

**SECTION THREE: THE FEDERAL RESPONSE TO AN EMERGENCY OR MAJOR
DISASTER DECLARATION**

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Table 1: Federal Response to a Major Emergency or Disaster Declaration

Reference and Section	Affected Entity	Principal Focus
Executive Guidance		
Executive Order 12241	Federal Emergency Management Agency (FEMA)	In the case of an accident at a nuclear facility, the President delegates his powers according to Section 304 of Public Law 96-295 (94 Stat. 790) to the Director of FEMA
Executive Order 12472	National Communications System (NCS); Various Federal Agencies	Establishes the NCS to coordinate national security and emergency preparedness communications planning and provision
Executive Order 12580	Various Federal agencies	Establishes a National Response Team (NRT) chaired by either the EPA or USCG and whose members consist of various Federal agencies
Executive Order 12657	FEMA; Nuclear Regulatory Commission (NRC); State and local authorities	Authorizes FEMA to provide emergency planning for commercial nuclear power plants when State and local authorities have declined or failed to establish such plans to the satisfaction of the NRC
Executive Order 13286	Homeland Security Council; Department of Homeland Security; FEMA; NSC	Amends various Executive Orders to take into account the creation of the Homeland Security Council and the Department of Homeland Security
Executive Order 12777	EPA; USCG; Various Federal agencies	Establishes the EPA and USCG as administrators with the power to designate Areas, appoint Area Committee members, and review and approve Area Contingency Plans
PDD 39	Various Federal agencies	DOJ/FBI – LFA for crisis management; FEMA – LFA for consequence management
PDD 62	Various Federal Agencies	Reaffirms PDD 39 crisis and consequence management LFAs for counterterrorism; DOJ LFA to equip first responders; HHS/PHS LFA for WMD-related medical emergencies; DoD LFA for training to metropolitan first responders and military units to assist State and local responders
PDD 63	Various Federal Agencies	Establishes clear methods and milestones for the Federal Government to develop the capability to protect critical infrastructures, especially cyber systems, from cyber and physical attack
HSPD-5	Various Federal Agencies	Enhances the ability of the United States to manage domestic incidents by establishing a single, comprehensive National Incident Management System (NIMS)
United States Code		
42 U.S.C. §5121, et seq., (The Stafford Act)	States, Executive, DoD	Emergency and disaster assistance of the Federal government to State and local governments; defines “disaster” and “major emergency”; outlines procedures for disaster and major emergency declaration
42 U.S.C. §§9601-9675	White House; States; Various Federal Agencies	Provides authority to respond to releases of hazardous substances; requires the President to revise and publish the national contingency plan for the removal of oil and hazardous substances and to establish the means of assessment and removal of the hazard
50 U.S.C. §2061, et seq.	Executive, Private Sector, States, Federal Agencies	Gives President and stated Agencies wide authority to make available products, materials, and services for national defense and national emergency requirements
Pub. L. 107-296	Department of Homeland Security	Establishes the Department of Homeland Security
Code of Federal Regulations		

Reference and Section	Affected Entity	Principal Focus
44 C.F.R. Part 206	Department of Homeland Security	Federal disaster assistance for disaster declared on or after Nov. 23, 1988
DoD Directives		
3025.1, Military Support to Civil Authorities	DoD Components	DoD Directive and Manual for providing support to civil authorities
3025.1-M, Manual for Civil Emergencies		
Federal Plans		
Federal Response Plan	Federal Government	Outlines procedures and concept of operations for responding to a major disaster or emergency under the Stafford Act
National Oil and Hazardous Substances Pollution Contingency Plan	Federal Government	Provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants
Federal Radiological Emergency Response Plan	Federal Government	Outlines procedures for responding to any peacetime radiological emergency that has actual, potential, or perceived radiological consequences within the U.S., its territories, possessions, or territorial waters
United States Government Interagency Domestic Terrorism Concept of Operations Plan	Federal Government	Provides a concept of operations for how the government will respond to a potential or actual terrorist event, particularly one involving WMD
Initial National Response Plan	Federal Government, State Governments, Local Governments, Non-profit organizations	Defines roles, responsibilities; establishes policy; outlines coordination of Federal, State, and local governments, private organizations, and citizens will work together to integrate domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan
Draft National Incident Management System (NIMS)	Federal, State, and local government	Provides a consistent nationwide approach for Federal, State, and local governments to work together to prepare for, respond to, and recover from domestic incidents

I. The Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act) provides for assistance by the Federal government to the States in the event of natural and other disasters and emergencies.¹ The Stafford Act is the primary legal authority for Federal emergency and disaster assistance to State and local governments. Congress' intent in passing the Stafford Act was to provide for an "orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters."² The Stafford Act sought, among other things, to broaden the scope of disaster relief programs; encourage the development of comprehensive disaster preparedness and assistance plans, programs, and capabilities of State and local governments; and provide Federal assistance programs for both public and private losses sustained in disasters.

Generally, Stafford Act assistance is rendered upon request from a State Governor(s) provided certain conditions are met, primarily that the Governor certifies that the State lacks the resources

¹ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121, *et seq.* (2002), as amended by Public L. No. 106-390 (2000) [hereinafter The Stafford Act].

² *Id.*, §5121.

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and capabilities to manage the consequences of the event without Federal assistance. **Table 2** provides a brief overview of the roles and responsibilities of Federal Agencies for emergency and disaster assistance to States. The Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) operates under the Stafford Act, focusing its efforts on managing the consequences of disasters and emergencies. FEMA’s actions generally are driven by requests from State and local governments.

Table 2: Stafford Act Roles and Responsibilities

The Stafford Act applies in the event of a major disaster or emergency. It details the emergency functions of the President, which are delegated as per, among others, Executive Order 12656.	
Departments & Agencies	Roles and Responsibilities
Executive Office of the President (President or as delegated)	Major Disaster Assistance, upon request of a State Governor: Provide specified essential services; coordinate disaster relief activities; direct Federal agency assistance to States and localities; take other action as consistent with the Act and within delegated authority.
	Emergency Assistance, upon request of a State Governor or <i>sua sponte</i> : Direct Federal agencies to provide resources and technical and advisory assistance; provide essential services; coordinate all disaster relief assistance.
Federal Coordinating Officer	Major Disaster and Emergency Assistance: Establish field offices; coordinate relief efforts; take other necessary actions within authority.
Emergency Support Teams	Assist the Federal Coordinating Officer in carrying out his responsibilities in a major disaster or emergency.
State Governor(s)	Request declaration by the President that a major disaster or emergency exists.
Federal Agencies	Assistance responsibilities as delegated by the President and as outlined in response plans. Within authority, provide personnel for the Emergency Support Teams on request from the President; provide assistance, on the direction of the President and as specified, to meet immediate threats to life and property resulting from a major disaster or emergency.
FEMA	Prepare, sponsor, and direct Federal response plans and programs for emergency preparedness; provide hazard mitigation assistance in the form of property acquisition & relocation assistance. ³
Department of Defense	Upon President’s direction, provide “emergency work” to protect life and property prior to declaration of major disaster or emergency.
ANRC and other relief organizations	Major Disaster: As a condition of receiving assistance, comply with regulations relating to non-discrimination and other regulations as deemed necessary by the President for effective coordination of relief efforts.

With the Stafford Act, Congress has delegated to the President emergency powers he may exercise in the event of a major disaster or emergency. It addresses disaster relief programs, disaster preparedness and assistance, hazard mitigation, and Federal assistance for losses sustained in disasters. The Stafford Act lists the roles and responsibilities of Federal agencies and departments in providing both major disaster and emergency assistance and delineates the types of assistance that affected State(s) may receive from the Federal government.

To facilitate the provision of Federal assistance in both major disasters and emergencies, the Act authorizes the President to appoint a Federal Coordinating Officer (FCO) immediately after declaring that a major disaster or emergency exists to coordinate the relief efforts of all Federal agencies. The Act also requires the President to request that a State Governor designate a State Coordinating Officer (SCO) for the purpose of coordinating State and local disaster assistance

³ Under Section 507 of Public Law 107-296, The Homeland Security Act, November 25, 2002, FEMA retained all functions assigned to it under the Stafford Act and remains the lead federal agency for the Federal Response Plan.

efforts with those of the Federal government.⁴ The FCO may utilize relief organizations, such as State relief organizations and the American National Red Cross (ANRC), in the distribution of emergency supplies, such as food and medicine, and in reconstruction or restoration of essential services, *e.g.*, housing. The FCO may coordinate all relief efforts, however, States, localities, and relief organizations must agree. The President is also authorized to form Emergency Support Teams (EST) of federal personnel to be deployed to the area of the disaster or emergency.⁵ The FCO may activate ESTS composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency.⁶ These teams may also be called Emergency Response Teams (ERTs). The ERT is the principal interagency group that supports the FCO in coordinating the overall Federal disaster assistance.

