

**History of FEMA Responsibility for Response to  
Technological (Manmade) Emergencies**

**A. 1979-1988.**

March 30, 1979, began the incident at Three-Mile Island nuclear power station, a NRC licensee. FEMA, created under Reorganization Plan No. 3 of 1978, opened its doors as an independent agency on April 1, 1979, pursuant to E.O. 12127. That Executive order transferred several statutory functions vested in the President and previously delegated to other departments to FEMA. E.O. 12148 [Extract at Appendix A] issued July 20, 1979, completed Reorganization No. 3 by transferring Presidential authority vested in the predecessor departments and agencies (DOD, HUD, GSA) to FEMA.

In an MOU with NRC (45 Fed. Reg. 82713) [Full text at Appendix B] effective November 3, 1980, FEMA committed to a joint preparedness and response effort. Although the issuance of the FRERP (federal Radiological Emergency Response Plan) in 1985 pursuant to E.O. 12241 issued September 29, 1980 encompassed most of the MOU, that MOU has not been revoked or superseded.

On January 27, 1981, FEMA also entered into an MOU with the Department of Defense and the Department of Energy for response to Nuclear Weapon Accidents and Nuclear Weapon significant incidents. DOD and DOE are currently updating this MOU. [MOU full text at Appendix C]

Significantly, President Jimmy Carter issued several emergency declarations and ultimately declared a disaster in the Love Canal area in upstate New York near Niagara Falls. President Ronald Reagan's first Presidential disaster declaration was for Hexane spilled into the sewers of Louisville, Kentucky, which then exploded. These two events eroded the FEMA position that the Disaster Relief Act of 1974 (Public Law 93-288) had no applicability to man-made or technological hazards.

The *National Oil and Hazardous Substances Pollution Contingency Plan* (hereinafter "NCP") was originally issued with FEMA concurrence pursuant to E.O. 12316, August 14, 1981, revoked by E.O. 12580, January 23, 1987. That latter Executive order remains in effect. It has been substantially amended by E.O. 12777, October 18, 1991 and E.O. 13016, August 1996.



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From 1981 to 1994, FEMA chaired the Preparedness and Training Committees of the National Response Team (NRT) for the Departments and agencies responsible for the NCP. FEMA continues to be assigned to the NRT by the specific language of E.O. 12580, as amended. From 1981 to 1990, FEMA was also responsible for the temporary and permanent relocation of citizens affected by hazardous materials releases after the initial evacuation based on a cross-delegation from EPA, now revoked. Implementation of the activity has been returned to EPA, although the revised Executive order as currently amended has not been corrected to reflect this transfer.

#### **B. 1988-1992.**

This period marks a transition period for FEMA from earlier approaches to technological emergency management. First, signature by Edwin Meese II, Attorney General, as Chair of the Domestic Policy Council of the January 19, 1988 Memorandum subject, *National System for Emergency Coordination (NSEC)* [Full text at Appendix D] assigned lead roles for the departments and agencies. FEMA for example was the lead for natural disasters and the Department of Justice for terrorism.

Second, a memorandum dated January 24, 1991, was signed by the Director of FEMA subject, *FEMA's Emergency Response Readiness* [Full text at Appendix E] adopting for FEMA the Federal Response Plan (hereinafter FRP) as the single plan by which officials and employees of FEMA through administration of FEMA's programs provide direct and indirect financial and technical assistance to State and local governments and their citizens or other eligible applicants. This plan for response and recovery provides a system of federal humanitarian relief whether or not there is a declared Presidential disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. §5121 *et seq.* (signed into law November 23, 1988 and hereinafter the "Robert T. Stafford Act" or the "Act"). Whenever a Presidential emergency or disaster declaration is involved other Department and agencies mission assigned response and recovery can be funded from the President's disaster relief fund. Otherwise, the departments and agencies must rely on their own appropriated funds and budget execution authority, e.g. the Small Business Administration.

Two events had occurred during the last quarter of FY 88 that affected FEMA's perception of its own role in technological emergencies. First, on August 3, 1988, the Director of FEMA and the Department of the Army signed an unfunded Memorandum of Understanding, subject, *Chemical Stockpile Disposal Program*, with that MOU now superseded by a new MOU signed October 8, 1997, subject *Chemical Stockpile Emergency Preparedness Program (CSEPP)* (Full text at Appendix F]. Second, based upon a two-year effort to resolve internal conflicts, on September 14, 1988, a memorandum was signed by the Associate Directors for SLPS and NP, and approved by the



Director, subject, *FEMA's Role in Technological Emergencies* [Full text Appendix G]. These two 1988 documents were not coordinated with each other. The latter memorandum incorporated the Meese Memorandum as FEMA policy.

Departments and agencies that had already adopted their own versions of incident command systems, including DOT, DOJ, DOE, EPA, and NRC, used the January 19, 1988 Meese memorandum to support their concept of "lead agency" in emergency planning and preparedness for which they were responsible by law or Executive order. These agencies still are the lead technical agencies for the incident command portion of various plans. None of these departments and agencies has legal authority or budget execution authority for humanitarian assistance, e.g. mass care, mass shelter, mass evacuation, mass feeding, and or mass medical care. The exclusive authority for direct or indirect financial assistance to the State and local governments, and the citizens of the United States for such assistance, with minor exceptions, remains the Robert T. Stafford Act. This Act also provides authority for DOD to assist in humanitarian relief, even prior to a disaster declaration.

Shortly after the approval of *FEMA's Role in Technological Emergencies*, two Presidential actions and one Congressional action affected FEMA's understanding of its role in technological emergencies. (For the purposes of this paper it should be understood that the reference to technological emergencies encompasses those events that could or do lead to Presidential disaster declarations, noting that the Robert T. Stafford Act limits, unless a cause specifically listed, the declaration of disasters to events involving fire, flood, or explosion regardless of cause (all undefined by the Act)). The two Presidential actions were the signature on November 18, 1988, of Executive orders 12656 and 12657. The first of these is addressed in a separate background paper discussing National Security Emergencies.

Executive order 12657, *Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants* directed FEMA to ensure adequate off-site planning when State and local governments decline or fail to adequately plan or prepare or respond to a nuclear power plant accident. The Congressional action was the transmittal to the President and his signature of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 101-107) on November 23, 1988.

As of date of the signing into law of the Robert T. Stafford Act, FEMA still was uncertain as to its role in technological emergencies. In March 1989, the EXXON VALDEZ release occurred. White House and Congressional entreaties for FEMA to become involved were rejected by FEMA Headquarters based on lack of legal authority for providing assistance under the Robert T. Stafford Act and the legal concern that disaster relief expenditures could not be recovered



should the Department of Justice file a civil or criminal recovery action for monetary damages against Exxon. The Senate Appropriations Committee members requested and received an opinion for the record concerning this declination. [See Appendix H]. The litigation surrounding the federal cases involving EXXON VALDEZ discovery and FOIA requests to FEMA resulted in documentation being recovered with respect to FEMA's NRT and RRT roles under E.O. 12580. It should be noted that under the language of the Disaster Relief Act of 1974 (Public Law 93-288) FEMA OGC and the Department of Justice recovered disaster moneys for the outlays at Love Canal (1979-83) against Occidental Petroleum and others and against Ralston Purina for a hexane gas explosion in the sewers of Louisville, Ky., in 1981. In enactment of the Stafford Act, Congress has allowed recovery against persons causing or aggravating the disaster but only when gross negligence (undefined) caused or aggravated the emergency or disaster.

## **B. Federal Response Plans 1988-1992**

FEMA's role in the plans discussed below does NOT include the technical aspects of hazard identification and assessment for chemical, biological, or radiological accidents or events, and FEMA DOES NOT stockpile or provide protective equipment or for monitoring or decontamination of affected populations and property (note, however, that FEMA's RADEF program did provide monitoring devices for radiological incidents to the States but that program has been terminated, and the FEMA's status as an NRC licensee for the program terminated). FEMA also does not make protective action decisions on evacuation or re-entry from or to contaminated areas. These functions are the specific responsibility by law of the DOE, NRC, EPA, HHS, and DOA, and NRC.

### **1. National Oil and Hazardous Substances Pollution Contingency Plan.**

The National Oil and Hazardous Substances Pollution Contingency Plan (hereinafter "NCP") was originally issued pursuant to E.O. 12316, August 14, 1981, revoked by E.O. 12580, January 23, 1987. That latter Executive order remains in effect although it has been substantially amended by E.O. 12777, October 18, 1991 and E.O. 13016, August 1996. From 1981 to 1994, FEMA chaired the Preparedness and Training Committees of the National Response Team (NRT) for the Departments and agencies responsible for the NCP. FEMA continues to be assigned to the NRT and RRTs by the specific language of Section 1 of E.O. 12580, as amended, and has a role in remedial actions under Section 9. From 1981 to 1990, FEMA was also responsible for the temporary and permanent relocation of citizens affected by any hazardous materials release after the initial evacuation. Implementation of the activity has been returned to EPA, although the amended E.O. 12580 has not been corrected to reflect this transfer.



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FEMA has been a signatory to the National Oil and Hazardous Substances Pollution Contingency Plan (hereinafter "NCP") since its adoption in 1983. In November 1990, the Hazardous Materials Transportation Uniform Safety Act was signed into law mandating a comprehensive update of that plan. The original plan published at 40 CFR Part 300 blurred the distinction between incident command and consequences management. The plan was substantially clarified by the revision published in September 1994. It should be noted that EPA and the U.S. Coast Guard are the incident command leadership agencies under this plan depending on whether the hazardous material is released on land or water.

Additional confusion occurred when EPA in 1990 published a document entitled *Response Capabilities for a Chemical/Biological Incident* that references the Meese document but failed to mention or be integrated with 40 CFR Part 300. EPA now informally states that document is overtaken by the updated 40 CFR Part 300. It may, however, retain some value as a guide to EPA's own incident command role. No notice of its availability or rescission was ever published in the Federal Register. Nor was it coordinated or officially provided to other federal departments and agencies. The FBI has also published a law enforcement incident command document for chemical and biological emergencies and crisis response. FEMA was urged to improve planning in this area by a Joint Resolution of Congress signed into law in November 1993. [See Appendix I]

Planned or unplanned releases of hazardous materials that exceed the regulatory or designated technical design specifications for the manufacture, transport, or utilization of hazardous materials may require federal involvement in responding to and recovering from the effects of the release. The NCP is the federal plan for such releases and is published in the Code of Federal Regulations (CFR) at 40 CFR Part 300. The lead agency for incident command, known as the On Scene Commander (OSC) under the plan, for releases on land is EPA. The lead agency for releases on water is the United States Coast Guard of the Department of Transportation. The plan was last extensively revised in September 1994, as mandated by the Hazardous Materials Transportation Uniform Safety Act of 1990, that amended the Hazardous Materials Transportation Act, both codified at 49 U.S.C. §1801 *et seq.* These statutes were recodified as part of the recodification of title 49 of the United States Code and now appear at 49 U.S.C. §5101 *et seq.* FEMA is referenced in these codified statutes.

