Specifically, in those cases, and in *Cox v. Wood*, 247 U.S. 3 (1918), the Court held that the plenary power to raise armies was "not qualified or restricted by the provisions of the militia clause." 17 [496 U.S. 334, 345]

The draft of the individual members of the National Guard into the Army during World War I virtually destroyed the Guard as an effective organization. The draft terminated the members' status as militiamen, and the statute did not provide for a restoration of their prewar status as members of the Guard when they were mustered out of the Army. This problem was ultimately remedied by the 1933

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amendments to the 1916 Act. Those amendments created the "two overlapping but distinct organizations" described by the District Court - the National Guard of the various States and the National Guard of the United States.

Since 1933 all persons who have enlisted in a State National Guard unit have simultaneously enlisted in the National Guard of the United States. In the latter capacity they became a part of the Enlisted Reserve Corps of the Army, but unless and until ordered to active duty in the Army, they retained their status as members of a separate State Guard unit. Under the 1933 Act, they could be ordered into active service whenever Congress declared a national emergency and authorized the use of troops in excess of those in the Regular Army. The statute plainly described the effect of such an order:

"All persons so ordered into the active military service of the United States shall from the date of such order stand relieved from duty in the National Guard of their respective States, Territories, and the District of Columbia so long as they shall remain in the active military service of the United States, and during such time shall be subject [496 U.S. 334, 346] to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Army whose permanent retention in active military service is not contemplated by law. The organization of said units existing at the date of the order into active Federal service shall be maintained intact insofar as practicable." 18, 48 Stat. 160-161.

"Upon being relieved from active duty in the military service of the United States all individuals and units shall thereupon revert to their National Guard status." *Id.*, at 161.

Thus, under the "dual enlistment" provisions of the statute that have been in effect since 1933, a member of the Guard who is ordered to active duty in the federal service is thereby relieved of his or her status in the State Guard for the entire period of federal service. Until 1952 the statutory authority to order National Guard units to active duty was limited to periods of national emergency. In that year, Congress broadly authorized orders to "active duty or active duty for training" without any emergency requirement, but provided that such orders could not be issued without gubernatorial consent. The National Guard units have under this plan become a sizable portion of the Nation's military forces; for example, "the Army National Guard provides 46 percent of the combat units and 28 percent of the support forces of the Total Army." 18 Apparently gubernatorial consents to training missions were routinely obtained until 1985, when the Governor of California refused to consent to a training mission for 450 members of the California National Guard in Honduras, and the Governor of Maine shortly thereafter refused to consent to a similar mission. Those incidents led to the enactment of the Montgomery Amendment and this litigation ensued. [496 U.S. 334, 347]

II

....

The unchallenged validity of the dual enlistment system means that the members of the National Guard of Minnesota who are ordered into federal service with the National Guard of the United States lose their status as members of the state militia during their period of active duty. If that duty is a training mission, the training is performed by the Army in which the trainee is serving, not by the militia from which the member has been temporarily disassociated. "Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as [496 U.S. 334, 348] the case may be, from the effective date of his order to active duty until he is relieved from that duty." 32 U.S.C. 325(a).

....

This view of the constitutional issue was presupposed by our decision in the Selective Draft Law Cases, 245 U.S. 366 (1918). Although the Governor is correct in pointing out that those cases were decided in the context of an actual war, the reasoning in our opinion was not so limited. After expressly noting that the 1916 Act had incorporated members of the National Guard into the National Army, the Court held that the Militia Clauses do not constrain the powers of Congress "to provide for the common Defence," to "raise and support Armies," to "make Rules for the Government and Regulation of the land and naval Forces," or to enact such laws as "shall be necessary and proper" for executing those powers. *Id.*, at 375, 377, 381-384. The Court instead held that, far from being a limitation on those powers, the Militia Clauses are - as the constitutional text plainly indicates - additional grants of power to Congress.