A. Requests for Emergency or Major Disaster Declarations

Under the Stafford Act, the Governor of an affected State may request the declaration of a major disaster or emergency, and must demonstrate, as a prerequisite for receiving assistance, both that the State's response plans have been activated and that State and local capabilities are inadequate for an effective response. The Stafford Act's definitions of "emergency" and "major disaster" are referenced in many of the legal documents related to incident management and are used consistently throughout this report.

1. Major Disasters

Major disaster is defined as follows:

any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.⁷

A major disaster encompasses fires, floods, and explosions, regardless of cause, when such acts cause damage of sufficient severity to warrant Federal disaster assistance, as determined by the President. A WMD event involving fire or explosion, including the detonation of a high-yield explosive, likely would meet this threshold. Following the letter of the law strictly, a chemical, radiological, or biological WMD event in the United States would qualify as a major disaster, only if it results in a fire, flood, or explosion. A WMD event of catastrophic proportions could warrant treatment as both a major disaster and an emergency.

Major disaster assistance is a more comprehensive grant of Federal aid for long-term consequence management. In a major disaster, the President has broad authority to assist States and localities. To receive Federal assistance, a Governor must not only indicate to the President that the State does not have the capacity or resources to mount an effective response, but also furnish information on the measures that have been taken at the State and local levels to mitigate

⁴ 42 U.S.C. §5143.

⁵ 42 U.S.C. §5144.

⁶ 44 CFR 206.24 (2003).

⁷ 42 U.S.C. §5122(2).

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the effects of the disaster. In addition, the President must certify that State and local government obligations and expenditures comply with all applicable cost-sharing requirements of the Stafford Act.⁸

The President's powers after the declaration of a major disaster include the authority to provide the following, among others, to States and localities: specified technical and advisory assistance; temporary communications services; food; relocation assistance; legal services; crisis counseling assistance and training; unemployment assistance; emergency public transportation in the affected area; and fire management assistance on publicly or privately owned forest or grassland.⁹ In addition, the President is authorized to direct Federal agencies in providing essential assistance to meet immediate threats to life and property, and to coordinate all disaster relief assistance.¹⁰

2. Emergencies

The Stafford Act defines "emergency" as follows:

any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.¹¹

An emergency is, more broadly, any situation in which Federal assistance is required to save lives, protect health and property, or mitigate or avert a catastrophe. Generally, the existence or threat of each type of WMD – chemical, biological, radiological, nuclear, and high-yield explosive (CBRNE) – likely would be deemed an "emergency," if the event or threat overwhelms State and local authorities and warrants the assistance of the Federal government.

Emergency authority granted to the President is similar to that authorized for handling major disasters, but it is not as extensive. Emergency assistance is more limited in scope and in time, and total assistance may not exceed \$5 million for a single emergency, unless the President determines there is a continuing and immediate risk to lives, property, public health or safety and necessary assistance will not otherwise be provided on a timely basis.¹² In any emergency, the President may direct any Federal agency, with or without reimbursement, to use the authorities and resources granted to it under Federal law in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lesson or avert the threat of a catastrophe.¹³ The President may coordinate all emergency relief assistance and provide technical and advisory assistance to affected State and local governments for: performance of essential community services; issuance of hazard and risk warnings; public health and safety information; and management, control and reduction of immediate threats to public safety. He may also direct Federal agencies to provide emergency assistance; remove debris pursuant to 42 U.S.C. §5173; provide temporary housing assistance in accordance with 42 U.S.C. §5174;

⁸ 42 U.S.C. §5170.

⁹ See 42 U.S.C. §§5171-5186.

¹⁰ 42 U.S.C. §5170(b).

¹¹ 42 U.S.C. §5122(1).

¹² 42 U.S.C. §5193.

¹³ 42 U.S.C. §5192.

and assist State and local governments in the distribution of food, medicine, and other consumable supplies.¹⁴

B. Liability under the Stafford Act

The Stafford Act specifically provides for immunity from liability for certain actions taken by Federal agencies or employees of the Federal Government pursuant to the Act. Section 5148 provides:

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

A boilerplate FEMA-State agreement further discusses liability issues.¹⁵

C. The President's Emergency Authority under the Stafford Act

The Stafford Act authorizes the President to declare an emergency, but not a major disaster, *sua sponte* with respect to an emergency that “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.”¹⁶ The Act also authorizes the President, upon request from the Governor of an affected State, to provide “emergency work” essential for the preservation of life and property, by the Department of Defense for a maximum of ten days before the declaration of either an emergency or a major disaster.¹⁷ In short, if the State or local government is overwhelmed by the incident or there is an independent Federal nexus to the event, the President may authorize major disaster assistance or declare a Federal emergency, respectively.

In summary, response to a disaster or emergency is primarily the responsibility of the State and local governments. However, when a disaster or emergency overwhelms State and local capabilities, a Governor may request the President to make a major disaster or emergency declaration under the Stafford Act. A presidential declaration is contingent on the joint findings of a Federal-State-local preliminary damage assessment, indicating that damages are of sufficient severity to warrant assistance under the Act.¹⁸ An incident of WMD terrorism is quite likely to be of sufficient severity to warrant an emergency declaration. When an emergency involves a facility for which the Federal government exercises exclusive or primary authority, the President may unilaterally direct the provision of Federal assistance under the Act.

II. The Federal Response Plan (FRP)

The Interim Federal Response Plan (FRP) establishes the processes and structure for the delivery of Federal assistance to manage the consequences of any major disaster or emergency declared

¹⁴ 42 U.S.C. §5192(a).

¹⁵ Boilerplate FEMA-State Agreement, available in the Agencies Document folder on the Deskbook CD-ROM.

¹⁶ 42 U.S.C. §5191(a).

¹⁷ 42 U.S.C. §5170b(c).

¹⁸ Interim Federal Response Plan, January 2003, p. 7.

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under the Stafford Act.¹⁹ The FRP applies to all signatory Federal departments and agencies that may be tasked to provide assistance during a presidentially declared disaster or emergency.

The FRP consists of a basic plan, emergency support function annexes, a recovery function annex, support annexes, a terrorism incident annex, and appendices.

Basic Plan. The basic plan presents the concept of operations that guides the delivery of federal assistance to disaster-stricken State and local governments.

Emergency Support Functions (ESFs). The twelve ESFs of the FRP include: transportation, communications, public works and engineering, firefighting, information and planning, mass care, resource support, health and medical services, urban search and rescue, hazardous materials, food, and energy. The emergency support function annexes describe the mission, policies, concept of operations, and responsibilities of the primary support agencies involved in the implementation of response functions that supplement State and local activities.

Recovery Function Annex. The recovery function annex describes the policies, planning considerations, and concept of operations that guide the delivery of federal assistance to help disaster victims and affected communities return to normal after a major disaster or emergency.

Support Annexes. The support annexes of the FRP describe the policies and concept of operations relating to community relations, congressional affairs, donations management, financial management, logistics management, occupational safety and public health, and public affairs.

Terrorism Incident Annex. The terrorism incident annex, which describes the policies and structures to coordinate crisis management activities with consequence management activities, is of particular relevance to WMD incident management. However, the distinction between crisis management and consequence management has been superseded under Homeland Security Presidential Directive 5 (HSPD-5), as described later in this section.

Appendices. The appendices provide supplemental information, to include terms and definitions, acronyms and abbreviations, information on coordinating changes and revisions to the FRP, and graphics providing an overview of a disaster operation.

¹⁹ *Id.*

A. Roles and Relationships under the FRP

The FRP employs a functional approach to emergency response that groups under twelve ESFs the type of direct federal assistance that a State is most likely to require. Each ESF is headed by a primary agency designated on the basis of its capabilities, authorities, and resources in that functional area. Federal response assistance under the FRP is then provided utilizing the ESFs as necessary. **Table 3** lists the ESFs and the corresponding primary agency.

Table 3: Emergency Support Functions Specified in the FRP

ESF #	ESF	Lead Federal Agency
1	Transportation	Department of Transportation
2	Communications	Department of Homeland Security
3	Public Works and Engineering	Department of Defense
4	Firefighting	Department of Agriculture
5	Information and Planning	Department of Homeland Security
6	Mass Care	American Red Cross
7	Resource Support	General Services Administration
8	Health and Medical Services	Department of Health and Human Services
9	Urban Search and Rescue	Department of Homeland Security
10	Hazardous Materials	Environmental Protection Agency
11	Food	Department of Agriculture
12	Energy	Department of Energy

B. Implementation of the FRP

After the President has made a major disaster or emergency declaration, he may direct any Federal agency to use its authorities and resources in support of State and local response efforts to the extent that provision of the support does not conflict with other agency emergency missions. Under the Stafford Act, FEMA, now a part of the Department of Homeland Security (DHS), serves as the lead federal agency (LFA) for disaster response and recovery activities. Consequently, the authority to direct Federal agencies to use their resources in support of State and local response efforts has been delegated from the President to the Secretary of DHS, the DHS regional director, and the FCO.²⁰ Under the FRP, the Secretary of DHS appoints a FCO, who is responsible for coordinating the delivery of Federal assistance to the affected State(s), local government(s) and disaster victims. The FCO works closely with the SCO, appointed by the Governor, to oversee disaster operations for the State. The SCO also serves as the Governor’s Authorized Representative (GAR) and is generally empowered to execute all necessary documents for disaster assistance on behalf of the State.