E.O. 12316 was issued pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9651 *et seq.*, as further amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Emergency Planning and Community Right to Know Act of 1986 (EPCRA) [Also was known as "SARA

Title III"], 42 U.S.C. §11001 *et seq.* is a closely related authority. FEMA is not mentioned in CERCLA. FEMA is mentioned in EPCRA at 42 United States Code §11005(a).

The NCP specifies the incident command procedures for a hazardous materials release. The plan leaves to FEMA the humanitarian and financial assistance response and recovery consequence management, since the premise of the plan is technical response, including decontamination and monitoring, or safe re-entry procedures for decontaminated areas. There is no direct funding under CERCLA or SARA or the transportation legal authorities for humanitarian relief i.e. mass care, mass shelter, mass feeding, and mass medical. Neither EPA nor the Coast Guard or DOT has budget execution authority for this kind of emergency response. The FRP also adopts "Incident Command" as a tool. [See Appendix J]

## **2. Federal Radiological Emergency Response Plan.**

The Federal Radiological Emergency Response Plan (FRERP) is the name of the plan published in response to the direct Presidential assignment to FEMA by E.O. 12241, National Contingency Plan, September 29, 1980. The FRERP was originally published at 50 Fed. Reg. 46542 on November 8, 1985, and republished as a notice on May 8, 1996 at 61 Fed. Reg. 20944-70 but has never been codified in the CFR (note that a correction was published on June 5, 1996 at 61 Fed. Reg. 28583-84.)

Additional radiological planning and preparedness responsibilities were assigned to FEMA on November 18, 1988, by E.O. 12657, *Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants*. That Executive order in section 5(a) amends the FRERP. While originally intended to set out the roles of the federal departments and agencies where there is the threat or an actual release of radionuclides that affects the public from fixed nuclear power plants, the FRERP is not the technical response plan for any event that might impact the public from radiological releases by NRC licensees because NRC uses the NCP for non-power plant licensees.

Under E.O.'s 12241 and 12657, FEMA has off-site responsibilities for the consequences of accidents at Nuclear Regulatory Commission (NRC) licensed fixed nuclear power plants, while the NRC has on-site responsibilities together with the facility owner for all its regulated facilities. The Meese Memorandum (NSEC) [Appendix D] also assigned NRC the on-site lead for nuclear power plants, although because of the wording FEMA initially argued that NSEC eliminated FEMA's FRERP role. See NRC letter dated January 13, 1989 [Appendix K] and DOE letter dated December 20, 1988, [Appendix L].

Additionally, the Department of Defense and the Department of Energy have responsibility for their nuclear materials sites including reactors and processing facilities, such as weapon plants and storage depots. This assignment also stems from the NSEC paper. NRC regulations at 10 CFR Part 50 and FEMA regulations at 44 CFR Part 350-354 reflect the relationship between NRC and FEMA. Weapons accidents are covered by the 1981 MOU [Appendix C].

FEMA coordinates its radiological role through the Federal Radiological Preparedness Coordinating Committee (FRPCC) and the NRC/FEMA Steering Committee described respectively at 44 CFR Part 351 and 56 Fed. Reg. 9459 (March 6, 1991) and publishes and distributes appropriate guidance and technical materials with NRC concurrence. The FRPCC is also mentioned in the Hazardous Materials Transportation Authorization Act of 1994, at 49 U.S.C. §5101. It should be noted that NRC uses the Hazmats NCP to respond to NRC licensees that are not fixed nuclear power stations. Support for these response activities are (perhaps erroneously) housed in FEMA's Preparedness, Training, and Exercises Directorate.

### **3. National Plan for Telecommunications Support In Non-Wartime Emergencies**

With respect to emergency telecommunication functions and related activities, FEMA responsibilities and authorities for civil emergencies are described in regulations published by the National Security Council and the Office of Science and Technology Policy (both organizations are part of the Executive Office of the President) at 47 CFR Part 201 *et seq.* pursuant to E.O. 12472, *Assignment of national security and emergency preparedness telecommunications functions*, April 3, 1984. These regulations are controlling on FEMA programs, functions, and activities. Those regulations refer to the *National Plan for Telecommunications Support in Non-Wartime Emergencies*. The plan itself has never been published in the Federal Register. A related system concerning service restoration issues is the Telecommunication Service Priorities System (TSP) discussed in 47 CFR Part 64.

FEMA provides coordination and program assistance to facilitate operations of the incident command lead and support departments and agencies under the NCP and FRERP. The listed point of contact in the NCP within FEMA for the NCP and in the FRERP is FEMA's Preparedness, Training, and Exercises Directorate. The lead for the National Plan for Telecommunications Support in Non-Wartime Emergencies is FEMA's Information Technology Services Directorate as a successor to the contact listed in 44 CFR Part 2, which has not yet been updated to reflect the establishment of the ITS Directorate.



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**For a comprehensive review of the statutory assignments of the federal departments and agencies in technological emergency response obtain a copy of *A Review of Federal Authorities for Hazardous Materials Accident Safety*, December 1993, EPA 550-R-93-002, from EPA.**

### **C. 1992-1997**

**FEMA has extensive programs of training, exercising, and information-sharing that are utilized to support the emergency management operations of other federal departments and agencies, State, and local governments, and private and voluntary organizations to support the emergency capability of those units. FEMA, both by statutory assignment and Presidential delegation has the overall federal responsibility to assist in achieving coordinated, efficient and effective planning, preparedness, mitigation, response and recovery activities, including integration of national security assets where necessary and appropriate to enhance the response and recovery activities of civil authorities.**

**FEMA has expertise in generic functions of emergency planning, preparedness, mitigation, response and recovery operations for the consequences of events that are defined as civil emergencies pursuant to E.O.12148, §2-203, and Title VI of the Robert T. Stafford Act, 42 U.S.C. §5195 *et seq.* Technological emergencies that may seriously degrade or threaten the national security of the United States may trigger national security plans or deployment of national security assets planned for under E.O. 12656, §101, and authorized under other authority. E.O. 12656 was issued pursuant to the President's authority under the National Security Act of 1947, as amended, 50 U.S.C. §§404-405, the Federal Civil Defense Act of 1950 (repealed in November 1994 by Pub. L. 103-337) and the Defense Production Act of 1950, as amended.**

#### **1. Federal Response Plan**

**The FRP was officially issued in May 1992. The next comprehensive revision is scheduled for spring 1998. It has evolved into an all-hazard document from the Plan for a Federal Response for Natural Disasters which in turn had evolved from the Plan for a Federal Response to a Catastrophic Earthquake issued in 1987 pursuant to the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. §7701 *et seq.*) It was silent as to its relationship to other federal emergency plans even though 26 other Federal departments and agencies had signed it. The FRP also lacks a law enforcement functional group or annex unlike the predecessor earthquake plan. This was at the request of the Department of Justice. There is a published Terrorism Annex to the FRP. A mass immigration emergency annex has not been finalized and is now the subject of a draft MOU between INS and FEMA.**



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The new Director of FEMA, recognizing that the language of Executive order 12148, *Federal Emergency management* [Extract is Appendix M], in sections 2-101, 2-102, 2-103, 2-104, and 2-201, can be construed as assigning the Director of FEMA responsibilities in technological emergencies, together with the specific assignment in E.O.'s 12241, 12580, and 12657, mandated on September 5, 1993 [Appendix k] that administrative procedures be adopted to eliminate confusion between the FRP and the Federal Radiological Emergency Response Plan (FRERP) mandated by E.O. 12241. This has not been completed as of December 1997.

If there is a Presidential declaration of an emergency or disaster pursuant to the Robert T. Stafford Act, then FEMA can provide humanitarian assistance in responding to or recovering from the consequences of the planned (this means an emergency but intentional release beyond design or regulatory limits that may impact or does impact the public) or accidental release, and the President will designate a federal coordinating officer (FCO). The FCO ensures that the appropriate financial and non-financial assistance is provided to the incident command under the NCP and FRERP. Other coordinated operational mission assignments carried out in accordance with the Federal Response Plan (FRP) can be utilized to assist in the response and recovery from the event, particularly with respect to mass shelter, mass care, mass feeding, or mass medical arrangements during the response. The objective is to facilitate the incident command role of the lead technical or law enforcement agency, and in particular to facilitate assistance to the affected population.

While the Director of FEMA mandated integration of the FRP and FRERP in a decision document dated September 5, 1993 [Appendix M] internal FEMA documentation reveals little progress. It should be noted also that in failing to resolve issues such as the interplay between the Price-Anderson Act and the Robert T. Stafford Act, confusion still exists as to post-accident, post-declaration payments to citizens. See for example the conflict in stated FEMA positions on the use of the Robert T. Stafford Act (pre-enactment of present Title VI) in NUREG 1457, *Resources Available for Nuclear Power Plant Emergencies Under the Price-Anderson Act and the Robert T. Stafford Disaster Relief and Emergency Assistance Act*, dated July 1992, issued by NRC (stating the Act may be used citing Title V of the Act), and the Report of the President's Commission on Catastrophic Nuclear Accidents (pursuant to E.O. 12658) (stating the Act has no applicability to such an event). See also NRC correspondence dated March 25, 1992 [Appendix N].