The first empowers Congress to call forth the militia "to execute the Laws of the Union, suppress Insurrections and repel Invasions." We may assume that Attorney General Wickersham was entirely correct in reasoning that when a National Guard unit retains its status as a state militia, Congress could not "impress" the entire unit for any other purpose. Congress did, however, authorize the President to call forth the entire membership of the Guard into federal service during World War I, even though the soldiers who fought in France were not engaged in any of the three specified purposes. Membership in the militia did not exempt [496 U.S. 334, 350] them from a valid order to perform federal service, whether that service took the form of combat duty or training for such duty. 20 The congressional power

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Perpich v. Department of Defense

to call forth the militia may in appropriate cases supplement its broader power to raise armies and provide for the common defense and general welfare, but it does not limit those powers. 21

The second Militia Clause enhances federal power in three additional ways. First, it authorizes Congress to provide for "organizing, arming and disciplining the Militia." It is by congressional choice that the available pool of citizens has been formed into organized units. Over the years, Congress has exercised this power in various ways, but its current choice of a dual enlistment system is just as permissible as the 1792 choice to have the members of the militia arm themselves. Second, the Clause authorizes Congress to provide for governing such part of the militia as may be employed in the service of the United States. Surely this authority encompasses continued training while on active duty. Finally, although the appointment of officers "and the Authority of training the Militia" is reserved to the States respectively, that limitation is, in turn, limited by the words "according to the discipline prescribed by Congress." If the discipline required for effective service in the Armed Forces of a global power requires training in distant lands, or distant skies, Congress has the authority to provide it. The subordinate [496 U.S. 334, 351] authority to perform the actual training prior to active duty in the federal service does not include the right to edit the discipline that Congress may prescribe for Guard members after they are ordered into federal service.

It is so ordered.

SOURCE: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=496&page=334>

The Amy Warwick (The Prize Cases)

67 U.S. 635 (1862) U.S. Supreme Court

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THE AMY WARWICK, 67 U.S. 635 (1862)

67 U.S. 635 (Black)

I. There was no actual breach. The question is of intent.

At the time of the seizure, the *Brillante* was lying at anchor in Biloxi Bay, and had so lain at anchor twenty-four hours or more. 'She came out from New Orleans and anchored in [67 U.S. 635, 640] Biloxi Bay, so as to be able to communicate with one of the blockading vessels, but did not see any vessel of war. On the next day, on which the vessel was seized, the sea was too rough to go on board the *Massachusetts*, which was lying in sight.'

Mr. Preciat, the claimant, 'wished to go on board one of the blockading vessels, to see if he could get a permit to go out to sea; otherwise he intended to have returned with the vessel to New Orleans.' (Deposition of the said Preciat, taken in preparatorio, Record, p. 11.) He was returning to Campeche, 'to attend to the duties of his office (U. S. Consul,) and business generally.' On going to New Orleans, he had a letter from the Commander of the *Brooklyn*, one of the blockading squadron, to the Commander of the *Niagara*, another of them, forwarding him to Mobile, where his son was at school, and whom he desired to take home. The passengers and crew mutinied, and refused to go to Mobile. The mate, taking control, steered for New Orleans, where the vessel arrived and the crew were discharged. These facts appear from the declarations in preparatorio. The libel and decree are exclusively founded on the alleged attempt to leave New Orleans. The claimant had a right to except that his application to return, although sailing from New Orleans, would have been granted; or, if not granted, that he would have been allowed the option of going back to New Orleans; which he declares, on his examination, was his intention, if not permitted to return to Campeche. He swears that he had no intention to violate the blockade. There is nothing to contradict him, but everything corroborates his declaration. He was at anchor twenty-four hours, and a considerable portion of that time in sight of one of the blockading vessels, which the evidence shows he could not safely attempt to reach in consequence of the state of the weather. Before that period there is nothing to show that he might not have run the blockade safely; nor is there any reason suggested or supposable why he cast anchor, except that he had no intent to violate the blockade. His public character as United States Consul, and the facts before referred to, go in confirmation of this.

But chiefly, the terms of the President's proclamation instituting [67 U.S. 635, 641] this so-called blockade, are important to be considered upon this question of intent. The condition of things was unprecedented. From the nature and structure of our peculiar system of government, it could have had no precedent. The co-existence of Federal and State sovereignties, and the double allegiance of the people of the States, which no statesman or lawyer has doubted till now, and which this Court has repeatedly recognized as lying at the foundation of some of its most important decisions; the delegation of special and limited powers to the Federal Government, with the express reservation of all other powers 'to the States and the people thereof' who created the Union and established the Constitution; the powers proposed to be granted and which were refused, and the general course of the debates on the constitution; all concurred in presenting this to the President as a case of the first impression. Assuming the power to close the ports of the seceded States, he evidently did so with doubt and hesitation. If the power be conceded to him, it cannot be denied that he might modify the strict law of blockade, and impose a qualified interruption of commerce. He might well have doubted whether, under the Constitution which he had sworn to support, a state of war could exist between a State, or States, and the Federal Union; whether, when it ceased to be insurrection, and became the formal and deliberate act of State sovereignty, his executive powers extended to such an exigency. Certainly, the words of the Acts of Congress authorizing him to use the navy did not embrace such a case. It was not quite certain that it had assumed this imposing shape. The President, so late as his message of July, was confident that it had not. He believed that the State sovereignties had been usurped by discontented leaders and a factious and inconsiderable minority. With the information laid before him, he declared that these seceded States were full of people devoted to the Union. Well, therefore, might he hesitate to exercise, even if he supposed himself to possess, the power of declaring or 'recognizing' a state of war. His powers in cases of insurrection or invasion were clear and undoubted. He had the army, the navy, and the militia of [67 U.S. 635, 642] the States (the United States having no militia except in the federal territories) confided to his command, *sub modo*.