Of particular relevance to a WMD terrorist event is the FRP’s terrorism incident annex. The United States Government Interagency Domestic Terrorism Concept of Operations Plan (USG CONPLAN), PDD-39 and the FRP bifurcate the federal approach to WMD response into crisis management and consequence management functions. The FRP defines crisis management as “measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or

²⁰ *Id.* at 7.

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resolve a threat or act of terrorism.”²¹ Consequence management is defined by the FRP as “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.”²² The distinction between crisis management and consequence management is a defining attribute of the pre-9/11 approach to WMD incident management. Labeling crisis management as predominately a law enforcement response, the FRP assigned lead federal agency responsibilities for crisis management to the Department of Justice (DOJ). On the other hand, FEMA (DHS) maintained lead federal agency responsibility for consequence management under the FRP. This division, established by PDD-39, placed DOJ in the overall LFA role for threats or acts of terrorism within U.S. territory. Under the FRP, overall LFA responsibility is transferred from the Attorney General to the Secretary of DHS upon resolution of the crisis management portion of the response.

C. Interplay between the FRP and Other Plans Applicable to WMD Response and Recovery

The FRP may be implemented concurrently with other inter-agency Federal response plans, agency-specific emergency operations plans developed under statutory authorities other than the Stafford Act, and inter-agency memoranda of understanding (MOUs). Interagency response plans that may be implemented concurrently with the FRP include: the National Plan for Telecommunications Support in Non-Wartime Emergencies (NTSP),²³ the National Oil and Hazardous Substances Pollution Contingency Plan;²⁴ the Federal Radiological Emergency Response Plan (FRERP);²⁵ and the USG CONPLAN²⁶ developed pursuant to PDD 39.²⁷ As described below, the National Response Plan (NRP), currently under development pursuant to HSPD-5, intends to integrate most of the aforementioned response plans, as well as the FRP, and will serve as the Federal government’s sole interagency response plan covering all types of disasters and emergencies and encompassing all response functions. The development of the NRP represents a significant effort to integrate the Federal government’s inter-agency emergency and disaster plans and may affect certain agency’s responsibilities in the event of a major disaster or emergency.

²¹ *Id.* at TI-1.

²² *Id.*

²³ National Plan for Telecommunications Support in Non-Wartime Emergencies, Office of Science and Technology Policy, January 1992. It serves as a basis of planning and use of national communications resources in support of Stafford Act provisions during a non-wartime emergency. (herein, National Telecommunications Support Plan or NTSP).

²⁴ National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300 (2002). (herein the National Contingency Plan or NCP). The NCP provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

²⁵ Federal Radiological Emergency Response Plan (FRERP), 61 F.R. 90, May 8, 1996, pp. 20943 -20970 provides a concept of operations for responding to any peacetime radiological emergency that has actual, potential, or perceived radiological consequences within the U.S.

²⁶ The United States Government Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), January 2001, provides an overall concept of operations for the Federal government's response to a threatened or actual terrorist event, particularly one involving WMD.

²⁷ Presidential Decision Directive 39, “U.S. Policy on Counterterrorism,” June 1995.

The NTSP was authorized by Executive Order 12472²⁸ to provide for the management of telecommunications support for Federal entities in non-wartime emergencies. ESF #2 of the FRP supplements the NTSP and sets out procedures for coordinating the provision of temporary national security and emergency preparedness telecommunications support in areas impacted by a major disaster or emergency.

The National Contingency Plan (NCP) was developed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.²⁹ It sets out procedures for managing oil spills into navigable waters and releases of hazardous substances, pollutants, and contaminants into the environment. Inland, the Environmental Protection Agency (EPA) is the lead agency for coordinating the Federal response. The U.S. Coast Guard, now a DHS entity, is lead agency for oil spills and hazardous materials releases in coastal areas. Generally, DoD or DOE will be the lead agency for responding to the release of hazardous substances, pollutants, or contaminants when the incident is on or comes from a facility or vessel under the control, custody, or jurisdiction of DoD or DOE, respectively. The EPA takes the lead for hazardous materials with respect to incidents that have not yet been determined to be related to terrorism, or for incidents when the FRP has not yet been activated. Once the FRP is activated, FEMA has the lead for consequence management and EPA has the lead agency role for ESF #10, Hazardous Materials, incorporating the NCP. Executive Order 12580 authorized the establishment of National Response Team (NRT) for planning and preparing for response actions; designated the EPA and the Coast Guard as co-chairs; and designated responsibilities of other agencies on the NRT and on Regional Response Teams.³⁰

Public Law 96-295 and Executive Orders 12241 and 12657 authorized the development of the FRERP.³¹ The plan sets out the concept of operations for Federal agencies to respond to peacetime radiological emergencies. Pursuant to the plan, the Department of Energy is responsible for coordinating off-site monitoring and assessment of the situation and the EPA handles response coordination after the immediate emergency. However, the identity of the LFA depends on the circumstances and location of the incident and could be any of a number of agencies. Thus, the Nuclear Regulatory Commission (NRC) is the LFA for both radiological emergencies involving nuclear facilities licensed by NRC or licensed by an Agreement State and shipment of radioactive materials licensed by NRC. The EPA is the LFA for radiological emergencies involving nuclear facilities not licensed, owned, or operated by a Federal agency or an Agreement State; shipment of materials not licensed or owned by a Federal agency or an Agreement State; and impacts from foreign or unknown sources. DOE is the LFA for radiological emergencies involving nuclear facilities owned or operated by DOE or radioactive

²⁸ Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, as amended by Executive Order 13286.

²⁹ 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. Executive Orders 12580 and 12777 delegated to the EPA responsibility to amend the NCP as necessary.

³⁰ Executive Order 12580, "Superfund Implementation," January 23, 1987, as amended.

³¹ Pub. L. 96-295, Nuclear Regulatory Commission Appropriations Authorization Act June 30, 1980; Executive Order 12241, "National Contingency Plan," September 29, 1980, as amended by Executive Order 12657, "Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants," November 18, 1988.

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materials shipped by or for DOE . DoD is the LFA for radiological emergencies involving: nuclear facilities owned or operated by DoD; radioactive materials shipped by or for DoD; and DoD satellites containing radioactive materials. NASA is the LFA for radiological emergencies involving satellites containing radioactive materials. Supporting agencies include DOA, DOC, DoD, HHS, DOI, NRC, HUD, DOT, NCS, and DOS. The FRERP provides for the LFA to coordinate Federal response in the absence of a Stafford Act major disaster or emergency declaration, with FEMA coordinating non-radiological support pursuant to the Federal Response Plan. The FCO, under the FRP, coordinates the Federal response when there is a Stafford Act declaration with respect to the radiological emergency.

PDD-39 authorized the USG CONPLAN. The plan primarily coordinates crisis and consequence management functions to optimize Federal response to actual or potential terrorist threats or incidents, particularly those involving WMD. PDD -39 and the CONPLAN designate the FBI as the lead federal agency for crisis management and FEMA as the lead federal agency for consequence management. Primary supporting agencies include DoD, DOE, EPA, and HHS. The CONPLAN complements, rather than supersedes, the FRP, to include the Terrorism Annex. While the CONPLAN further details the crisis management functions of the FBI, as well as coordination of the crisis and consequence management phases, consequence management functions are performed in accordance with the FRP.

D. Impact of the Homeland Security Act on the Federal Response Structure and Process

The Homeland Security Act of 2002 represented a watershed in the manner in which the Federal government organizes to respond to WMD terrorism.³² The Act established the Department of Homeland Security (DHS), and consolidated the consequence management missions, assets, and personnel of numerous federal departments and agencies into a single department.³³ The primary missions of DHS include: preventing terrorist attacks within the United States; reducing the vulnerability of the United States to terrorism; and minimizing the damage and assisting in the recovery from terrorist attacks that occur within the United States.³⁴

To execute these missions, DHS has four functional directorates: Science and Technology, Information Analysis and Infrastructure Protection, Border and Transportation Security, and Emergency Preparedness and Response. Key consequence management functions, personnel, and assets that were transferred to the Secretary of DHS are represented in **Table 4**.³⁵

Table 4: Functions, Personnel, and Assets Transferred to the DHS

Function/Personnel/Asset Transferred	Transferring Department/Agency	Receiving DHS Directorate
FEMA, including functions of the Director of FEMA	N/A (Independent Agency)	Emergency Preparedness and Response
Integrated Hazard Information System "FIRESAT"	National Oceanic and Atmospheric Administration	Emergency Preparedness and Response

³² Pub. L. 107-296, Homeland Security Act of 2002, November 25, 2002 [herein The Homeland Security Act].