## **2. FEMA Organization**

In November 1993, FEMA underwent a comprehensive reorganization. One year later the ITS Directorate was formed in a further realignment. New delegations were published in May 1994 with several interesting assignments and omissions. First, the Robert T. Stafford Act was delegated to the new



**Response and Recovery Directorate for day-to-day administration. Second, all training, including hazardous materials issues, except for the programs of the United States Fire Administration was delegated to the new Preparedness, Training and Exercises Directorate.**

**The administration of the FEMA response role in the FRERP was also delegated to the PTE Directorate but the Response and Recovery Directorate coordinated the May 1996 republication of the FRERP and was listed as point of contact in the Federal Register. The former SLPS Directorate had chaired both the Preparedness and Training Committees of the National Response Team, established by E.O. 12580, but with the amendment of that Executive order by E.O. 12777, and updating of the NCP, those organizations were placed under the Chair of the U.S. Coast Guard. While E.O. 12580, as amended, still reflects a relocation and NRT role for FEMA, the reference to the relocation role is obsolete since on October 31, 1990, that role, except for certain limited windup projects, reverted to EPA and EPA now utilizes the U.S. Army Corps of Engineers for that activity.**

**In September 1994, the National Contingency Plan was republished at 40 CFR Part 300 clarifying the incident command leadership role of the EPA and the Coast Guard vis-à-vis the consequence management lead role for FEMA. Interestingly, both providing the official comment on the revision [See Appendix O] and listed operational point of contact was and is the Associate Director for PTE.**

**On January 31, 1995 [See Appendix I], in Director's Policy Statement No. 1-95, the January 24, 1991 adoption of the FRP by the Director [Appendix E], the position was restated with the important clarification that the principles of the Incident Command System should be utilized in all of FEMA's response efforts. FEMA's Urban Search and Rescue plans and CSEPP already recognize this principle. The NCP for Hazardous Materials (40 CFR Part 300) and the FRERP since its inception also recognizes this principle, as did the Meese Memorandum [Appendix D] discussed previously.**

**The Response and Recovery Directorate continues to have significant factions that argue against disaster declarations, but not emergency declarations, for man-made events (either planned or accidental) which is a factor necessarily affecting operational response for both the consequences of terrorism events and technological events. The Robert T. Stafford Act clearly states that regardless of cause events surrounding a fire, flood, or explosion (terms undefined) may become a declared Presidential disaster. Opposition to declaration of emergencies, and using those declarations to roll into Disaster Declarations has diminished as both a practical and legal matter since the Oklahoma Bombing.**

**A relatively comprehensive Office of General Counsel opinion issued February 21, 1991, subject *Application of Section 501(b) of the Stafford Act*, addressed the issues raised by the language of the Act "under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority." See GCM 91-2-21. [Appendix P] Since the date of that memorandum, it has also been made clear by President Clinton's issuance of PDD-39 [House Document 105-29] that any terrorist event or threat or use of weapons of mass destruction (WMD) will be considered automatically to involve the Federal government's "preeminent responsibility and authority."**

**In GCM-96-11-21 [Appendix Q] the General Counsel of FEMA concluded that the Attorney General should be included on decisions to use the Stafford Act emergency authority with respect to findings as to areas of Federal preeminent responsibility and authority. Again witness the events surrounding the Oklahoma City Bombing that involved a GSA owned structure. As of this date the hazardous materials incident annex to the FRP is not complete. The Terrorism Annex has been adopted and issued to all FRP signatories.**

**Finally, the Associate Director signed a new FEMA/Department of Army MOU for Preparedness, Training, and Exercises for CSEEP on October 8, 1997. [Appendix F] FEMA cited as its authority E.O. 12148 and EPCRA (Emergency Planning and Community Right to Know Act of 1986). FEMA also cited §611 of the Stafford Act. The Army cited §1412 of Public Law 99-145 (which also mentions FEMA as an optional funding organization for State and local governments with reimbursement by the Army) and Public Law 104-201 (DOD Authorization Act for FY 96) for Integrated Product and Process Teams (IPTs) under the program. Additionally, the Army cites E.O. 12580 (which also mentions FEMA in §1,2 and 9). It should be noted that DOD is specifically mentioned in the Stafford Act for pre-declaration assistance. DOD has no implementing regulations, but see 32 CFR Part 501-502.**



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## **APPENDIX A**

### **FULL TEXT OF SECTION 2 OF EXECUTIVE ORDER 12148**

**Note-The extract from §2 of E.O. 12148 set forth below  
has not been amended since the E.O. was issued on July 20, 1979**

#### **Section 2. Management of Emergency Planning and Assistance**

##### **2-1. General.**


**2-101. The Director of the Federal Emergency Management Agency shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.**

**2-102. The Director shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Director shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.**

**2-103. The Director shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.**

**2-104. The Director shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.**

**2-105. The Director shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Federal Emergency Management Agency. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.**

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## **2-2. Implementation.**

**2-201. In executing the functions under this Order, the Director shall develop policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:**

**(a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;**

**(b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and**

**(c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.**

**2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.**

**2-203. For purposes of this Order, "civil emergency" means accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.**

**2-204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Director of the Federal Emergency Management Agency shall be subject to oversight by the Secretary of Defense and the National Security Council.**

**2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Director of the Federal Emergency Management Agency with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.**

**2-206. All Executive agencies shall cooperate with and assist the Director in the performance of his functions.**



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**[The emphasis in the above extract is supplied and is not in the original. Note the transition provisions of 2-301 and 2-302 as well as the entire remaining provisions of E.O.12148 are no longer of legal importance due to intervening legal developments including the enactment of legislation and signature of later Executive Orders. The only other current legal effect of E.O.12148 is to provide a Presidential delegation of those Titles (all Titles other than VI) by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the Earthquake Hazards Reduction Act of 1977 as amended. The Executive order is also the only specific reference to the consequences of terrorism role. Executive orders amending other sections of E.O.12148 were E.O.'s 12155,12156,12319,12356,12379,12381, 12673]**

**END Appendix A**



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## MEMORANDA OF UNDERSTANDING

and NRC can provide to each other in carrying out responsibilities for the health and safety of the public.

### III. Authorities and Responsibilities

FEMA was established by Reorganization Plan No. 3 of 1978 and placed into effect by Executive Orders 12127 of March 31, 1979 (44 FR 19327) and 12148 of July 23, 1979 (44 FR 43238) in order to create a single point of management for the emergency planning and response activities of the Federal Government.

Executive Order 12148 charges the Director, FEMA, with establishing policy for and coordinating all civil emergency planning and assistance functions for Executive agencies (section 2-101). It also provides that civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies (section 2-202).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the accident at Three Mile Island, directed that FEMA assume lead responsibilities for all off-site nuclear emergency planning and response.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, the NRC has the authority and responsibility for licensing and regulating, among others, nuclear power reactors in order to protect the health and safety of the public from radiation hazards. To meet its statutory responsibility for protecting the public health and safety from radiation hazards, the NRC will respond promptly and effectively to radiological emergencies.

### IV. Agency Roles

The NRC and FEMA officials will work in tandem both on- and off-site. NRC will have the lead on-site, and in matters relating to assessment of hazards and recommendations for protective actions. FEMA will have the lead in the off-site Federal response role. These roles are complementary and require constant communications and mutual support. Such a cooperative structure will extend to the NRC and FEMA relations with State and local officials. Based on each agency's specific authority, responsibilities and the public's needs in an emergency situation, the roles of each agency in a radiological emergency are complementary and enumerated as follows:

A. NRC—NRC will maintain a readiness to function in a variety of roles. Within each of these roles, a spectrum of actions can be accomplished.

1. *Notification.* NRC will notify FEMA, as quickly as possible/whenever a radiological emergency occurs or whenever there is a high potential for such an occurrence.

2. *Monitor the Incident.* NRC will verify and evaluate data from multiple sources to assure that appropriate operational measures are being taken, and assure that adequate information and recommendations are being provided to off-site agencies so that appropriate protective actions may be taken. NRC will also monitor these protective actions.

3. *Advise Other Government Entities.* Provide technical assessment of on-site radiological conditions and of the physical condition of the facility to the appropriate State and local government officials as well as to FEMA and other Federal agencies.

Advise FEMA of any NRC or licensee recommendations for off-site protective actions. Work with FEMA representatives to establish a cooperative relationship with State and local officials including the Governors of the affected States.

Advise FEMA, State, local and other Federal government officials of any operational decisions or actions being taken by the licensee or the NRC which may affect the off-site protective actions.

NRC should prepare appropriate recommendations for protective actions, for State and local officials, including the governors and local chief executives. Such recommendations should reflect all substantive dissenting views from other Federal agencies and should be presented jointly with FEMA. Direct contact is expected if imminent peril to the public health and safety exists and time does not permit a coordinated recommendation.

4. *Disseminate Technical Information.* In coordination with licensee, NRC will provide technical information regarding the radiological conditions on-site and around the nuclear facility and regarding the physical condition of the facility to the White House, FEMA, other Federal agencies, Congress, news media and general public. The NRC will also provide specific technical assessments to FEMA for its use in coordinating off-site response activities.

B. FEMA—FEMA will have the following roles in coordinating the Federal response and in support of NRC in its technical mission during a radiological emergency.

1. *Notification.* Receive emergency notification from NRC that a radiological incident has occurred.

2. *Monitor.* Receive the technical advisories of the NRC regarding the radiological conditions at and around the affected site and the physical

## Memorandum of Understanding Between the Federal Emergency Management Agency and the Nuclear Regulatory Commission for Incident Response

### I. Introduction

This Memorandum of Understanding (MOU) is in recognition of the need expressed by the President's Commission on the Accident at Three Mile Island that Federal emergency support in any future accidents at nuclear power plants be better coordinated. It was also agreed in the January 16, 1980, MOU between Nuclear Regulatory Commission (NRC) and Federal Emergency Management Agency (FEMA) on the subject of prompt improvement in radiological emergency planning and preparedness, that a separate MOU would be negotiated covering NRC/FEMA cooperation and responsibilities in response to an actual emergency.

### II. Purpose

This Memorandum of Understanding is to define the relationships between FEMA and NRC in connection with response to a potential or actual radiological emergency. The MOU focuses on the assistance that FEMA

## MEMORANDA OF UNDERSTANDING

conditions of a facility. Keep other Federal organizations with support roles advised of the situation.

3. *Advise.* Keep the Governor and his appointed representative as well as local Government officials informed of the status of Federal assistance being provided and that is available.

4. *Coordination and Support.* Provide and coordinate Federal response to assist NRC in carrying out its technical role. Coordinate response with State and local officials in connection with potential response activities associated with radiological emergencies. Coordinate Federal support to assist State and local officials when a decision is made to take protective action.

5. *Dissemination of Information.* FEMA will be responsible for the dissemination of information concerning offsite support activities to the White House, other Federal agencies, Congress, news media, and general public.

### V. Emergency Response

A. *Criteria for Notification.* NRC will notify FEMA whenever a radiological emergency occurs or there is a high potential for such occurrence; i.e. whenever the NRC makes a decision to activate the Executive Management Team (EMT). FEMA will notify NRC if it becomes aware of an occurrence through the activity of its Operations Center.

B. *Exchange of Personnel During an Emergency.* As early as possible upon activation of the NRC Operations Center, NRC will consult with FEMA to determine whether each agency should have a representative stationed at the other's Operations Center.