But insurrection is not war; and invasion is not war. The Constitution expressly distinguishes them, and treats them as wholly different subjects. But this belongs to a subsequent question in the argument. It is now referred to as bearing upon the construction of the proclamation, and consequently upon the question of intent to break a blockade. It is true that the proclamation calls it a blockade. But the message speaks of it as proceedings 'in the nature of a blockade.' And the proclamation itself, by its terms and provisions, substantially conforms to the latter description. It founds itself upon the existence of 'an insurrection.' It renounces the disturbance to be

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The Amy Warwick (The Prize Cases)

by 'a combination of persons.' It proceeds upon the Acts of Congress provided for 'insurrections' by 'combinations of persons.' It declares that the executive measures are provisional and temporary only, 'until Congress shall have assembled and deliberated upon the said unlawful proceedings.' It requires the seceded States to disperse, and return peaceably 'to their respective place of abode in twenty days.'

'These 'combinations of persons,' and these 'unlawful proceedings,' are not at all recognized as presenting a case for belligerent rights and obligations. Naturally and prudently, the President did not assume to proclaim a strict blockade, with the extreme rights which obtain between belligerents, and with the corresponding rights of neutrals. He first called out the militia of the States, as such. He then used the army and the navy, under the Act of 1807. But he knew that this was not war. It was the suppression of insurrection. Consequently, in this use of the navy, he did not contemplate capture jure belli. Long after the period involved in this case, he maintained to all the civilized world, (see Mr. Seward's diplomatic correspondence, 1861,) that to attribute anything of belligerent right to these 'combinations of persons' and these 'unlawful proceedings,' was an outrage and an offence to the United States. In effect, his position was that it was purely a municipal question; and, [67 U.S. 635, 643] of course, there could be no blockade, in the international sense, and no capture jure belli.

Accordingly, the proclamation threatens not the regular proceedings of a prize Court, but 'such proceedings as may be deemed advisable.' And these proceedings are to follow upon a seizure to be made in the precise and only case where a vessel shall have attempted to enter or leave a port, and shall have been 'duly warned by the commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or to leave,' & c., then these undescribed proceeding shall take place.

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Sterling v. Constantin

287 U.S. 378 (1932), U.S. Supreme Court

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STERLING v. CONSTANTIN, 287 U.S. 378 (1932)

By virtue of his duty to 'cause the laws to be faithfully executed,' the executive is appropriately vested with the discretion to determine whether an exigency requiring military aid for that purpose has arisen. His decision to that effect is conclusive. That construction, this Court has said, in speaking of the power constitutionally conferred by the Congress upon the President to call the militia into actual service, 'necessarily results from the nature of the power itself, and from the manifest object contemplated.' The power 'is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union.' *Martin v. Mott*, 12 Wheat. 19, 29, 30. Similar effect, for corresponding reasons, is ascribed to the exercise by the Governor of a state of his discretion in calling out its military forces to suppress insurrection and disorder. *Luther v. Borden*, 7 How. 1, 45; *Moyer v. Peabody*, 212 U.S. 78, 83, 29 S.Ct. 235, 236. The nature of the power also necessarily implies that there is a permitted range of honest judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order, for, without such liberty to [287 U.S. 378, 400] make immediate decisions, the power itself would be useless. Such measures, conceived in good faith, in the face of the emergency, and directly related to the quelling of the disorder or the prevention of its continuance, fall within the discretion of the executive in the exercise of his authority to maintain peace. Thus, in *Moyer v. Peabody*, supra, the Court sustained the authority of the Governor to hold in custody temporarily one whom he believed to be engaged in fomenting disorder, and right of recovery against the Governor for the imprisonment was denied. The Court said that, as the Governor 'may kill persons who resist,' he 'may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not necessarily for punishment, but are by way of precaution to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief.' In that case it appeared that the action of the Governor had direct relation to the subduing of the insurrection by the temporary detention of one believed to be a participant, and the general language of the opinion must be taken in connection with the point actually decided. *Cohens v. Virginia*, 6 Wheat. 264, 399; *Carroll v. Carroll*, 16 How. 275, 287; *Myers v. United States*, 272 U.S. 52, 142, 47 S.Ct. 21.