³³ *Id.*, §101.

³⁴ *Id.*, §101(b).

³⁵ *Id.*, §§503, 201(9), 403.

Function/Personnel/Asset Transferred	Transferring Department/Agency	Receiving DHS Directorate
National Domestic Preparedness Office	Federal Bureau of Investigation	Emergency Preparedness and Response
Domestic Emergency Support Teams	Department of Justice	Emergency Preparedness and Response
Office of Emergency Preparedness	Department of Health and Human Services	Emergency Preparedness and Response
National Disaster Medical System	Department of Health and Human Services	Emergency Preparedness and Response
Metropolitan Medical Response System	Department of Health and Human Services	Emergency Preparedness and Response
Strategic National Stockpile	Department of Health and Human Services	Emergency Preparedness and Response
Nuclear Incident Response Team*	Department of Energy and Environmental Protection Agency	Emergency Preparedness and Response
National Communications System	Department of Defense	Information Analysis and Infrastructure Protection
Coast Guard	Department of Transportation	Reports Directly to the Secretary
Secret Service	Department of the Treasury	Reports Directly to the Secretary
Customs Service	Department of the Treasury	Border and Transportation Security
Transportation Security Administration	Department of Transportation	Border and Transportation Security
Federal Protective Service	General Services Administration	Border and Transportation Security

The Emergency Preparedness and Response Directorate maintains responsibility for providing the Federal Government’s response to terrorist attacks and major disasters. Activities pursuant to this responsibility include managing the response; directing the strategic response assets that were transferred to DHS; overseeing the Metropolitan Medical Response System; and coordinating other Federal response resources outside of DHS in the event of a terrorist attack or major disaster. The Homeland Security Act also directed the Emergency Preparedness and Response directorate to build a National Incident Management System to integrate the Federal, State, and local government response to terrorist attacks; and consolidate existing Federal government emergency response plans into a single, coordinated National Response Plan.³⁶ In sum, the Homeland Security Act served as the foundation for the government to reorganize and consolidate WMD consequence management assets and personnel under a single federal agency. Further, it served as the legal impetus for a revised approach to WMD incident management, pursuant to Homeland Security Presidential Directive 5, discussed below.

* The Nuclear Incident Response Team includes technical response elements of the Department of Energy and the Environmental Protection Agency. In the event of an actual or threatened terrorist attack, major disaster, or other emergency within the United States, the Nuclear Incident Response Team operates as an organization unit of DHS, subject to the direction of the Secretary of DHS. Absent an actual or threatened terrorist attack, major disaster, or other emergency, the Secretary of Energy and the Administrator of the Environmental Protection Agency maintain responsibility for organizing, training, and equipping their respective entities that comprise the Nuclear Incident Response Team.

³⁶ The Homeland Security Act, *supra* note 32, §502.

E. HSPD-5 and the Federal Response Structure

Homeland Security Presidential Directive 5 (HSPD-5), “Management of Domestic Incidents” established a new approach to federal emergency management of WMD events.³⁷ The approach is founded upon ensuring that all levels of government across the nation have a single, unified, national approach toward managing domestic incidents. Pursuant to the Homeland Security Act of 2002, HSPD-5 tasked the Secretary of Homeland Security to develop and administer a NRP that would integrate Federal government domestic prevention, preparedness, response and recovery plans into one all-discipline, all-hazards plan. It also tasked the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS) that would unify Federal, State and local government capabilities to work together to prepare for, respond to and recover from domestic events regardless of cause, size or complexity. The intent behind the NRP and the NIMS is to provide the structure and mechanisms for establishing national level policy and operational direction regarding Federal support to State and local incident managers. Once finalized, the NRP will establish the Federal government’s response policy, whereas the NIMS will serve as the operational arm of the NRP.

HSPD-5 also reaffirmed the Secretary of Homeland Security’s responsibility as the principal federal official for domestic incident management. HSPD-5 tasked the Secretary of Homeland Security with coordinating the Federal Government’s resources in response to, or recovery from terrorist attacks, major disasters or other emergencies. This coordination responsibility exists when any one of the following four conditions applies: 1) a Federal department or agency acting under its own authority has requested the assistance of the Secretary; 2) the resources of State and local authorities are overwhelmed and Federal assistance has been requested by the appropriate State and local authorities; 3) more than one Federal department or agency has become substantially involved in responding to the incident; or 4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President.³⁸ **Table 5** summarizes the roles and responsibilities established by HSDP–5.

HSPD-5 also eliminates the previous division between crisis management and consequence management treating the two “as a single, integrated function, rather than as two separate functions.”³⁹ Whereas under the FRP the Attorney General was the overall lead federal official for the Government’s response until the crisis management phase of the response was over, now the Secretary of Homeland Security remains the lead federal official for the duration of the period involving federal assistance. Despite HSPD-5 erasing the distinction between crisis management and consequence management, the Directive reaffirms the Attorney General’s authority as the lead official for conducting criminal investigation of terrorist acts or terrorist threats.⁴⁰

³⁷ Homeland Security Presidential Directive 5, “Management of Domestic Incidents,” February 28, 2003.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

Table 5: Roles and Responsibilities Established by HSPD - 5

Homeland Security Presidential Directive 5	
Departments & Agencies	Roles and Responsibilities
Federal Government	Sec. 3 Declares that the U.S. Government policy is to treat crisis management and consequence management as a single, integrated function, rather than as two separate functions.
Secretary of Homeland Security	Sec. 4 Assigns Secretary of Homeland Security responsibility for coordinating Federal operations within the U.S. to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. Sec. 15 Tasks the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). Sec. 16. Tasks the Secretary of Homeland Security to develop and administer a National Response Plan (NRP).
Attorney General	Sec. 8 Reaffirms the Attorney General's role as having lead responsibility for criminal investigations of terrorist acts or terrorist threats.

1. Emerging National Incident Management System

When finalized, it is envisioned that the NIMS will serve as the operational arm of the NRP.⁴¹ The NIMS will be the underlying architecture that governs the full range of the United States incident management efforts from awareness, prevention and preparedness, to response and recovery. Essentially, it will provide the “nuts and bolts” for the approach of the U.S. government to domestic incident management. The initial draft of the NIMS, published on July 18, 2003, notes five key features:⁴²

Standardization of incident management for all hazards and all levels of government. The NIMS plans to incorporate the existing Incident Command System (ICS) and Multi-Agency Coordination Systems (MACS) as the command structure for response to all hazards at all levels of government. There currently is no universal federal structure for responding to domestic incidents.⁴³

Extension of incident management into the awareness, prevention, and preparedness domains. As of July 2003, NIMS is intended to provide a system of local, State and Federal Prevention and Preparedness Councils (PPCs). PPCs will be responsible for integrating awareness, prevention, and preparedness activities into a unified structure that will provide an ongoing MACS for all potential and impending hazards. Presently, there is no unified national approach to pre-incident planning with State and local governments and organizations.⁴⁴

⁴¹ Draft National Incident Management System, “Initial System”, July 18, 2003, (herein Draft NIMS Initial System) p. 3.

⁴² *Id.* at 5-7.

⁴³ The ICS and MACS emanated from the National Interagency Incident Management System (NIIMS), developed by the fire services, to govern how fire teams from multiple states and organizations could work together to respond to large wildfires more safely and efficiently.

⁴⁴ *Id.* at 6.

Facilitation of the flow of resources in pre-incident planning and post-incident execution. NIMS will provide a standardized mechanism for managing the flow of financial and physical resources before, during, and after an incident occurs. Currently, no systematic process exists at both the pre-incident and post-incident stages of an incident to facilitate the flow of resources between Federal, State, and local governments.⁴⁵

Establishment of a Common Operating Picture that Promotes Useful Information Flow at all Levels of Government. Because the NIMS approach to domestic incident management will be based upon the ICS and MACS, the result will be a standardized continuum to account for effective, reliable, and timely information management, communications, and intelligence sharing across Federal, State, and local levels of government.⁴⁶

Strategic Development of New Technologies and Provision of Scientific Support to Enhance Pre- and Post-Incident Operations at All Levels of Government. The NIMS will provide the architecture for science and technology support to the NRP at both the operational and developmental phases. That is, the NIMS will provide expert advice and technical systems during an incident and will identify and prioritize unmet technical needs prior to an incident.⁴⁷

Like the Stafford Act and its progeny, the draft NIMS is based upon the premise that most incidents begin and end at the local level with few incidents requiring assistance from Federal, State, and local authorities.⁴⁸

F. Overview of the Emerging National Response Plan

The Initial NRP was published on September 30, 2003.⁴⁹ The purpose of the NRP is to harmonize the operational processes, procedures, and protocols detailed in such documents as the FRP, FRERP, the NCP, the Mass Migration Emergency Plan, and the CONPLAN with the strategic direction provided in HSPD 5 until such plans can be integrated in the full NRP.⁵⁰

1. Implementation of the NRP

Once fully implemented, the NRP will integrate several existing Federal interagency emergency plans. Until then, the coordination structures, operational procedures, and reporting requirements outlined in the FRP, the FRERP, the NCP, and the CONOPS will be used for WMD incident management. However, the Initial NRP does provide some interim guidance as an addendum to the guidance provided in existing interagency emergency plans. Guidance relevant to WMD incident management includes:

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 17.