#### C. Communications.

1. NRC and FEMA recognize the need for mutual communications support and interface capability, particularly in the areas of emergency notification and response coordination. The two agencies agree to periodically evaluate their respective communications capabilities to maintain compatibility for effective and efficient communications at national, regional and local deployment levels. Communications liaison between the agencies will continue to identify interface/mutual support communications opportunities, to develop appropriate procedures for implementation of agreed-on courses of action, and will develop interagency emergency communications operational procedures.

2. FEMA authorizes NRC to enter the Civil Defense National Radio System (CDNARS) for relaying emergency information. NRC will notify the FEMA Operations Center (DR&R) when it needs to enter the CDNARS network. The FEMA Regional Center responsible

for the geographical area in which NRC desires to operate will exercise net control functions. The primary transmission method will be by voice. NRC will reimburse FEMA for additional personnel costs incurred in the provision of NRC-requested service.

NRC will acquire, at its own expense, equipment compatible with CDNARS.

3. FEMA agrees in the event of a nuclear incident, to permit NRC and all licensed fixed nuclear facilities access to the National Warning System (NAWAS), and any other warning networks which FEMA currently has available or may develop in the future. Specific details and justification for the needed access will be provided to FEMA by NRC. The use of NAWAS will be subject to FEMA criteria. FEMA will not be liable for additional costs involved.

D. *Participation in Exercises.* FEMA and NRC will participate, in periodic exercises. Such exercises may involve FEMA/NRC Headquarters and/or Regional offices, licensees and State and local government participation. Each agency will fund its participation in these exercises. If any significant costs are anticipated, discussions concerning each agency's participation will be held at least 30 days before such an exercise. FEMA and NRC will also participate in periodic communication checks.

E. *Off-Site Collocation.* The NRC Director of site operations will be located at the near-site emergency operations facility designated by a licensee. FEMA will assign at least one representative to this location to assure that FEMA and NRC activities are coordinated and that there is an effective information exchange.

### VI. Public Affairs

NRC and FEMA agree that, where practicable, public announcements by the two agencies on emergencies will be coordinated. NRC announcements and public statements will deal with radiological conditions on-site and around the nuclear facility and the physical condition of the facility. Public statements by FEMA will deal with information concerning off-site response activities. Both agencies agree to work closely with the Governor's office in issuing public statements.

### VII. Terms of Agreement

A. This Memorandum of Understanding shall take effect when signed by both parties and shall endure until terminated by one of the parties. Participation in this agreement may be terminated by either party following 30 days advance written notice to the other party.

B. Modifications to this Memorandum of Understanding may be made by written agreement of both parties.

C. It is recognized that the National Contingency Plan mandated in the NRC Appropriation Authorization (Pub. L. 96-295, June 30, 1980) will bear directly on the provisions of this Memorandum of Understanding and result in this agreement being superseded or modified.

D. In the event that an emergency or a major disaster is declared by the President pursuant to the provisions of the Disaster Relief Act of 1974, it is understood that FEMA will not issue any directives to the NRC, or make requests for assistance from the NRC under such Act which would impede or interfere with NRC's ability to meet its statutory responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974.

E. The effective date of this agreement is October 22, 1980.

For the Nuclear Regulatory Commission,  
John F. Ahrens,  
Chairman, Nuclear Regulatory Commission.

For the Federal Emergency Management Agency,  
John W. Macy, Jr.,  
Director, Federal Emergency Management Agency.



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**Joint Department of Defense,  
Department of Energy and Federal  
Emergency Management Agency  
Agreement for Response to Nuclear  
Weapon Accidents and Nuclear  
Weapon Significant Incidents**

January 15, 1981.

The Department of Defense and Energy and the Federal Emergency Management Agency have entered into an agreement in which they agree to take all possible measures to protect the public from the hazards associated with accidents involving nuclear weapons. The agreement specifies the responsibilities, organizational relationships and types of activities that will govern the response of the three agencies in the event of a nuclear weapon accident or significant incident. The agreement commits the three agencies to further joint planning to mitigate the effects of a nuclear weapon accident.

The text of the Memorandum of Agreement follows.

**Frank A. Camm,**

*Associate Director for Plans and Preparedness.*

**Preamble**

The Department of Defense (DOD) and the Department of Energy (DOE), in carrying out the responsibilities vested in them by the Atomic Energy Act of 1954, as amended, have diligently pursued a development program to insure that the maximum degree of safety attainable is designed into nuclear weapons. Dealing with the consequences to the civilian populace of a nuclear weapon accident or significant incidence is part of the Federal Emergency Management Agency's responsibilities. In carrying out these responsibilities, FEMA will establish policies for, and coordinate, all civilian emergency planning, management, and assistance by, executive agencies. The signatories, recognizing the unlikely nature of a nuclear weapon accident, nevertheless commit their respective organizations to this Memorandum of Agreement. The intention is to ensure that all possible measures are taken to protect the public of the United States of America, to the greatest degree possible, from the hazards associated with an accident involving nuclear weapons. The signatories agree to the conduct of thorough joint planning on the various aspects of nuclear weapon accidents to mitigate the effects of such an accident.

1. *Purpose and Scope.* To delineate general areas of responsibility, and set forth a joint policy for an effective and coordinated response by Department of Defense (DOD), Department of Energy

(DOE), and the Federal Emergency Management Agency (FEMA) within the United States and its territories, to peacetime Nuclear Weapon Accidents and Nuclear Weapon Significant Incidents where one or more of the signatory agencies is responsible for providing assistance. For DOD and DOE, the responsibilities and scope of this agreement are extended worldwide subject to the provisions of applicable international agreements.

2. *Cancellation.* This agreement supercedes the "Joint Department of Defense and Energy Research and Development Administration Agreement in Response to Accidents Involving Radioactive Material or Nuclear Weapons", dated March 1, 1977.

3. *Policy.* The DOE is generally responsible for protecting the public from hazards involving the development, use, or control of DOE-owned radioactive materials in its custody. The DOD and DOE are responsible for protecting the public from hazards associated with, and for planning for and mitigating the health and safety problems connected with, the development, storage, transportation, use or control of nuclear weapons and radiological nuclear weapon components within their respective custodies. The DOE will participate in the consideration of these problems as a matter of continuing responsibility. FEMA is responsible for coordinating Federal response actions, within the United States and its territories, for a nuclear weapon accident or significant incident affecting the civilian population and ensuring that Federal actions are coordinated with state and local governments.

4. *Implementation.* The DOD, DOE, and FEMA will issue appropriate internal instructions and operating procedures to implement this agreement.

5. *Definitions. a. Nuclear Weapon Accident.* An unexpected event involving nuclear weapons or radiological nuclear weapon components that results in any of the following:

(1) Accidental or unauthorized launching, firing, or use by U.S. forces or U.S. supported Allied forces, or a nuclear-capable weapons system which could create the risk of an outbreak of war.

(2) Nuclear detonation.

(3) Non-nuclear detonation or burning of a nuclear weapon or radiological nuclear weapon component.

(4) Radioactive contamination.

(5) Seizure, theft, loss or destruction of a nuclear weapon or radiological nuclear weapon component, including jettisoning.

(6) Public hazard, actual or implied.

**b. Nuclear Weapon Significant**

**Incident.** An unexpected event involving nuclear weapons or radiological nuclear weapon components which does not fall in the nuclear weapon accident category but:

(1) Results in evident damage to a nuclear weapon or radiological nuclear weapon component to the extent that major rework, complete replacement, or examination or recertification by the DOE is required.

(2) Requires immediate action in the interest of safety or nuclear weapons security.

(3) May result in adverse public reaction (national or international) or premature release of classified information.

(4) Could lead to a nuclear weapon accident and warrants that high officials of the signatory agencies be informed or take action.

**c. Nuclear Weapon Accident/Significant Incident Assistance.** That assistance provided after an accident or significant incident involving nuclear weapons or radiological nuclear weapon components to:

(1) Evaluate the radiological hazard.

(2) Accomplish emergency rescue and first aid.

(3) Minimize safety hazards to the public.

(4) Minimize exposure of personnel to radiation and/or radioactive material.

(5) Establish security, as necessary, to protect classified Government material.

(6) Minimize the spread of radioactive contamination.

(7) Minimize damaging effects on property.

(8) Disseminate technical information and medical advice to appropriate authorities.

(9) Inform the public (as appropriate) to minimize public alarm and to promote orderly accomplishment of emergency functions.

(10) Support recovery operations of damaged weapons or weapon components.

(11) Support the removal of radiological hazards.

**d. National Defense Area (NDA).** An area established on non-Federal lands located within the United States, its possessions or territories, for the purpose of safeguarding classified defense information, or protecting DOD equipment and/or material. Establishment of a NDA temporarily places such non-Federal lands under the effective control of DOD and results only from an emergency event. The senior DOD representative at the scene will define the boundary, mark it with a physical barrier, and post warning signs.

The landowner's consent and cooperation will be obtained whenever possible; however, military necessity will dictate the final decision regarding location, shape and size of the NDA.

**e. National Security Area (NSA).** An area established on non-Federal lands located within the United States, its possessions, or territories, for the purpose of safeguarding classified and/or restricted data information, or protecting DOE equipment and/or material. Establishment of a NSA temporarily places such non-Federal lands under the effective control of the DOE and results only from an emergency event. The senior DOE representative having custody of the material at the scene will define the boundary, mark it with a physical barrier, and post warning signs. The landowner's consent and cooperation will be obtained whenever possible; however, operational necessity will dictate the final decision regarding location, shape, and size of the NSA.

**f. On-Site.** That area around the scene of a nuclear weapon accident or significant incident that is under the operational control of the installation commander, facility manager, DOD on-scene commander, or DOE Team Leader. The on-site area includes any area which has been established as a NDA or NSA.

**g. Off-Site.** That area beyond the boundaries of a DOD installation or DOE facility, including the area beyond the boundary of a NDA or NSA, that has been, or may become affected by a nuclear weapon accident or significant incident.

**h. Initial Response Force.** A force, identified in the Nuclear Accident Response Capabilities Listing (NARCL), belonging to DOD or DOE installations, facilities, or activities, within the United States and its territories, tasked with taking emergency response actions necessary to maintain command and control on-site pending arrival of the Service or Agency Response Force. Functions which the Initial Response Force are tasked to perform, within their capabilities are:

(1) Rescue operations

(2) Accident site security

(3) Firefighting

(4) Initial weapon emergency safing

(5) Radiation monitoring

(6) Establishment of command, control and communications

(7) Public affairs activities

**i. Service/Agency Response Force.** A DOD or DOE response force that is appropriately manned, equipped, and capable of performing the Initial Response Force tasks and coordinating all actions necessary to effectively

control and recover from an accident or significant incident. The specific purpose of a Service/Agency Response Force is to be able to provide nuclear weapon accident/significant incident assistance. Service/Agency Response Forces are organized and maintained by those Services or Agencies which have custody of nuclear weapons or radioactive nuclear weapon components.