It does not follow from the fact that the executive has this range of discretion, deemed to be a necessary incident of his power to suppress disorder, that every sort of action the Governor may take, no matter how unjustified by the exigency or subversive of private right and the jurisdiction of the courts, otherwise available, is conclusively supported by mere executive fiat. The contrary [287 U.S. 378, 401] is well established. What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions. Thus, in the theater of actual war, there are occasions in which private property may be taken or destroyed to prevent it from falling into the hands of the enemy or may be impressed into the public service, and the officer may show the necessity in defending an action for trespass. 'But we are clearly of opinion,' said the Court speaking through Chief Justice Taney, 'that in all of these cases the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. ... Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified.' *Mitchell v. Harmony*, 13 How. 115, 134. See, also, *United States v. Russell*, 13 Wall. 623, 628. There is no ground for the conclusion that military orders in the case of insurrection have any higher sanction or confer any greater immunity.

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United States v. Hartley, (1986)

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796 F. 2d 112
UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

Opinion by Justice Fay

Defendants assert that the participation of Captain Shallenberger and other Air Force personnel violates [**6] the Posse Comitatus Act and thus warrants the exclusion of all evidence obtained as a result of the defendants' arrest. Defendants base this conclusion on their assertion that the military involvement was so pervasive as to represent "use() . . . Of the . . . Air Force, . . . To execute the laws. . . ." 18 U.S.C. § 1385. After carefully examining the record, the jurisprudence interpreting the Posse Comitatus Act, and recently enacted statutes regarding use of military equipment and personnel, see 10 U.S.C. § § 371-378, we hold that the acts of the Government in the instant case do not warrant creation or extension of an exclusionary rule. The Posse Comitatus Act, n3 which was passed shortly after the end of the Reconstruction Era, was designed to limit "the direct active use of federal troops by civil law enforcement officers" to enforce the laws of this nation. *United States v. Red Feather*, 392 F. Supp. 916, 922 (D.S.D. 1975). See also H.R. Rep. No. 97-71, Part II, 97th Cong., 1st Sess.3 (1981), reprinted in 1981 U.S. Code Cong. & Ad. News 1781, 1785. See generally *Furman, Restrictions Upon Use of [**7] the Army Imposed by the Posse Comitatus Act*, 7 Mil. L. Rev. 85 (1960); Note, *Don't Call Out the Marines: An Assessment of the Posse Comitatus Act*, 13 Tex. Tech L. Rev. 1467 (1982). Congress has also sought to clarify the role of the military through recent enactments. H.R. Rep. No. 97-71, supra, at 3. As codified, sections 371 and 372 of Title 10 allow the military to share information and equipment with civilian law enforcement officials in certain instances. Sections 374(a) and (b) allow the Secretary of Defense to assign military personnel to operate and maintain equipment loaned to civilian officials in order to "monitor () and communicate () the movement of air and sea traffic." 10 U.S.C. § § 371, 372, 374(a) (b). N4 Moreover, in examining allegations that military involvement in civilian law enforcement violated the Posse Comitatus Act, courts have noted that "aerial photographic reconnaissance flights and other like activities" do not reflect direct military involvement violative of the Posse Comitatus Act. *Red Feather*, 392 F. Supp. At 925. See also *United States v. McArthur*, 419 F. Supp. 186, 194 (D.N.D. 1975), [**8] *aff'd sub nom.*, *United States v. Casper*, 541 F.2d 1275 (8th Cir. 1976) (per curiam), [*115] cert. Denied, 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362 (1977).