⁴⁹ Initial National Response Plan, September 30, 2003.

⁵⁰ *Id.*

Federal reporting requirements. Each Federal department or agency is directed to report the initiation of a Federal department or agency plan to respond to an incident, submission of requests for assistance to or receipt of a request from another Federal agency, and receipt of requests for assistance from State or local governments, non-governmental organizations, or the private sector to DHS.

State reporting requirements. State governments are requested to report to DHS the activation of State Emergency Operation Centers, emergency declarations made under State or local authorities, and activation of State mutual-aid agreements or compacts.

Designation of a single DHS Interagency Coordinating Body. During a WMD incident, the Secretary of Homeland Security will designate a single interagency coordinating body to perform the functions of separate bodies under existing plans.

Designation of Federal Incident Management Officials. The Secretary of Homeland Security may designate Federal incident management officials to serve as the DHS representative to oversee Federal incident management activities in the field at the regional, State or local level. These officials will be responsible for coordinating the activities of the Lead Federal Agencies and supporting agencies; overseeing the allocation of resources; coordinating the clearance and dissemination of information; and providing updated information to the Secretary on activities and conditions.

In order to ensure a quick national-level response to domestic incidents, DHS has taken a number of measures to increase the speed of communications, reduce response time, and make the NRP a more effective mechanism. These include:

National Homeland Security Operations Center (HSOC). HSOC is the primary national-level hub for operational communications and information pertaining to domestic incident management. The HSOC will, *inter alia*, maintain domestic incident situational awareness and facilitate domestic incident awareness, prevention, deterrence, and response and recovery activities. In order to perform these functions the HSOC will establish and maintain real-time communications links to other Federal emergency agencies, as well as those at the State, regional, and nongovernmental level.

Interagency Incident Management Group (IIMG). Should there be an emergency or major disaster fitting the criteria found in HSPD-5, the Secretary of DHS may activate a tailorable, task-organized headquarters-level IIMG comprising senior representatives from DHS components, other Federal departments and agencies and nongovernmental organizations. The purpose of the IIMG will be to support the Secretary's decision-making process by, *inter alia*, reviewing and validating threat assessments, making recommendations to the Secretary on actions to take, and providing oversight of the application of Federal resources in support of domestic incident management.

III. Summary

The Initial NRP and Draft NIMS have instituted a paradigmatic shift in the approach of the Federal government to domestic incident management. Although requests for assistance from a State governor will still formally initiate the response from the Federal government during a WMD incident, the manner in which the Federal government provides such assistance will change. Consolidation, unification, and systemization are the unifying themes of these key changes.

IV. Appendix: Citation Excerpts

Executive Order 12241, September 29, 1980
National Contingency Plan
<i>This document is included in its entirety on the Deskbook CD-ROM.</i>
Source: The provisions of Executive Order 12241 of Sept. 29, 1980, appear at 45 FR 64879, 3 CFR, 1980 Comp., p. 282, unless otherwise noted.
By the authority vested in me as President of the United States of America under Section 304 of Public Law 96-295 (94 Stat. 790) and Section 301 of Title 3 of the United States Code, and in order to provide for the publication of a plan to protect the public health and safety in case of accidents at nuclear power facilities, it is hereby ordered as follows:
1-101. The functions vested in the President by Section 304 of Public Law 96-295 (94 Stat. 790) are delegated to the Director, Federal Emergency Management Agency.
1-102. A copy of the National Contingency Plan shall, from time to time, be published in the Federal Register.
Source: http://www.archives.gov/federal_register/codification/executive_order/12241.html
UPDATE
Executive Order 12657, November 18, 1988
Amends and supersedes to extent Exec Order 12241 is inconsistent.

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Executive Order 12472 (1984)

Assignment of National Security and Emergency Preparedness Telecommunications Functions

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;
- (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;

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- 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.

(f) The NCS Committee of Principals shall:

- (1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;
- (2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;
- (3) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and
- (4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

- (1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:
 - a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;
 - b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;
 - c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;
 - d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and
 - e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Director of the Office of Management and Budget.
- (2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;
- (3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;
- (4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency preparedness telecommunications requirements of the Federal government;
- (5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;
- (6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and
- (7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

Sec. 2. Executive Office Responsibilities.

(a) *Wartime Emergency Functions.*

- (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).
- (2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606(a), (c)-(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing

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instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) Non-Wartime Emergency Functions.

(1) The National Security Council shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) Planning and Oversight Responsibilities.

(1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communications systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such tests or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) Consultation with Federal Departments and Agencies. In performing the functions assigned under this Order, the National Security Council and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Director of the Federal Emergency Management Agency with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) Budgetary Guidelines. The Director of the Office of Management and Budget, in consultation with the National Security Council and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding,

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through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.
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
Amended by sec. 46.

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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. (b) (1) The responsibility for the revision of the NCP and all of the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act is delegated to the Administrator of the Environmental Protection Agency ('the Administrator'). (2) The function vested in the President by Section. II 8(p) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) ('SARA') is delegated to the Administrator. (c) In accord with Section 107(f)(2)(A) of the Act and Section 31 I (f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321 (f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources: (1) Secretary of Defense; (2) Secretary of the Interior, (3) Secretary of Agriculture; (4) Secretary of Commerce; (5) Secretary of Energy. (d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment. Revisions shall also be made in consultation with the Director of the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. (e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB"). Sec. 2. Response and Related Authorities. (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services, who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service. (b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act, relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT. (c) (1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency. (2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c) and 119 of the Act, to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency. (d) Subject to subsections (a), (b), and (c) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or

Executive Order 12580 (1987)
<p>threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act.</p> <p>(e)</p> <p>(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term 'emergency,' solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.</p> <p>(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119, of the Act are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.</p> <p>(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.</p> <p>(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4), and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA.</p> <p>(h) The functions vested in the President by Section 104(c)(3) of the Act are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.</p> <p>(i) Subject to subsections (d), (e), (f), (g), and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.</p> <p>(j)</p> <p>(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments or agencies, to be exercised with the concurrence of the Attorney General.</p> <p>(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.</p> <p>(k) The functions vested in the President by Section 104(f), (g), (h), (l)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.</p>
UPDATE(S)
Executive Order 13016 (1996)
Amendment to Executive Order No. 12580, Superfund Implementation
Amended by secs. 1 and 2
Executive Order 13286 (2003)
Amended by sec 34

Domestic WMD Incident Management Legal Deskbook

Executive Order 12657, November 18, 1988

National Contingency Plan

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

SOURCE: The provisions of Executive Order 12657 of Nov. 18, 1988, appear at 53 FR 47513, 3 CFR, 1988 Comp., p. 611, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, and Section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

SECTION 1. Scope.

This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance of the Federal Emergency Management Agency ("FEMA") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to FEMA that the situation described in Subsection (a) exists.

SEC. 2. Generally Applicable Principles and Directives.

Subject to the principles articulated in this Section, the Director of FEMA is hereby authorized and directed to take the actions specified in Sections 3 through 6 of this Order.

In carrying out any of its responsibilities under this Order, FEMA:

shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive branch, shall make maximum feasible use of the licensee's re-sources;
shall take care not to supplant State and local resources. FEMA shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

is authorized, to the extent permitted by law, to enter into inter-agency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to FEMA under this Order; how-ever, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the FEDERAL REGISTER; and

shall assume for purposes of Sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radio-logical emergency preparedness plan.

The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order.

In resolving issues under this Subsection, the Director of OMB shall ensure:

that FEMA has utilized to the maximum extent possible the re-sources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

that FEMA shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

that implementation of this Order is accomplished with an economy of resources; and

that full reimbursement to the Federal Government is provided, to the extent permitted by law.

SEC. 3. FEMA Participation in Emergency Preparedness Planning

FEMA assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and re-sources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended, and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

FEMA shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making

Executive Order 12657, November 18, 1988

such plans and arrangements, FEMA shall focus planning of Federal response activities to ensure that: adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent; FEMA's planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees, to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veterans' Administration; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

SEC. 4. Evaluation of Plans.