**j. Lead FEMA Official.** The designated senior FEMA representative at the scene of a nuclear weapon accident or significant incident responsible for implementing FEMA's responsibilities. In the event the accident/significant incident results in the President declaring the accident or significant incident a major disaster under the authority of Pub. L. 93-288, these responsibilities will be assumed by the designated Federal Coordinating Officer (FCO) for that major disaster.

**6. Responsibilities.** **a. General.** (1) Primary responsibility for command and control on-site at the scene of a nuclear weapon accident or significant incident rests with:

(a) The Service or Agency in charge or command of a DOD installation, DOE facility, ship at sea, or geographic area on which the accident or incident occurs. The installation, facility, ship, or geographic area commander will coordinate his actions with the Service or Agency having custody of the weapon at the time the accident or significant incident occurs.

(b) The Service or Agency having custody of the weapon at the time the accident or significant incident occurs, should the accident occur off or beyond the boundaries described in 6a(1)(a) above.

(2) FEMA will coordinate the off-site response actions of all Federal agencies to assure that all necessary assistance is being provided and that all off-site actions are consistent with the on-site activities of DOD and DOE and the response activities of state and local officials.

(3) FEMA will coordinate all Federal emergency response activities with state and local emergency response efforts.

(4) The military on-scene commander or the DOE Team Leader will inform FEMA of all on-site response activities which could have an impact off-site.

(5) FEMA will receive all requests from state and local officials for assistance from the Federal Government and will coordinate these requests with the appropriate agency.

(6) If an accident or significant incident involving nuclear weapons should result in a Presidential declaration of a major disaster or



emergency (Public Law 93-288), the Secretary of the Army will become the DOD Executive Agent for providing additional military support to the Federal Coordinating Officer (FCO) as required, subject to the military missions and priorities of DOD.

(7) The DOD or DOE official first to arrive at the scene of a nuclear weapon accident or significant incident will take initial emergency actions required to establish control of the accident site and to safeguard classified material, and to advise military and DOE personnel of the possible radiological hazard. Prior to the arrival of a FEMA representative, this DOD or DOE official will also seek the assistance and cooperation of State and local authorities and will advise them of the possible radiological hazards. This DOD or DOE official will remain on the scene until arrival of the identified Service on-scene commander, or DOE Team Leader having the primary responsibility as set forth in para 6a(1).

(8) The commander of the Initial Response Force or the DOE Team Leader will assume responsibility for control of on-site emergency operations when directed to do so by the appropriate Service or DOE operations center. A NDA or NSA will be established if required at the appropriate time using appropriate authority. The Initial Response Force commander will remain in control until relieved by the DOD on-scene commander or DOE Team Leader of the Service/Agency Response Force.

(9) The National Military Command Center (NMCC) will be responsible for initial national-level command and control and response of DOD resources and personnel until conditions have stabilized, at which time command and control will be transferred to the responsible Service operations center. The NMCC will continue to provide information and support facilities as may be required. The equivalent DOE focal point will be the HQ DOE Emergency Operations Center (EOC). The equivalent FEMA focal point will be the FEMA National Operations Center (NOC). Liaison representatives will be exchanged between these focal points if the situation so dictates.

(10) The NDA/NSA will be dissolved after all nuclear weapons, nuclear weapon components, and classified materials have been removed. Any continuing Federal assistance within this former NDA or NSA will be coordinated directly by FEMA. Within the Federal Government, the responsibility for site clean up will

normally remain with the responsible DOD or DOE Agency.

(11) DOD and DOE will operate a Joint Nuclear Accident Coordinating Center (JNACC) to assist in performing the functions set forth in this agreement.

(12) The DOD, DOE, and FEMA will establish procedures to ensure that the JNACC is advised promptly of all accidents or significant incidents involving nuclear weapons. Coordination should be maintaining throughout the response activity to assure all applicable command centers are properly informed.

(13) The Military Services and the DOE will provide JNACC with information necessary for the maintenance of current records reflecting the location of identified Initial and Service/Agency Response Forces and other specialized units and teams which can be used to provide nuclear weapon accident assistance.

(14) The Military Services, Defense Nuclear Agency, and the DOE will respond to requests from the JNACC for mutual assistance.

(15) The DOD, DOE, and FEMA will develop and publish guidance in the area of nuclear weapon accident assistance. Signatory agencies will insure that information contained in computerized data bases pertinent to the requirements of this agreement is readily available to the other signatories.

(16) A Joint Information Center (JIC) will be established near the scene of an accident or significant incident involving nuclear weapons which results, or appears likely to result, in effects outside DOD or DOE facility boundaries. This JIC will include public affairs representatives from the DOD, DOE and FEMA, as well as provisions for other Federal Agency, state and local participation. The JIC will effect coordination of all public information prior to release. Details and procedures will be worked out as a result of experience gained in exercises and further discussion among the agencies.

b. *Department of Defense.* (1) The DOD will immediately notify the DOE and FEMA of the occurrence of an accident or significant incident involving nuclear weapons. In addition, the NMCC or the appropriate Military Service will advise the DOE and FEMA of the name of the designated on-scene commander and a point of contact for coordinating the DOD/DOE nuclear weapon accident assistance.

(2) Upon request, the DOD will provide worldwide military transportation, aerial photographic

support, airborne survey platforms, logistic support services, and other support as requested to the DOE for its response to either DOD or DOE nuclear weapon accidents or significant incidents.

(3) The DOD will provide required administrative, medical, and logistic support (including communications and military transportation) for a DOE response organization supporting a DOD nuclear weapon accident assistance effort.

(4) The DOD on-scene commander will provide public affairs liaison to the JIC.

(5) The DoD on-scene commander will provide liaison to the senior FEMA official at the scene.

(6) The DoD on-scene commander will formally recognize the DoD Team Leader as a member of his personal staff. Further, the on-scene commander will consult with the DoE Team Leader on technical matters involving weapons operations and radioactive hazards.

(7) The DoD response organization will be under the control of the DoE Team Leader for on-site activities while at a DoE nuclear weapon accident or significant incident scene.

c. *Department of Energy.* (1) The DoE will immediately notify the DoD and FEMA of the occurrence of a nuclear weapon accident or significant incident. In addition, DoE will advise DoD and FEMA of the name of the designated DoE Team Leader and a point of contact for coordinating the DoD/DoE nuclear weapon accident assistance.

(2) The DoE response capability will be comprised of technical specialists with equipment on continuous alert and ready for dispatch to provide nuclear weapon accident assistance. They will advise and assist in collecting and evaluating data, and mitigating radioactive and nuclear weapon hazards.

(3) The DoE will dispatch the appropriate response organizations to the scene of a DoE/DoE nuclear weapon accident or significant incident. The specific composition of the organization (e.g., Accident Response Group (ARG) or Nuclear Emergency Search Team (NEST)), to include any necessary specialized equipment, will be designed to best meet the requirements of the accident or incident, and will be coordinated with the DoE/DoE JNACC.

(4) The DoD response organization will be under the control of the DoD on-scene commander for on-site activities while at a DoD nuclear weapon accident or significant incident scene.

(5) The DoE response organization's



mission will include provision of the following support to a DoD on-scene commander:

(a) Technical advice and assistance for determining the extent of any radioactive hazards.

(b) Technical advice to minimize hazards to the public.

(c) Technical advice and assistance in the collection, identification and disposition of weapon components, weapon debris, and the resulting radioactive material.

(d) Technical advice and assistance in the identification and protection of nuclear weapon design information and other restricted data.

(e) Support of discussions with foreign, state, or local government officials on matters within areas of special DoE competence.

(f) Technical advice and assistance to DoD Explosive Ordnance Disposal (EOD) teams in render safe and recovery procedures.

(6) The DoE response organization for supporting the DoD will be headed by a DoE Team Leader. The DoE Team Leader will:

(a) Direct the activities of the DoE response organization.

(b) Ensure coordinated DoE support for the DoD on-scene commander.

(c) Advise the DoD on-scene commander of any requirement for additional DoE response capabilities and provide for such additional response as may be mutually agreed upon.

(7) The response organization will normally include a Senior Scientific Advisor. The Senior Scientific Advisor, reporting to the DoE Team Leader, serves as the chief advisor to the response group on weapons technical matters.

(8) The DoE Team Leader will provide public affairs liaison to the JIC.

(9) The DoE Team Leader will provide liaison to the senior FEMA official at the scene.

(10) When directed, Headquarters DoE will coordinate off-site radiological monitoring and assessment activities of Federal Agencies.

**d. Federal Emergency Management Agency.** (1) FEMA will immediately notify the DoD and DoE of the occurrence of a nuclear weapon accident or significant incident.

(2) FEMA will dispatch a coordinator and public affairs representative to the scene of a nuclear weapon accident or significant incident when it has or may have an effect outside of the DoD or DoE facility boundaries.

(3) FEMA will provide a liaison representative to the DoD or DoE official

responsible for on-site activities.

(4) FEMA will make any necessary recommendations to state and local officials regarding protective actions. FEMA will rely upon the technical expertise of DoD, DoE, and other Federal agencies in making these recommendations.

(5) FEMA will take actions to ensure that all necessary Federal assistance available from any Federal agency is being provided and will coordinated these activities with the response activities of state and local governments.

(6) FEMA will supply coordinated information on the Federal response role to the state and/or local government officials.

#### **7. Joint Nuclear Accident Coordinating Center.** JNACC will:

a. Maintain current information as to the location of specialized DoD and DoE teams or organizations capable of providing nuclear weapon accident assistance.

b. Upon notification of a nuclear weapon accident or significant incident, select and notify specialized teams capable of responding to the accident or significant incident, inform the NMCC, Services, and DoE operations centers of actions taken, and when requested by the Services, coordinate deployment of specialized teams.

c. Refer public inquiries to the JIC.

**8. Reimbursement for Emergency Assistance Expense.** The Military Service or agency providing the necessary assistance will fund such costs initially within existing fund availability. The Military Service or agency having physical possession of the nuclear weapon or nuclear weapon component at the time of the accident or significant incident will be responsible for reimbursing, upon request, the Military Service or agency providing the necessary assistance for those costs which are in addition to normal operating expenses and which are directly chargeable to, and caused by, the accident/incident.