United States v. Allred, (1989)

867 F. 2d 856

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UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINION by Justice Johnson

The Posse Comitatus Act provides that whoever "willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall" commit an offense. 18 U.S.C. § 1385. Appellants would have this Court hold that Major Held's "hybrid position constitutes the very merger of the civil laws and military authority that the Posse Comitatus Act prohibits." Appellants' Brief at 99-100. The legislative and judicial history of the Act, however, indicates that its purpose springs from an attempt to end the use of federal troops to police state elections in ex-Confederate states. *United States v. Hartley*, 486 F. Supp. 1348 (D.C. Fla. 1980). In keeping sight of this original purpose, the Eighth Circuit has indicated [*871] that military involvement does not constitute a violation of the Act "unless it actually regulates, forbids, or compels some conduct on the part of those claiming relief." *Bissonette [**42] v. Haig*, 776 F.2d 1384, 1390 (8th Cir. 1985), adhered to on rehearing, 800 F.2d 812 (1986) (en banc), cert. Granted, 479 U.S. 1083, 107 S. Ct. 1283, 94 L. Ed. 2d 141 (1987); *United States v. McArthur*, 419 F. Supp. 186, 194 (D.N.D.), *aff'd sub nom.* *United States v. Casper*, 541 F.2d 1275 (8th Cir. 1976), cert. Denied, 430 U.S. 970, 97 S. Ct. 1654, 52 L. Ed. 2d 362 (1977).

United States v. Walden (1974)

490 F. 2d 921

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINION given by Justice Winter

The use of Marines as undercover investigators by the Treasury Department is counter to a Navy military regulation proscribing the use of military personnel to enforce civilian laws. [HN1] Secretary [**4] of the Navy Instruction 5400.12 provides that:

throughout the United States, it is a fundamental policy to use civilian, rather than military, officials and personnel to the maximum extent possible in preserving law and order. In the Federal Government this policy is reflected by the Posse Comitatus Act (18 USC § 1385) which prohibits the use of any part of the Army or Air Force to enforce local, state, or Federal laws except as Congress may authorize. Although not expressly applicable to the Navy and Marine Corps, that act is regarded as a statement of Federal policy which is closely followed by the Department of the Navy. SECNAVINST 5400.12, p. 2 (January 17, 1969).

[*374] Thus, though by its terms the Posse Comitatus Act does not make criminal the use of Marines to enforce federal laws, the Navy has adopted the restriction by self-imposed administrative regulation. N4 Cf. United States v. Heffner, 420 F.2d 809 (4 Cir. 1969).

N2 The term "posse comitatus" is defined as "the power or force of the county. The entire population above the age of 15, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, etc. 1 Bl. Comm. 343; Com. V. Martin, 7 Pa. Dist. R. 224." Black's Law Dictionary 1324 (rev'd 4 ed. 1968). [**5]

**Domestic WMD Incident Management
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United States v. Yunis, January 29, 1991

924 F.2d 1086

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

UNITED STATES v. YUNIS
924 F.2d 1086
C.A.D.C., 1991.

B. Posse Comitatus Act

Next, Yunis appeals from the district court's denial of his motion to dismiss on the basis of the government's alleged violation of the Posse Comitatus Act, 18 U.S.C. § 1385 (1988), which establishes criminal penalties for willful use of "any part of the Army or the Air Force" in law enforcement, unless expressly authorized by law. See *United States v. Yunis*, 681 F.Supp. 891 (D.D.C.1988). Despite the Posse Comitatus Act's express limitation to the Army and Air Force, appellant seeks dismissal of the indictment on the grounds that the Navy played a direct role in Operation Goldenrod.

We cannot agree that Congress' words admit of any ambiguity. By its terms, 18 U.S.C. § 1385 places no restrictions on naval participation in law enforcement operations; an earlier version of the measure would have expressly extended the bill to the Navy, but the final legislation was attached to an Army appropriations bill and its language was accordingly limited to that service. See H.R. REP. No. 71, Part II, 97th Cong., 1st Sess. 4 (1981), reprinted in 1981 U.S. Code Cong. & Admin. News 1781, 1786 [hereinafter H.R. REP. No. 71]; Note, *The Posse Comitatus Act: Reconstruction Politics Reconsidered*, 13 AM.CRIM.L.REV. 703, 709-10 (1976). Reference to the Air Force was added in 1956, consistent with reassignment of Army aviation responsibilities to that new branch of the military. See H.R. REP. No. 71 at 4, 1981 U.S. Code Cong. & Admin. News 1786. Nothing in this history suggests that we should defy the express language of the Posse Comitatus Act by extending it to the Navy, and we decline to do so. Accord *United States v. Roberts*, 779 F.2d 565, 567 (9th Cir.), cert. denied, 479 U.S. 839, 107 S.Ct. 142, 93 L.Ed.2d 84 (1986); see H.R. REP. No. 71 at 4, U.S. Code Cong. & Admin. News 1786 (Navy "not legally bound" by Posse Comitatus Act).