FEMA shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government. FEMA shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participating in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

SEC. 5. Response to a Radiological Emergency.

In the event of an actual radiological emergency or disaster, FEMA shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency. FEMA shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. FEMA shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority. FEMA shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function. In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, FEMA or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

SEC. 6. Implementation of Order.

FEMA shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order. Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary revisions of, all FEMA regulations, directives, and guidance to conform them to the terms and policies of this Order. Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary renegotiations of, all interagency agreements to which FEMA is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 Fed. Reg. 46542 (November 8, 1985)). To the extent permitted by law, FEMA is directed to obtain full reimbursement, either jointly or severally, for services performed by FEMA or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

SEC. 7. Amendments.

This Executive Order amends Executive Order Nos. 11490 (34 Fed. Reg. 17567 (October 28, 1969)), 12148 (44 Fed. Reg. 43239 (July 20, 1979)), and 12241 (45 Fed. Reg. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

UPDATE

Executive Order 13286, February 28, 2003

Amended by sec. 41

Domestic WMD Incident Management Legal Deskbook

Executive Order 13286, February 28, 2003

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

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

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

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

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

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

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

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

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

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

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

Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly

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required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

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

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

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

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

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

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

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

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

Sec. 75. Executive Order 10637 of September 16, 1955 ("Delegating to the Secretary of the Treasury Certain Functions of the President Relating to the United States Coast Guard"), is amended by:

- (a) striking "The Secretary of the Treasury" in sections 1 and 2 and inserting "The Secretary of Homeland Security" in lieu thereof;
- (b) striking "the Secretary of the Treasury" in the title and in subsections 1(j), 1(k), and 5, and inserting "the Secretary of Homeland Security" in lieu thereof; and
- (c) striking subsection 1(r) and redesignating subsection 1(s) as subsection 1(r).

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

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

Sec. 86. Exception from the Provisions of the Government Employees Training Act.

Those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis are, pursuant to section 4102(b)(1) of title 5, United States Code, and in the public interest, excepted from the following provisions of the Government Employees Training Act as codified in title 5: sections 4103(a)(1), 4108, 4115, 4117, and 4118, and that part of 4109(a) that provides "under the regulations prescribed under section 4118(a)(8) of this title and".

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

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

Sec. 88. Order of Succession.

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of, the office of Secretary of Homeland Security ("Secretary") during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

- (i) Deputy Secretary of Homeland Security;
- (ii) Under Secretary for Border and Transportation Security;
- (iii) Under Secretary for Emergency Preparedness and Response;
- (iv) Under Secretary for Information Analysis and Infrastructure Protection;
- (v) Under Secretary for Management;
- (vi) Under Secretary for Science and Technology;
- (vii) General Counsel; and
- (viii) Assistant Secretaries in the Department in the order of their date of appointment as such.

(b) Exceptions.

- (i) No individual who is serving in an office listed in subsection (a) in an acting capacity shall act as Secretary pursuant to this section.
- (ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., to depart from this order in designating an acting Secretary.

Sec. 92. This order shall become effective on March 1, 2003.

Sec. 93. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

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

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

UPDATE: None

Executive Order 12777, 18 October 1991

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

By authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, ("FWPCA") (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101 - 380) ("OPA"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Sec. 2. National Response System.

(a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act of 1974 ("DPA"), are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(B) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant

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response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or Section 4202(b)(4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

Sec. 3. Removal. The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA, respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.
George Bush

UPDATE

Executive Order 13286, Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security, Feb. 28, 2003

Amended by sec. 34

Presidential Decision Directive 39, June 21, 1995

United States Policy on Counterterrorism

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

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

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

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

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

U.S. Policy on Counterterrorism

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

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

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

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

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

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

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Presidential Decision Directive 39, June 21, 1995

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

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

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

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

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

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

UPDATE: None

Presidential Decision Directive 62, May 22, 1998

Combating Terrorism

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

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

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

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

The National Coordinator

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

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Presidential Decision Directive 63, May 22, 1998

Protecting America's Critical Infrastructures

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.

Source: http://www.ciao.gov/CIAO_Document_Library/WhiteHouseFactSheet_PDD63.htm

UPDATE: None

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

Management of Domestic Incidents

Purpose

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

Definitions

(2) In this directive:

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

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

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

Policy

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

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

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

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

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

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

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terrorist threat or an actual incident that falls within the criminal jurisdiction of the United States, the full capabilities of the United States shall be dedicated, consistent with United States law and with activities of other Federal departments and agencies to protect our national security, to assisting the Attorney General to identify the perpetrators and bring them to justice. The Attorney General and the Secretary shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.

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

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

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

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

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

Tasking

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

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

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

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

(b) The NRP will include protocols for operating under different threats or threat levels; incorporation of existing Federal emergency and

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incident management plans (with appropriate modifications and revisions) as either integrated components of the NRP or as supporting operational plans; and additional operational plans or annexes, as appropriate, including public affairs and intergovernmental communications.

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

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

(17) The Secretary shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (f) striking "Customs and INS" in the first sentence of the second paragraph of section 2, and inserting "the Department of Homeland Security" in lieu thereof;
- (g) striking "the two agencies" in the second sentence of the second paragraph of section 2, and inserting "the Department of Homeland Security" in lieu thereof;
- (h) striking "the Secretary of the Treasury" wherever it appears in section 2, and inserting "the Secretary of Homeland Security" in lieu thereof;
- (i) inserting ", the Secretary of Homeland Security," after "The Secretary of State" wherever the latter appears in section 3;
- (j) inserting ", the Department of Homeland Security," after "the Department of State," in the second sentence in the third paragraph in section 3;
- (k) inserting "the Secretary of Homeland Security," after "the Secretary of State," in the first sentence of the fifth paragraph of section 3;
- (l) striking "INS" in the first sentence of the sixth paragraph of section 3, and inserting "Department of Homeland Security" in lieu thereof;
- (m) striking "the Treasury" wherever it appears in section 4 and inserting "Homeland Security" in lieu thereof;
- (n) inserting ", the Secretary of Homeland Security," after "the Attorney General" in the first sentence in section 5; and
- (o) inserting ", Homeland Security" after "State" in the first sentence of section 6.

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

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

- (a) replacing the third sentence of the second paragraph entitled "Homeland Security Advisory System" with "Except in exigent circumstances, the Secretary of Homeland Security shall seek the views of the Attorney General, and any other federal agency heads the Secretary deems appropriate, including other members of the Homeland Security Council, on the Threat Condition to be assigned."
- (b) inserting "At the request of the Secretary of Homeland Security, the Department of Justice shall permit and facilitate the use of delivery systems administered or managed by the Department of Justice for the purposes of delivering threat information pursuant to the Homeland Security Advisory System." as a new paragraph after the fifth paragraph of the section entitled "Homeland Security Advisory System."
- (c) inserting ", the Secretary of Homeland Security" after "The Director of Central Intelligence" in the first sentence of the seventh paragraph of the section entitled "Homeland Security Advisory System".
- (d) striking "Attorney General" wherever it appears (except in the sentences referred to in subsections (a) and (c) above), and inserting "the Secretary of Homeland Security" in lieu thereof; and
- (e) striking the section entitled "Comment and Review Periods."

GEORGE W. BUSH

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

UPDATE: None

42 U.S.C. §5121, et seq. (2002)

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 5121. Congressional findings and declarations

(a) The Congress hereby finds and declares that--

- (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and
- (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by--

- (1) revising and broadening the scope of existing disaster relief programs;
- (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;
- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
- (6) providing Federal assistance programs for both public and private losses sustained in disasters
- (7) Repealed. Pub.L. 100-707, Title I, 103(a)(1), Nov. 23, 1988, 102 Stat. 4689

Section 5122. Definitions

(1) Emergency--"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) Major disaster--"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) Public facility--"Public facility" means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

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42 U.S.C. §5121, et seq. (2002)

- (C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.
- (D) Any park.

(9) Private nonprofit facility--"Private nonprofit facility" means private nonprofit educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.

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 5170a. General Federal Assistance

In any major disaster, the President may--

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for--
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks and hazards;
 - (C) public health and safety information, including dissemination of such information;
 - (D) provision of health and safety measures; and
 - (E) management, control, and reduction of immediate threats to public health and safety; and
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

Section 5170b. Essential Assistance

(a) In general

Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including--

- (A) debris removal;
- (B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water,

42 U.S.C. §5121, et seq. (2002)

medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act [42 U.S.C. 5170 et seq. or 5191 et seq.], the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title [42 U.S.C. 5173(b)], relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines

Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988 [enacted Nov. 23, 1988], the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.

(6) Definitions

For purposes of this section--

(A) Department of Defense. The term 'Department of Defense' has the meaning the term "department" has under section 101 of title 10, United States Code.