**9. Biennial Review.** This agreement will be updated every two years at a Biennial Review Conference by representatives from each of the signatory agencies. The Office of the Assistance to the Secretary of Defense for Atomic Energy will chair and make arrangements for the review conference.

For the Department of Defense,  
James P. Wade, Jr.,

Assistant to the Secretary of Defense (Atomic Energy).

For the Department of Energy,  
Duane C. Sewell,

Assistant Secretary for Defense Programs.

For the Federal Emergency Management Agency.

Frank A. Camm,

Associate Director for Plans and Preparedness.

January 8, 1981.

[FR Doc. 81-2865 Filed 1-26-81; 8:45 am]

BILLING CODE 6710-01-M



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Appendix C

THE WHITE HOUSE  
WASHINGTON

19 January 1988

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

SUBJECT: National System for Emergency Coordination

Pursuant to Domestic Policy Council meetings on this subject, the President has approved a National System for Emergency Coordination. The system's purpose, principles, activation and operational responsibilities are outlined in the attachment to this memorandum. Department and agency heads are encouraged to ensure that organizations and staff members are prepared to carry out their respective operational responsibilities.



Edwin Meese III  
Chairman Pro Tempore



## NATIONAL SYSTEM FOR EMERGENCY COORDINATION

Purpose: The National System for Emergency Coordination is a mechanism for ensuring that the Federal Government provides timely, effective, and coordinated assistance to States and local governments in extreme catastrophic technological, natural or other domestic disasters of national significance. Responsibilities currently assigned to Federal departments and agencies by statute or other authority, and existing emergency management systems and capabilities are an integral part of this response system and will be used when possible.

### Principles:

- (a) The primary responsibility for public health and safety in the event of a domestic emergency resides with the States. For certain extreme emergencies (i.e., those requiring coordinated action by a number of agencies or immediate relief to a widespread area) Federal responses are mandated by statute, or may otherwise be appropriate.
- (b) The Federal Government may provide support in life saving and life protecting operations when requested by State or local governments, or when otherwise appropriate. Assistance may be provided directly to a local government in cooperation with the State government.
- (c) Federal assistance will ordinarily be provided by Federal regional offices and field elements, such as disaster field offices, located nearest to the crisis site.
- (d) The Federal Government's response to major domestic crises will be consistent with current emergency plans, and existing domestic and national security crisis information and management systems will be used.

System Activation: When an extreme emergency occurs, the Executive Office of the President (EOP) official responsible for Cabinet affairs will consult with the National Security Council and appropriate Executive Branch departments and agencies to develop specific action plans for consideration by the President.



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the Cabinet and other officials as necessary. Only the President may activate the system. If he does, the Cabinet Affairs Office will be responsible for apprising the President of developments and decisions that may be needed.

Operational Responsibilities:

(a) Federal departments and agencies shall respond to potential crises in their respective areas of cognizance.

(b) Federal interagency functional groups.

(1) Federal interagency functional groups will be established to support and coordinate relief operations in extreme emergencies, consistent with those currently called for in existing emergency plans such as the Plan for Federal Response to a Catastrophic Earthquake. These groups will assess problems, propose solutions, and facilitate resolution of specific emergency functional needs.

(2) Lead agencies have been designated for each functional group on the basis of recognized leadership roles, resources, inherent authorities, and/or relevant expertise.

(3) To the extent possible under existing authorities, interagency functional groups will also, in their respective areas of cognizance: conduct risk assessments; identify and prioritize contingencies for which emergency plans are needed; provide external liaison and situation assessments; and test Federal emergency response structures and plans.

(4) Interagency functional groups will be established to facilitate communications, economic affairs, energy, human services, legal and law enforcement, transportation and other functions needed to mitigate the crisis. Leadership and membership are to be based on statutes, Executive Orders, interagency agreements, and logical extensions of normal responsibilities.

(c) The Federal Emergency Management Agency (FEMA) will be prepared to consult with and assist Federal departments and agencies in planning for and responding to all types of emergencies, as listed below.

(d) National Coordinator.

(1) The President may designate a National Coordinator as his representative to coordinate Federal support operations during extreme emergencies.



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(2) The National Coordinator would ordinarily be a senior official of a department or agency having assigned responsibilities for the following specified types of emergencies:

Natural disasters..... FEMA  
Health or medical..... DHHS  
Terrorism..... DOJ  
    (less airborne hijacking)  
Energy..... DOE  
Nuclear weapon, reactor,  
    facility accident..... DOE or DOD ("owner")  
Accident at licensed nuclear  
    power plant..... NRC  
Environmental..... EPA  
    (less some water related incidents but  
    including chemical plant accidents)  
Transportation..... DOT  
    (including airborne hijacking and  
    some water related environmental  
    incidents)  
Economic disruption..... TREAS  
Telecommunications..... CSTP/NCS

(3) Based on the nature of the crisis, the National Coordinator would determine which interagency functional groups should be activated.

(e) Federal Coordinating Officer.

(1) One or more Federal Coordinating Officers (FCO) may be appointed as the President's on-scene representative(s) when necessary. The FCO would ordinarily be a senior field official of the same Federal department or agency as the National Coordinator, and would be responsible for coordinating the Federal response at the emergency site(s).

(2) FCOs would report to the National Coordinator.

(3) Based on the nature of the crisis, the FCO(s) would determine appropriate regional functional groups to be activated.



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(f) State Coordination.

(1) If the President activates the system, the Director of the Federal Emergency Management Agency will notify the Governors of affected States and territories about the Federal Government's plan of action.

(2) The National Coordinator or an FCO may ask the Governor of a State requesting Federal assistance to appoint a State Coordinating Officer to coordinate State and local government response efforts with those of the Federal Government.

(3) States would be expected to interact with FCOs to indicate their need for Federal assistance, and to coordinate the use of Federal assistance.



DIR

# Federal Emergency Management Agency

Washington, D.C. 20472

January 24, 1991

MEMORANDUM FOR: ALL FEMA EMPLOYEES

FROM:

Wallace E. Stickney  
Director

*Wally Stickney*

SUBJECT:

FEMA's Emergency Response Readiness

Events in the Middle East have made readiness a watchword throughout the world. Accordingly, we have reviewed and tested our plans, our communications system and procedures for support to state and local emergency response operations. We found that some requirements and systems need updating and clear decisions needed to be made. To ensure FEMA's capability to support the full scope of emergency response, and best support the state and local response plans which we helped develop, I have determined that the Federal Response Plan (for Public Law 93-288, as amended) will be used if needed. We use all or parts of this plan on a regular basis and it is the process with which states are most familiar. The State and Local Programs and Support and National Preparedness Directorates are cooperating in fine tuning this capability, and I am pleased with their progress.

Our readiness review identified some areas of FEMA in need of additional improvement. These areas include the Continuity of Operations Plan and other routinely used management tools. We are taking this opportunity to address these areas as well to assure a fully integrated response capability. I appreciate your assistance in the longer term planning required to achieve these improvements. We will be a much better agency next month than we were last month!

To date there is no known specific threat against any facility or person. However, because of the war in the Middle East, the potential exists that a terrorist act could occur. FEMA, like most other departments and agencies, has taken steps to enhance security in this building and in all field activities. In addition, security awareness of personnel has been encouraged through security advisories both local and nationwide. We feel confident that should a specific threat become identified, we will be provided information to make available to all FEMA employees. Moreover, should a threat exist anywhere in the country, we are confident that we and the state officials will be advised of this by those agencies tasked with law enforcement aspects of national security.

FEMA's readiness to respond to major emergencies is an important responsibility for all of us. I know we all want to offer our talents to FEMA when needed. Extra assistance could be required were a major technological or natural disaster to occur. Please let your



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supervisor know if you would like to volunteer to assist, should we need to implement the Federal response plan.

I appreciate your support in these times. Our task, without question, is to execute our assigned programs and emergency operations. We know our responsibilities. We have reviewed, practiced, tested and updated our procedures. We will continue to hone our skills and be prepared to do our best when called. I'm confident that if we all simply do our jobs well, we will ensure that the Federal Government will provide the support that the state and local governments need, when and if required.

I KNOW I CAN COUNT ON YOU TO  
DO WHATEVER WE NEED TO DO WHEN  
WE NEED TO DO IT. THANKS FOR  
YOUR HELP.

W

Distribution: H(AllPersHqFld)



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MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
DEPARTMENT OF THE ARMY  
AND THE  
FEDERAL EMERGENCY MANAGEMENT AGENCY



SUBJECT: Chemical Stockpile Emergency Preparedness Program (CSEPP)

1. **Purpose.** This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the Department of the Army (Army) to identify their respective roles, responsibilities and joint efforts for emergency response preparedness involving the storage and ultimate disposal of the United States stockpile of chemical warfare materiel. This MOU shall supersede all previous agreements between FEMA and the Army regarding the CSEPP.

In order to best manage the CSEPP effort, both FEMA and the Army agree that FEMA should be responsible for managing and directing the off-post aspects of the program while the Army retains that responsibility for the on-post aspects of the program. To that end, both parties are supporting legislation which will give FEMA the necessary authority with respect to CSEPP to take on this expanded role. In anticipation of such legislation being enacted into law, FEMA and the Army will begin implementation of this new CSEPP management structure as soon as possible.

2. **Background.**

- a. The United States currently stockpiles chemical agents and munitions at eight Army installations within the continental United States.
- b. Public Law 99-145 directs the Department of Defense to dispose of the United States stockpile of lethal chemical agents and munitions. As a first step in that disposal program, the Army, with the cooperation of FEMA, the Department of Health and Human Services (DHHS), and the U. S. Environmental Protection Agency, prepared and issued a Final Programmatic Environmental Impact Statement (FPEIS) for the Chemical Stockpile Disposal Program. As a result of the Army recognition of and public concern over the inadequacy of emergency preparedness capabilities at each of the eight locations where the stockpile is stored, a concept plan for enhancing emergency preparedness at the eight sites was developed and committed to in the FPEIS.



c. This MOU is a mutual effort on the part of FEMA and the Army to assure an appropriate level of readiness at the eight chemical stockpile storage installations and in the surrounding communities by identifying:

- (1) Specific areas of responsibility for each agency.
- (2) Areas of special expertise of each agency, and which can be applied to support chemical stockpile storage operations and the Chemical Demilitarization Program.
- (3) Areas where coordinated and cooperative programs between FEMA and the Army will achieve cost savings through the efficient use of human and material resources.