Furthermore, some courts have taken the view that the Posse Comitatus Act imposes no restriction on use of American armed forces abroad, noting that Congress intended to preclude military intervention in domestic civil affairs. See *Chandler v. United States*, 171 F.2d 921, 936 (1st Cir.1948), cert. denied, 336 U.S. 918, 69 S.Ct. 640, 93 L.Ed. 1081 (1949); *D'Aquino v. United States*, 192 F.2d 338, 351 (9th Cir.1951), cert. denied, 343 U.S. 935, 72 S.Ct. 772, 96 L.Ed. 1343 (1952). And even if these difficulties could be overcome, a remedial problem would remain, as dismissal of all charges against Yunis might well be *1094 **137 an inappropriate remedy if violations of the Posse Comitatus Act were found. See *United States v. Cotten*, 471 F.2d 744, 749 (9th Cir.) (rejecting dismissal as remedy for alleged violation of Posse Comitatus Act on Ker-Frisbie grounds), cert. denied, 411 U.S. 936, 93 S.Ct. 1913, 36 L.Ed.2d 396 (1973); see also *United States v. Hartley*, 796 F.2d 112, 115 (5th Cir.1986) (noting courts' hesitation to adopt exclusionary rule for violations of Posse Comitatus Act); *United States v. Roberts*, 779 F.2d at 568 (refusing to adopt exclusionary rule).

Nor is Yunis helped by 10 U.S.C. § 375 (1988), which requires the Secretary of Defense to issue regulations prohibiting "direct participation" by military personnel in a civilian "search, seizure, arrest, or other similar activity" unless expressly authorized by law. Reliance on this provision faces the same remedial hurdle as direct reliance on the Posse Comitatus Act: Under the Ker-Frisbie doctrine, outright dismissal of the charges against Yunis would not be an appropriate remedy for legal violations relating to his arrest. See *United States v. Crews*, 445 U.S. at 474, 100 S.Ct. at 1251. Nor would a violation of the regulations at issue amount to a constitutional violation, making application of an exclusionary rule or similar prophylactic measures inappropriate. See *United States v. Caceres*, 440 U.S. 741, 754-55, 99 S.Ct. 1465, 1472-73, 59 L.Ed.2d 733 (1979).

In any event, we agree with the district court that no governmental illegality occurred. Regulations issued under 10 U.S.C. § 375 require Navy compliance with the restrictions of the Posse Comitatus Act, but interpret that Act as allowing "indirect assistance" to civilian authorities that does not "subject civilians to the exercise of military power that is regulatory, proscriptive, or compulsory in nature." 32 C.F.R. § 213.10(a)(7) (1987). The regulations are consistent with judicial interpretations of the Posse Comitatus Act; in fact, they incorporate one of three tests employed to identify violations. See *Yunis*, 681 F.Supp. at 892 (setting out three tests); *United States v. McArthur*, 419 F.Supp. 186, 194 (D.N.D.1975) ("[T]he feared use which is prohibited by the posse comitatus statute is that which is regulatory, proscriptive or compulsory in nature"), aff'd sub nom. *United States v. Casper*, 541 F.2d 1275 (8th Cir.1976), cert. denied, 430 U.S. 970, 97 S.Ct. 1654, 52 L.Ed.2d 362 (1977).

The district court found that Navy personnel played only a "passive" role in housing, transporting, and caring for Yunis while he was in the

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custody of the FBI, and that "[n]one of the Navy's activities constituted the exercise of regulatory, proscriptive, or compulsory military power." Yunis, 681 F.Supp. at 895-96. Nor did the Navy's participation in Operation Goldenrod violate either of the other judicial tests for violations of the Posse Comitatus Act: The Navy's role did not amount to "direct active involvement in the execution of the laws," and it did not "pervade the activities of civilian authorities." Id. at 895. We see no error in this assessment of the record, and accordingly conclude that no violation of military regulations occurred.

Source: Excerpt from *Terrorism and the Law*, by Yonah Alexander and Edgar H. Brenner, Editors. Transnational Publishers, Inc., 2001.
<http://www.terrorismcentral.com/Library/Teasers/YnisAppealT.html>

**Domestic WMD Incident Management
Legal Deskbook**

Youngstown Co. v. Sawyer, June 2, 1952

343 U.S. 579, U.S. Supreme Court

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YOUNGSTOWN SHEET & TUBE CO. ET AL. v. SAWYER.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT. * No. 744.