(B) Emergency work. The term "emergency work" includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

Section 5170c. Hazard Mitigation

(a) In General.

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5176 of this title and shall be subject to approval by the President. The total of contributions under this section for a major disaster shall not exceed 15 percent of the estimated

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aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance.--

(1) General authority.

In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions.

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if--

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that--

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than--

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Director approves in writing before the commencement of the construction of the structure;

and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program--

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in sub-clause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction

Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on December 3, 1993.

Section 5171. Federal facilities

(a) Repair, reconstruction, restoration or replacement of United States facilities

The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

Section 5172. Repair, restoration, and replacement of damaged facilities

(a) Contributions

The President may make contributions--

(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

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(2) to a person who owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of such facility and for associated expenses incurred by such person.

(b) Minimum Federal share

The Federal share of assistance under this section shall be not less than--

- (1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;
- (2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2) of this section; and
- (3) 75 percent of associated expenses described in subsections (f)(3), (f)(4), and (f)(5) of this section.

(c) Large in lieu contributions

(1) For public facilities

In any case where a State or local government determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by such State or local government, it may elect to receive, in lieu of a contribution under subsection (a)(1) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures which the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(2) For private nonprofit facilities

In any case where a person who owns or operates a private nonprofit facility determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing such facility, such person may elect to receive, in lieu of a contribution under subsection (a)(2) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected private nonprofit facilities owned or operated by such person, to construct new private nonprofit facilities to be owned or operated by such person, or to fund hazard mitigation measures which such person determines to be necessary to meet a need for its services and functions in the area affected by the major disaster.

3) Restriction on use for State or local contribution

Funds provided under this subsection shall not be used for any State or local government cost-sharing contribution required under this chapter.

(d) Flood insurance

(1) Reduction of Federal assistance

If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of reduction

The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of--

- (A) the value of such facility on the date of the flood damage or destruction, or
- (B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] on such date.

(3) Exception

Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information

The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

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(e) Net eligible cost

(1) General rule

For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

(2) Special rule

In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner's responsibility and not the contractor's responsibility.

(f) Associated expenses

For purposes of this section, associated expenses include the following:

(1) Necessary costs

Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:

(A) For an applicant whose net eligible costs equal less than \$100,000, 3 percent of such net eligible costs.

(B) For an applicant whose net eligible costs equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.

(C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess of \$1,000,000.

(D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such net eligible costs in excess of \$5,000,000.

(2) Extraordinary costs

Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under sections 5170b, 5170c, 5172, 5173, 5192 and 5193 of this title in such State in connection with the major disaster as follows:

(A) If such total amount is less than \$100,000, 3 percent of such total amount.

(B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.

(C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.

(D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 percent of such total amount in excess of \$5,000,000.

(3) Costs of National Guard

The costs of mobilizing and employing the National Guard for performance of eligible work.

(4) Costs of prison labor

The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.

(5) Other labor costs

Base and overtime wages for an applicant's employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

Section 5173. Debris removal

(a) Presidential authority

The President may make contributions--

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

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(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

Section 5174. Temporary housing assistance

(a) Provision of temporary housing

(1) In general

The President may--

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who, as a result of a major disaster, require temporary housing; and

(B) reimburse State and local governments in accordance with paragraph (4) for the cost of sites provided under paragraph (2).

(2) Mobile home site

(A) In general

Any mobile home or other readily fabricated dwelling provided under this section shall whenever possible be located on a site which--

(i) is provided by the State or local government; and

(ii) has utilities provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) Other sites

Mobile homes and other readily fabricated dwellings may be located on sites provided by the President if the President determines that such sites would be more economical or accessible than sites described in subparagraph (A).

(3) Period

Federal financial and operational assistance under this section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) Federal share

The Federal share of assistance under this section shall be 100 percent; except that the Federal share of assistance under this section for construction and site development costs (including installation of utilities) at a mobile home group site shall be 75 percent of the eligible cost of such assistance. The State or local government receiving assistance under this section shall pay any cost which is not paid for from the Federal share.

(b) Temporary mortgage and rental payments

The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of a foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months.

(c) In lieu expenditures

In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the

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purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition.

(d) Transfer of temporary housing

(1) Direct sale to occupants

Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) Transfers to states, local governments, and voluntary organizations

The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 308 [42 U.S.C. 5171] requiring nondiscrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) of this section and to the purposes of providing temporary housing for disaster victims in major disasters or emergencies.

(e) Notification

(1) In general

Each person who applies for assistance under this section shall be notified regarding the type and amount of any assistance for which such person qualifies. Whenever practicable, such notice shall be provided within 7 days after the date of submission of such application.

(2) Information

Notification under this subsection shall provide information regarding--

- (A) all forms of such assistance available;
- (B) any specific criteria which must be met to qualify for each type of assistance that is available;
- (C) any limitations which apply to each type of assistance; and
- (D) the address and telephone number of offices responsible for responding to--
 - (i) appeals of determinations of eligibility for assistance; and
 - (ii) requests for changes in the type or amount of assistance provided.

(f) Location

In providing assistance under this section, consideration shall be given to the location of and travel time to--

- (1) the applicant's home and place of business;
- (2) schools which the applicant or members of the applicant's family who reside with the applicant attend; and
- (3) crops or livestock which the applicant tends in the course of any involvement in farming which provides 25 percent or more of the applicant's annual income.

Section 5175. Repealed.

Pub.L. 100-707, Title I, 105(m)(2), Nov. 23, 1988, 102 Stat. 4696

Section 5176. Minimum standards for public and private structures

As a condition of any disaster loan or grant made under the provisions of this chapter, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of compliance with this section as may be required by regulation. As a further condition of any loan or grant made under the provisions of this chapter, the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed or approved by the President after adequate consultation with the appropriate elected officials of general purpose local governments, and the State shall furnish such evidence of compliance with this section as may be required by regulation.

Section 5177. Unemployment assistance

(a) Benefit assistance

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The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of Title 26) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment assistance

(1) State assistance

A State shall provide, without reimbursement from any funds provided under this chapter, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal assistance

The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

Section 5178. Individual and family grant programs

(a) In general

The President is authorized to make a grant to a State for the purpose of making grants to individuals or families adversely affected by a major disaster for meeting disaster-related necessary expenses or serious needs of such individuals or families in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this chapter or through other means.

(b) Cost sharing

(1) Federal share

The Federal share of a grant to an individual or a family under this section shall be equal to 75 percent of the actual cost incurred.

(2) State contribution

The Federal share of a grant under this section shall be paid only on condition that the remaining 25 percent of the cost is paid to an individual or family from funds made available by a State.

(c) Regulations

The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants under this section.

(d) Administrative expenses

A State may expend not to exceed 5 percent of any grant made by the President to it under subsection (a) of this section for expenses of administering grants to individuals and families under this section.

(e) Administration through Governor

The Governor of a State shall administer the grant program authorized by this section in the State.

(f) Limit on grants to individual

No individual or family shall receive grants under this section aggregating more than \$10,000 with respect to any single major disaster. Such \$10,000 limit shall annually be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Section 5179. Food coupons and distribution

(a) Persons eligible; terms and conditions

Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (Pub.L 91-671; 84 Stat. 2048) [7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of

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this chapter. (b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C.A. 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

Section 5180. Food commodities

(a) Emergency mass feeding

The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) Funds for purchase of food commodities

The Secretary of Agriculture shall utilize funds appropriated under section 612c of Title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

Section 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub.L 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

Section 5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

Section 5183. Crisis counseling assistance and training

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

Section 5184. Community disaster loans

(a) The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

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 5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

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

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<p>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.</p> <p>(b) Certain emergencies involving Federal primary responsibility</p> <p>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.</p> <p><i>Section 5192. Federal emergency assistance</i></p> <p>(a) Specified</p> <p>In any emergency, the President may--</p> <ol style="list-style-type: none"> (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe; (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments; (3) provide technical and advisory assistance to affected State and local governments for-- <ol style="list-style-type: none"> (A) the performance of essential community services; (B) issuance of warnings of risks or hazards; (C) public health and safety information, including dissemination of such information; (D) provision of health and safety measures; and (E) management, control, and reduction of immediate threats to public health and safety; (4) provide emergency assistance through Federal agencies; (5) remove debris in accordance with the terms and conditions of section 5173 of this title; (6) provide temporary housing assistance in accordance with section 5174 of this title; and (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance. <p>(b) General</p> <p>Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.</p>
UPDATE
Pub. L. 106-390, Disaster Mitigation Act of 2000
Sec. 104(c)(2). Repealed Section 5176
Pub. L. 108-7, Consolidated Appropriations Resolution 2003
Amended by sec. 417. New note added by sec. 419.
Pub. L. 107-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002
Amended by sec. 151.
Pub. L. 107-171, Farm Security and Rural Investment Act of 2002
Amended by sec. 10102.