### 3. Expertise and Authorities.

a. FEMA has special expertise in developing and implementing plans and programs for hazardous materials emergency preparedness under the following authorities:

- (1) Executive Order 12148 delegates authority to FEMA for developing policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.
- (2) Executive Order 12148 also delegates authority to the Director of FEMA to represent the President in working with State and local governments and the private sector to stimulate participation in civil emergency preparedness, mitigation, response, and recovery programs.
- (3) Section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, confers on the Director of FEMA the authorities to prepare Federal response plans and programs for the emergency preparedness of the United States and coordinate such plans with State efforts. These authorities include providing for necessary emergency preparedness communications for the dissemination of warnings to the civilian population of a hazard; study and development of emergency preparedness measures; conduct and development of training for the instruction of emergency preparedness officials and other persons in organization, operation, and techniques of emergency preparedness, and dissemination of emergency preparedness information.
- (4) Under the Emergency Planning and Community Right-to-Know Act of 1986 (Title III of P.L. 99-499), FEMA is authorized to provide for training and education

programs for Federal, State and local personnel in hazard mitigation, emergency preparedness, technological hazards, and emergency processes, with special emphasis with respect to hazardous chemicals.

b. In the prevention and mitigation of chemical emergencies resulting from storage, handling and disposal incidents, the Army operates under the following authorities:

(1) Title 14, Part B, Section 1412 of Public Law 99-145, the Department of Defense Authorization Act of 1986, requires the Secretary of Defense to provide for maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the stockpile of lethal chemical agents and munitions.

(2) Executive Order 12580 delegates to the Army the President's broad response authority under Section 104 of CERCLA with respect to releases or threatened release from any facility under the jurisdiction or control of the Secretary of Defense.

(3) Public Law 104-201 required the Secretary of the Army to assess the implementation and success of the establishment of site-specific Integrated Product and Process Teams (IPTs) as a management tool for the Chemical Stockpile Emergency Preparedness Program (CSEPP).

#### 4. Responsibilities.

a. For this MOU, FEMA agrees to:

(1) Assume total authority, responsibility and accountability for working with State and local governments to develop their off-post emergency preparedness for responding to chemical accidents or incidents at the eight chemical stockpile storage installations.

(2) Administer funds to the State and local governments to support off-post emergency response preparedness for the chemical stockpile as such funds may be appropriated by Congress, either through the Army or a direct appropriation to FEMA.

(3) Take the lead in supporting State and local government development of off-post emergency preparedness plans, including upgrading community response capabilities, and conducting necessary training.

(4) Prepare, develop, deliver, and evaluate the effectiveness of, training to State and local governments for planning, mitigation and emergency response as they apply to the chemical warfare materiel stockpile.

(5) Provide technical assistance to State and local governments in the development of site-specific emergency preparedness programs.

(6) Work closely with States to develop policies and procedures to assist States in developing and assessing readiness at each site as necessary.

(7) Provide emergency management assistance, liaison and functional expertise to the Army and State and local governments in integrating on-post/off-post emergency response.

b. The Army, in turn, agrees to:

(1) Until such time as a direct appropriation to FEMA is established for the purposes of accomplishing the objectives identified herein, provide an annual funding amount to FEMA at the beginning of each fiscal year that is based on the approved program Life Cycle Cost Estimate, adjusted for the actual Congressional appropriation.

(2) Provide technical support and expertise to assist FEMA in implementing off-post chemical agent emergency preparedness procedures, to include:

(a) Chemical agent emergency preparedness automation systems.

(b) Meteorological expertise in atmospheric dispersion modeling and site-specific hazard assessments and analyses required for personal protection, collective protection, monitoring/detection and decontamination equipment.

(c) Expertise, training, and technical assistance, as requested and in coordination with FEMA, for emergency medical response to chemical agent incidents/accidents.

(d) Chemical agent specific equipment and systems support, such as agent testing, personal protection, detection/monitoring, decontamination, modeling, analysis, mitigation, and risk analysis.

(3) At FEMA's request provide technical assistance and support to FEMA in the development, review and/or conduct of training on chemical agent material characteristics and agent specific emergency response procedures.

(4) Conduct site-specific risk analyses, and provide the product in a form needed by FEMA, which will be used by FEMA and the Army in defining readiness and funding requirements for site-specific chemical agent emergency preparedness programs.

(5) Ensure that viable Chemical Accident/Incident Response Assistance (CAIRA) Plans are in place and are assessed in conjunction with FEMA assessments of off-post emergency response plans.

c. Areas of Cooperation. Within the resources available, the Army and FEMA are committed to:

(1) Jointly developing a readiness posture at the eight chemical stockpile storage installations and in the surrounding communities based on assessments, requirements and available resources at the earliest practicable date.

(2) Assuring the continuance and success of a collaborative approach to decision making and problem solving by supporting Integrated Product and Process Teams, in accordance with the provisions of P.L. 104-201.

(3) The integration and compatibility of on-post and off-post emergency preparedness and response procedures, to include information and communication systems.

(4) Assessing and improving the effectiveness of Federal, State and local response systems and procedures through the design, conduct and evaluation of exercises.

(5) Keeping the public involved and informed through public information and education programs, including Joint Information Centers/Systems activities, and an active a community relations program.

(6) Providing reciprocal technical support for joint initiatives as well as initiatives requested by installations and State and local governments.

(7) Collaborating in the preparation of Army and FEMA CSEPP budgets to be presented and defended before the Congress each year. This will facilitate maintenance of a joint Life Cycle Cost Estimate for CSEPP which include on-post and off-post emergency preparedness program funding requirements as well as technical support funding requirements.

(8) Use site-specific risk analyses in conjunction with defining readiness and funding requirements for site-specific chemical materiel emergency preparedness programs.

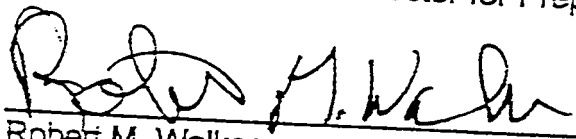


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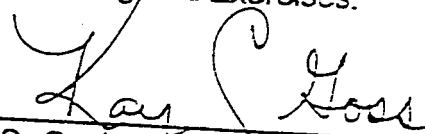
## 5. Implementation

- a. FEMA and the Army will jointly develop and implement a full transition of functions as described in this Memorandum of Understanding.
- b. FEMA and the Army will execute a Memorandum for the Record (MFR) that will provide details pertaining to the use and operation of the IPTs.
- c. An Overarching IPT (OIPT) will convene, as needed, to receive in-process reviews (IPRs) from the Army and FEMA Program Managers, submit recommendations on policy, program direction and oversight, and to resolve issues elevated from IPTs.
- d. The lead oversight office for the Department of the Army is the Office of the Assistant Secretary of the Army (Installations, Logistics and Environment).
- e. The lead oversight office for the Federal Emergency Management Agency is the Office of the Associate Director for Preparedness, Training and Exercises.

  
Robert M. Walker

Assistant Secretary of the Army  
Installations, Logistics and Environment  
Department of the Army

10/8/97  
\_\_\_\_\_  
(Date)

  
Kay C. Goss  
Associate Director  
Federal Emergency Management Agency  
The Preparedness, Training and  
Exercises Directorate

10/8/97  
\_\_\_\_\_  
(Date)



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# Federal Emergency Management Agency

Washington, D.C. 20472

September 14, 1988

MEMORANDUM FOR: Julius W. Bection, Jr.  
Director

FROM:

Grant C. Peterson

Associate Director

State and Local Programs and Support Directorate

George Woloshyn

Associate Director

National Preparedness Directorate

SUBJECT:

FEMA's Role in Technological Emergencies

We have undertaken a series of discussions in which we considered five different perspectives concerning FEMA's role in technological emergencies (summarized in the attached). We concluded with several joint decisions in response to the issues identified in the Capability Project briefing (also attached). These are summarized below.

1. FEMA should accept the philosophy of the NSEC paper with respect to the concept of lead agency responsibilities, the functional approach and an active FEMA role only when requested by the appropriate lead agency (FEMA is the lead agency for natural emergencies). The discussion of this issue raised three additional issues:
  - Does the NSEC paper represent binding guidance on the executive branch given that it is in a form that may not survive the transition (such as a statute, executive order, regulation or NSDD)? We agreed that the paper is binding on this administration and that the form of the paper is sufficient for today.
  - Will this decision create a capability vacuum given that several agencies (especially NRC and DoD) expect FEMA to play a very substantive role in emergencies for which they would have the lead? We recognize that this is a possibility, but that the agencies are all aware of the paper and can/should come to FEMA to request support. Further, FEMA will continue to honor its responsibilities as set forth in the current plans (especially the FRERP) until there has been an opportunity to revise the plans, and we will continue

to maintain the ERT/EST and Federal Response Center support capabilities.

Will this decision create readiness and response problems in that several of the extant plans are not functionally organized? Yes; however, the draft FRERP revision dated July 20, 1988, will be a starting point for changes reflecting the FEMA and other agency roles envisioned by NSEC. This includes provision of additional functional response descriptions.

2. FEMA should not seek greater authorities at this time. It should first focus its energies and resources on developing the capabilities to adequately execute its current responsibilities.
3. We have adopted an objective of developing an operational capability for catastrophic natural emergencies and expect to hold a demonstration in October. A work plan has been finalized and we both have dedicated the resources needed to execute it.
4. The issue of whether we should unify emergency response organizations for natural and technological emergencies was difficult. The argument that we need "different tools for different jobs" was compelling and we recognized that some of the current response organizations are probably effective in doing the specific jobs for which they were designed. Notwithstanding, we are committed to trying the unified approach. The overriding factor in the decision was our desire to enhance the integration of the different elements of FEMA.
5. In the event of a technological emergency, FEMA would alert the extant teams in accordance with the procedures set forth in "FEMA's Response in Emergency Operations" and in the manuals. We would not deploy until a decision was made by agency leadership.
6. The functions that FEMA could perform in a technological emergency are in the areas of communications, information and coordination support. The specifics of what support FEMA may provide will, of course, have to be requested by and negotiated with the respective lead agencies.
7. In accordance with current practice, FEMA would continue to provide a forward liaison element. The function of the element is to facilitate a major FEMA response through its ability to alert FEMA leadership and to conduct some site preparation and liaison planning in concert with headquarters program offices. FEMA would not normally preposition response elements unless approved by the Director or his designee.