MR. JUSTICE BLACK delivered the opinion of the Court.

Two crucial issues have developed: First. Should final determination of the constitutional validity of the President's order be made in this case which has proceeded no further than the preliminary injunction stage? Second. If so, is the seizure order within the constitutional power of the President?

I.

It is urged that there were non-constitutional grounds upon which the District Court could have denied the preliminary injunction and thus have followed the customary judicial practice of declining to reach and decide constitutional questions until compelled to do so. On this basis it is argued that equity's extraordinary injunctive relief should have been denied because (a) seizure of the companies' properties did not inflict irreparable damages, [343 U.S. 579, 585] and (b) there were available legal remedies adequate to afford compensation for any possible damages which they might suffer. While separately argued by the Government, these two contentions are here closely related, if not identical. Arguments as to both rest in large part on the Government's claim that should the seizure ultimately be held unlawful, the companies could recover full compensation in the Court of Claims for the unlawful taking. Prior cases in this Court have cast doubt on the right to recover in the Court of Claims on account of properties unlawfully taken by government officials for public use as these properties were alleged to have been. See e. g., *Hooe v. United States*, 218 U.S. 322, 335 -336; *United States v. North American Co.*, 253 U.S. 330, 333 . But see *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 701 -702. Moreover, seizure and governmental operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement. Viewing the case this way, and in the light of the facts presented, the District Court saw no reason for delaying decision of the constitutional validity of the orders. We agree with the District Court and can see no reason why that question was not ripe for determination on the record presented. We shall therefore consider and determine that question now.

II.

The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President [343 U.S. 579, 586] to take both personal and real property under certain conditions. 2 However, the Government admits that these conditions were not met and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (201 (b) of the Defense Production Act) as "much too cumbersome, involved, and time-consuming for the crisis which was at hand."

Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency. 3 Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining. 4 Consequently, the plan Congress adopted in that Act did not provide for seizure under any circumstances. Instead, the plan sought to bring about settlements by use of the customary devices of mediation, conciliation, investigation by boards of inquiry, and public reports. In some instances temporary injunctions were authorized to provide cooling-off periods. All this failing, unions were left free to strike after a secret vote by employees as to whether they wished to accept their employers' final settlement offer. 5 [343 U.S. 579, 587]

It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

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The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The [343 U.S. 579, 588] first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States . . ." After granting many powers to the Congress, Article I goes on to provide that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress - it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution. The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control.

It is said that other Presidents without congressional authority have taken possession of private business enterprises in order to settle labor disputes. But even if this be true, Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution [343 U.S. 579, 589] "in the Government of the United States, or any Department or Officer thereof."

The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

The judgment of the District Court is Affirmed.

SOURCE: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=343&page=579>

**Domestic WMD Incident Management
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6 Op. Atty. Gen 466, 473 (1854)

USE OF MILITARY PERSONNEL TO MAINTAIN ORDER AMONG CUBAN PAROLEES ON MILITARY BASES

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

Historically, the commander of the military installation has had both the responsibility and the authority to maintain law and order in his command. This authority derives generally from the President's constitutional power as Commander-in-Chief, n3 as well as from statutes, n4 and more particularly from regulations applicable to the respective military services. N5 Congress has implicitly recognized the existence of this authority in two criminal statutes. See 18 U.S.C. § 1382, which makes it unlawful to enter a military base for an unlawful purpose, or to reenter a base after having been removed therefrom; and 50 U.S.C. § 797, which makes unlawful the violation of any "regulation or order" issued by "any military commander designated by the Secretary of Defense" for "the protection or security of" property and places subject to his jurisdiction, [*4] including "the ingress thereto or egress or removal of persons therefrom. . . ."