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42 U.S.C. §9601-9675 (2002)

Comprehensive Environmental Response, Compensation, and Liability

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

Sec. 9605. National contingency plan

(a) Revision and republication

Within one hundred and eighty days after December 11, 1980, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 1321 of title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2) (FOOTNOTE 1) of title 33. Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(FOOTNOTE 1) See References in Text note below.

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this chapter

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after December 11, 1980, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefore and including consideration of minority firms in accordance with subsection (f) of this section; and

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this chapter.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 1321(c)(2)(F) and (G) and (j)(1) of title 33. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

42 U.S.C. §9601-9675 (2002)

(b) Revision of plan

Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 (October 17, 1986), the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) Hazard ranking system

(1) Revision

Not later than 18 months after October 17, 1986, and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after October 17, 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) Health assessment of water contamination risks

In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) Reevaluation not required

The President shall not be required to reevaluate, after October 17, 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) New information

Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this chapter.

(d) Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) of this section to determine the national priority of such release or threatened release.

(e) Releases from earlier sites

Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) Minority contractors

In awarding contracts under this chapter, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) Special study wastes

(1) Application

This subsection applies to facilities -

(A) which as of October 17, 1986, were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 6921(b) of this title are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) Considerations in adding facilities to NPL

Pending revision of the hazard ranking system under subsection (c) of this section, the President shall consider each of the following

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42 U.S.C. §9601-9675 (2002)

factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) Savings provisions

Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of October 17, 1986, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) Information gathering and analysis

Nothing in this chapter shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

(h) NPL deferral

(1) Deferral to State voluntary cleanups

At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that -

(A) the State, or another party under an agreement with order from the State, is conducting a response action at the eligible response site -

(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

(ii) that will provide long-term protection of human health and the environment; or

(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

(2) Progress toward cleanup

If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

(3) Cleanup agreements

With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on -

(A) the complexity of the site;

(B) substantial progress made in negotiations; and

(C) other appropriate factors, as determined by the President.

(4) Exceptions

The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that -

(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.

UPDATE: None

Pub. L. 107-296 (2002)

Homeland Security Act of 2002

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

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

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

(b) MISSION-

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

(A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States; (D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning; (E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; (F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and (G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

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

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(g) FUNCTIONS TRANSFERRED- In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of--

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include--

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)--

(A) establishing standards and certifying when those standards have been met;

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- (B) conducting joint and other exercises and training and evaluating performance; and
- (C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;
- (3) providing the Federal Government's response to terrorist attacks and major disasters, including--
 - (A) managing such response;
 - (B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;
 - (C) overseeing the Metropolitan Medical Response System; and
 - (D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;
- (4) aiding the recovery from terrorist attacks and major disasters;
- (5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;
- (6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and
- (7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

- (1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.
- (2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed "FIRESAT".
- (3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.
- (4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.
- (5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.
- (6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

- (a) IN GENERAL- The functions of the Federal Emergency Management Agency include the following:
 - (1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
 - (2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program--
 - (A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;
 - (B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
 - (C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;
 - (D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and
 - (E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.
- (b) FEDERAL RESPONSE PLAN-
 - (1) ROLE OF FEMA- Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order No. 12148 (44 Fed. Reg. 43239) and Executive Order No. 12656 (53 Fed. Reg. 47491).
 - (2) REVISION OF RESPONSE PLAN- Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

UPDATE: None

44 CFR Part 206 (2003)

Federal Disaster Assistance for Disasters Declared on or After November 23, 1988

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

Sec. 206.43 Emergency support teams.

The Federal Coordinating Officer may activate emergency support teams, composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the FCO in carrying out his/her responsibilities under the Stafford Act and these regulations. Any Federal agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with the FCO. Each detail shall be without loss of seniority, pay, or other employee status.

UPDATE: None

9230.1-PL (January 2003)

Federal Response Plan, "Interim"

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

Policies

A. Authorities

1. Under the Stafford Act, a Governor may request the President to declare a major disaster or an emergency if an event is beyond the combined response capabilities of the State and affected local governments. Based on the findings of a joint Federal- State-local Preliminary Damage Assessment (PDA) indicating the damages are of sufficient severity and magnitude to warrant assistance under the Act, the President may grant a major disaster or emergency declaration. (Note: In a particularly fast moving or clearly devastating disaster, the PDA process may be deferred until after the declaration.)

Terrorism Incident Annex

I. Introduction

Presidential Decision Directive (PDD)-39, U.S. Policy on Counterterrorism, establishes policy to reduce the Nation's vulnerability to terrorism, deter and respond to terrorism, and strengthen capabilities to detect, prevent, defeat, and manage the consequences of terrorist use of weapons of mass destruction (WMD). PDD-39 states that the United States will have the ability to respond rapidly and decisively to terrorism directed against Americans wherever it occurs, arrest or defeat the perpetrators using all appropriate instruments against the sponsoring organizations and governments, and provide recovery relief to victims, as permitted by law.

Responding to terrorism involves instruments that provide crisis management and consequence management. "Crisis management" refers to measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. The Federal Government exercises primary authority to prevent, preempt, and terminate threats or acts of terrorism and to apprehend and prosecute the perpetrators; State and local governments provide assistance as required. Crisis management is predominantly a law enforcement response. "Consequence management" refers to 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. State and local governments exercise primary authority to respond to the consequences of terrorism; the Federal Government provides assistance as required. Consequence management is generally a multifunction response coordinated by emergency management.

Based on the situation, a Federal crisis management response may be supported by technical operations, and by Federal consequence management, which may operate concurrently (see **Figure TI-1**). "Technical operations" include actions to identify, assess, dismantle, transfer, dispose of, or decontaminate personnel and property exposed to explosive ordnance or WMD.

UPDATE: None

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50 U.S.C. §2061, et seq. (2002)
War and National Defense
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
Sec. 2061. Short title This Act (sections 2061 to 2171 of this Appendix), divided into titles, may be cited as "the Defense Production Act of 1950".
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;
UPDATE: None

DoDD 3025.1 (15 January 1993)
Military Support to Civil Authorities
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
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.
UPDATE: None

DoD 3025.1-M (15 January 1993)
Manual for Civil Emergencies
<i>This document is included in its entirety on the Deskbook CD-ROM</i>
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).
UPDATE: None

40 CFR 300 (2002)
National Oil and Hazardous Substances Pollution Contingency (NCP)
<i>This document is included in its entirety in Appendix B on the Deskbook CD-ROM</i>
Sec. 300.1 Purpose and objectives. The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.
UPDATE: None

Federal Radiological Emergency Response Plan
FRERP
<i>This document is included in its entirety in Appendix B on the Deskbook CD-ROM</i>
SUMMARY: The Federal Emergency Management Agency gives notice of and publishes the Federal Radiological Emergency Response Plan (FRERP) as the operational plan for Federal agencies to discharge their responsibilities during peacetime radiological emergencies. The FRERP establishes an organized, integrated capability for participating Federal agencies to respond to a wide range of peacetime radiological emergencies. The Plan provides a concept of operations, outlines Federal policies and planning considerations, and specifies authorities and responsibilities of each Federal agency that has a significant role in such emergencies. The FRERP is now fully operational for use in the Federal response to radiological emergencies. EFFECTIVE DATE: May 8, 1996.
UPDATE: None

United States Government Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN) (January 2001)
<i>This document is included in its entirety in Appendix B on the Deskbook CD-ROM</i>
A. Introduction
The ability of the United States Government to prevent, deter, defeat and respond decisively to terrorist attacks against our citizens, whether these attacks occur domestically, in international waters or airspace, or on foreign soil, is one of the most challenging priorities facing our nation today. The United States regards all such terrorism as a potential threat to national security, as well as a violent criminal act, and will apply all appropriate means to combat this danger. In doing so, the United States vigorously pursues efforts to deter and preempt these crimes and to apprehend and prosecute directly, or assist other governments in prosecuting, individuals who perpetrate or plan such terrorist attacks.
UPDATE: None

Initial National Response Plan
<i>This document is included in its entirety in Appendix B on the Deskbook CD-ROM</i>
I. Purpose
A. This document implements, on an interim basis, the domestic incident management authorities, roles, and responsibilities of the Secretary of Homeland Security as defined in Homeland Security Presidential Directive-5 (HSPD-5), <i>Management of Domestic Incidents</i> . This document also provides interim guidance on Federal coordinating structures and processes for domestic incident management pending the development, coordination, validation, and implementation of a full National Response Plan (NRP) and National Incident Management System (NIMS), as required by HSPD-5. It is applicable to domestic incident management in the context of terrorist attacks, major disasters, and other emergencies.
UPDATE: None

National Incident Management System (NIMS)
The draft National Incident Management System (NIMS) was not available as of this Deskbook's publication date.
UPDATE: None