N3 We believe it beyond question that, inherent in the President's power as Commander-in-Chief, is the authority to see that order and discipline are maintained in the armed forces. In the chain of command, base commanders perform this function on behalf of the President, on their respective bases. N4 Congress has provided that the Secretaries of the Army and Air Force "[are] responsible for and [have] the authority necessary to conduct all affairs" of their respective Departments, 10 U.S.C. § § 3012(b) and 8012(b). As part of this authority, the Secretaries have been given the power to issue regulations for "the custody, use, and preservation of [the Department's property]." 5 U.S.C. § 301. See also 10 U.S.C. § § 4832 and 9832. The Supreme Court has held that Army regulations, when sanctioned by the President, have the force of law. See *United States v. Eliason*, 41 U.S.(16 Pet.) 291, 301-02 (1842). N5 Regulations promulgated by the Secretary of the Army state that a base commander is "responsible for the efficient and economical operation, administration, service, and supply of all individuals, units, and activities assigned to or under the jurisdiction of the installation . . ." 32 C.F.R. § 552.18(c). In the Air Force, base commanders are "responsible for protecting personnel and property under their jurisdictions and for maintaining order on installations, to insure the uninterrupted and successful accomplishment of the Air Force Mission." 32 C.F.R. § 8092a. 1(a). [*5] The military's power to preserve order among civilians on its own reservations has been recognized and affirmed by the Supreme Court, see, e.g., *Cafeteria Workers Union v. McElroy*, 367 U.S. 886 (1961), and by your predecessors. The first explicit formulation of the power of military officers to maintain order among civilians on a military reservation is apparently that given by Attorney General Butler in 1837, 3 Op. Atty Gen. 268. In the course of affirming the power of the commandant of West Point to exclude civilians from that enclave, the Attorney General said that the commandant "has a general authority to prevent any person within [the base] limits from interrupting its discipline, [**645] or obstructing in any way the performance of the duties assigned" to military personnel there stationed. *Id.* At 272. Even with respect to civilians owning property within a military enclave, "there can be no doubt of [the commandant's] authority to exclude such person . . . From access to any part of the post not essential to the use of the building he may occupy, and to his ingress and egress from it."

41 Op. Atty. Gen (1957)

President's Power to use Federal Troops to Suppress Resistance to Enforcement of Federal Court Orders-Little Rock, Arkansas

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

During the course of consideration relative to the use of Federal troops, attention also was given to the "Posse Comitatus Act" (18 U.S.C. 1385). In its present form, that act provides: "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 not more than \$10,000 or imprisoned not more than two years, or both. This section does not apply in Alaska." I pointed out to you that the act, by its specific terms, excepts from its prohibition the use of the Army or Air Force as a posse comitatus or otherwise to execute the law "in cases and under circumstances expressly authorized by the Constitution or Act of Congress." I advised you that your authority to dispatch Federal troops to Little Rock would be predicated upon express statutory right (10 U.S.C. 332, 333) and, therefore, would be within the exception contained in the Posse Comitatus Act. Although there has been no judicial decision on this question, the advice given you has support in a long line of opinions [*34] of past Attorneys General and in Executive action. N6 The legislative history surrounding this act fully supports this view. In brief, it discloses that, at the time the Posse Comitatus Act was enacted, the predecessors to 10 U.S.C. 332, 333 were in force and the Congress did not intend or interpret the act as impairing whatever powers the President had under those statutes. The sponsors of the Posse Comitatus Act expressly so stated during the course of the debates. N7 This was also the view of President Hayes who approved the Posse Comitatus Act. In his diary entry for July 30, 1878, President Hayes wrote: "The whiskey cases in the South call for wise and firm conduct. No doubt the Government is a good deal crippled in its means of enforcing the laws by the proviso attached to the Army Appropriation Bill which prohibits the use of the Army as a posse comitatus to aid United States officers in the execution of process. The states may and do employ state military force to support as a posse comitatus the state civil authorities. If a conflict of jurisdiction occurs between the State and the United States on any question, the United States is thus placed at a great [*35] disadvantage. But in the last resort, I am confident that the laws give the Executive ample power to enforce obedience to United States process. The machinery is cumbersome and its exercise will tend to give undue importance to petty attempts to resist or evade the laws. But I must use such machinery as the laws give. Senator Beck, a supporter of the provision, stated with respect to the use of troops to enforce the laws: "Wherever the law authorizes it, it is admitted to be right; * * *" (ibid., 4240). "Without passion or haste, the enforcement of the laws must go on. If the sheriffs or other state officers resist the laws, and by the aid of state militia do it successfully, that is a case of rebellion to be dealt with under the laws framed to enable the Executive to subdue combinations or conspiracies too powerful to be suppressed by the ordinary civil officers of the United States. This involves proclamations, the movement of United States land and naval forces, and possibly the calling out of volunteers, and this looks like war. It is like the Whiskey Rebellion in the time of Washington. That precedent, if the case demands it, will be followed. Good citizens [*36] who wish to avoid such a result must see to it that neither their State Governments nor mobs undertake to prevent United States officers from enforcing the laws. My duty is plain. The laws must be enforced."