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Assuming your concurrence, we are proceeding to:

- Notify the NSEC designated lead agencies and other agencies that are members of the Federal Radiological Preparedness Coordinating Committee of the above decisions emphasizing FEMA's interpretation of the NSEC policy statement, our willingness to provide assistance as called for in the NSEC paper and that we welcome letters requesting such assistance;
- Emphasize the joint SL-NP development of an operational capability for a catastrophic natural disaster (you have a copy of the work plan); and
- Prepare implementing instructions for NSEC. We are establishing an interdirector task force consisting of NP-OP, SL-DA and SL-NT to prepare the implementing instructions. We will provide you a review draft in December, 1988.

We will provide periodic reports on the progress of these activities at the Director's Council.

Attachments

Concur

Nonconcur

Concur with comment

*deferring NSEC  
memo re E.O.*

*draft E.O. for Jha P.*

*add resp for implementation  
detailed E.O. of implementing  
instructions  
charge FEMA*



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# Federal Emergency Management Agency

Washington, D.C. 20472

JUN 2 1988

MEMORANDUM FOR: George Woloshyn  
Associate Director  
National Preparedness Directorate

Grant C. Peterson  
Associate Director  
State and Local Programs  
and Support Directorate

FROM: John R. Powers *John R. Powers*  
Senior Policy Advisor  
National Preparedness Directorate

SUBJECT: FEMA's Role in Technological Emergencies

One of the major issues identified in the capability project report is FEMA's role in technological emergencies. Your decision on this issue will have significant implications for both planning and operations in this emergency category.

A meeting has been scheduled in Room 829 on Monday, June 6, 1988, at 1:00 p.m. for you to review the various positions and options that have been articulated on this issue. With apologies in advance to the respective proponents for any distortion of their positions, the positions are characterized as follows (in alphabetical order):

1. (Booker-Cumming). FEMA has a role as a "coordinator" specified in various executive orders; however, these executive orders give little guidance concerning how this role should be interpreted outside of a PL 93-288 context following a declaration of a "major disaster" by the President. In that context, FEMA may exercise major administration and a wide range of emergency relief functions. If confronted with a catastrophic technological emergency, FEMA may wish to seek a disaster declaration in order to implement the PL 93-288 authorities. Outside of such a declaration, FEMA's role is unclear. Exceptions are the fact that FEMA has the President's delegation of authority under 201 (h) of the Civil Defense Act to provide equipment and is authorized under EO 12580 to provide funding for temporary and permanent relocation in a "super fund" context.
2. (Jones). FEMA has a substantive coordinative role in technological emergencies assigned by E.O. 12148. That role is reflected in FEMA's assignment in E.O. 12221 to coordinate the FRERP and chair the Federal Response Subcommittee. It is also recognized under the FRERP, a consensual, agreed to response plan, now over 6 years old. The ERT manual, Extraordinary Situation Plan, and the FEMA Response

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in Emergency Operations manual describe fully FEMA's role under the Reorganization Plan, Executive Order, and CFR. It is noted that FEMA has a specific response role in the consequences of a major catastrophic terrorism incident under E.O. 12148. FEMA is obliged by its authorities to continue to play a major coordination and support role in planning for and responding to technological emergencies and should use the approach in the above documents as the basis for its response. It is noted, however, that for catastrophic hazardous materials incidents, CERCLA is the operant authority and thus FEMA's response would be in accordance with the National Plan.

3. (Krimm). FEMA has an important role in technological emergencies which is recognized and accepted in the interagency community; however, FEMA's response capability is inhibited by the lack of adequate authorities. FEMA should seek such authorities.
4. (McLoughlin). Given our resource constraints, FEMA should restrict its Federal preparedness and response activities to those areas for which it has specified authorities. With the exception of PL 93-288, I believe FEMA has no assigned role in the Federal response to technological emergencies nor the resources for an expanded role. Under NSEC the lead roles in technological emergencies are assigned to other agencies. I do not interpret EO 12148 as giving us this authority. I have no problem with the consequences of terrorism role, but that is not the same as technological emergencies. These comments don't address the FEMA support to State and local governments on technological emergencies where we do have some congressionally mandated roles under SARA Title III. (ETCRA)
5. (Powers). FEMA's response capability for a catastrophic event in both the natural and technological emergency categories is inadequate. In the natural emergency category, we have the authority to perform both the response manager and response process manager roles whereas in the technological category we have neither. Hence, we should develop our operational capabilities based mainly on the requirements of a catastrophic natural emergency. However, it should include other functional groups for the possibility that FEMA is called on to respond to a technological emergency. Given the terms of the NSEC paper, FEMA should be very circumspect about assuming any responsibility for response outside of the PL 93-288 area (if this position is adopted, FEMA should alert to various cognizant Federal agencies of this portion).

It is proposed that each of the respective proponents be authorized 5 minutes to present their positions and that these presentations be followed by 20 minutes of open discussion in response to your concerns. At the end of the discussion, it is recommended that the two of you spend 15 minutes in private to agree on what you need to arrive at a decision (unless, of course, you have already made such a decision).



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It would be appreciated if one of you would summarize your conclusions at the Director's Council meeting the following morning at 10:00 a.m.

cc: W. Booker  
W. Cumming  
W. Jones  
R. Krimm  
D. McLoughlin

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Appendix F

SAVE

**VA, HUD, AND INDEPENDENT AGENCIES  
APPROPRIATIONS FOR FISCAL YEAR 1990**

MONDAY, MAY 1, 1989

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
Washington, DC.

The subcommittee met at 1:40 p.m. in room SD-138, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Stevens, and Grassley.

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

STATEMENT OF JULIUS W. BECTON, JR., DIRECTOR

ACCOMPANIED BY:

DAVE MC LOUGHLIN, DIRECTOR, OFFICE OF TRAINING  
HAROLD T. DURYEE, ADMINISTRATOR, FEDERAL INSURANCE ADMINISTRATION  
WILLIAM C. TIDBALL, CHIEF OF STAFF  
GRANT C. PETERSON, ASSOCIATE DIRECTOR FOR STATE AND LOCAL PROGRAMS AND SUPPORT  
GEORGE WOLOSHYN, ASSOCIATE DIRECTOR FOR NATIONAL PREPAREDNESS  
EDWARD WALL, DEPUTY FIRE ADMINISTRATOR  
R. GREGG CHAPPELL, ASSISTANT ASSOCIATE DIRECTOR, DISASTER ASSISTANCE PROGRAMS  
GEORGE W. WATSON, ACTING GENERAL COUNSEL  
BARBARA MOODY, ACTING BUDGET OFFICER  
RICHARD S. SHIVAR, ACTING COMPTROLLER  
JACK THIEDE, INSPECTOR GENERAL

OPENING REMARKS OF SENATOR MIKULSKI

Senator MIKULSKI. The subcommittee will come to order. Today the subcommittee will conduct its hearings on the budget for the Federal Emergency Management Agency for fiscal year 1990. We welcome General Becton to the subcommittee and we note that FEMA's request is for \$816.3 million for fiscal year 1990, an increase of 29 percent over last year, but there are some disturbing trends despite this increase.

While disaster relief and homeless assistance increase, FEMA's Emergency Management Program is being cut by almost 5 percent—this reduction in the face of the public's expectation that FEMA is the coordinator of our Nation's emergency management response and readiness.

(599)

Appendix H



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## OF STAFFORD ACT

ist one last question, and that is our interpretation that under the ursuant to the emergency provi-Act that you have had no author-1 would in any other disaster for unities that needed help in that

terpretation of the law that has t and—

ed by Congress last year, sir. hat. Who interpreted it? unsel. It was through an exten- s one of the reasons we took a Governor had requested, coordi- der the five elements of the na- pollution contingency plan. ejection of those specific two re- ergency, sir.

such a legal interpretation? Is

something else like that?

that for the record.

now. I want to know did

r. Under the emergency part of oint, one of the requirements is ; available to meet the need. In atutes and other authority, not A's and the Coast Guard's, that

application on the legal aspect is vents the Government from re- ct from the perpetrator, in this ave no authority to recoup any le unless it was, in effect, a de-

ere is a provision so that the to pay for it, and that's another pect to the recommendations

to belabor it here right now, at. Whoever wrote that, I'd like before another committee and : construed the law that way. you read together the Clean Disaster Act, that is, and the here are three ways to recover person in connection with this

But somehow or other, our people were denied the protection that we thought was available through FEMA. There was no such intention on the part of Congress to my knowledge, and I've checked with the people who worked on the act. I think everyone here was appalled that your Agency decided not to recommend to the President to have an emergency in this situation.

Madam Chairman, I am pleased that you gave us the opportunity to make the inquiry. I look forward, General, to getting those documents.

General BECTON. We will provide them, Senator.  
[The information follows:]

## INTERPRETATION OF STAFFORD ACT

Title V of the Robert T. Stafford Relief and Emergency Assistance Act ("the Act") authorizes the President to provide assistance in response to Presidentially-declared emergencies. The Act, as well as the legislative history leading to the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, P.L. 100-707, indicates a Congressional intent that the Act's emergency authorities cannot adequately address a situation. For example, S. Rpt. 100-524, 100th Cong. 2d Sess, which accompanied S. 2380, states in pertinent part at page 4:

In any emergency the President must first invoke other Federal authorities available to him to meet the crisis. If there are other authorities, the role of the Federal Emergency Management Agency would be limited to providing technical assistance and coordinating the efforts of other Federal agencies under authorities granted to them under other Federal acts. Only after a determination that assistance under other Federal authorities is inadequate to meet the crisis may FEMA directly intervene.

In addition, Congressman Stangeland—one of the sponsors of H.R. 2707—stated in pertinent part in a floor debate on October 21, 1988:

... we do not intend for emergency declarations to be available in responding to . . . environmental . . . catastrophies for which Federal assistance is already available.

The National Contingency Plan (NCP) which is authorized by section 311 of the Federal Water Pollution Control Act provides the United States with authority to respond to the oil spill. Therefore, the declaration of an emergency under the Act, to trigger authorities which were already available under the NCP, was unnecessary.

## LACK OF FEMA PRESENCE IN ALASKA

Senator STEVENS. I intend to pursue it so it doesn't happen to someone else. It's too late for us.

Senator MIKULSKI. If the Senator could stay for a few minutes, I'd like to pick up on this. First there is the literal interpretation of the law and I think you have given a rather rigorous explanation of that. But then there's the spirit of the time.

All of a sudden we wake up one morning and a ship we had never heard of, called the *Valdez*, hits a reef and is leaking oil in what has emerged now as a Chernobyl of an oilspill. It is an ecodisaster of unfathomable and unmeasurable proportion. Somehow or other, it has not only touched the pocketbook of Americans, devastated the economy of Alaska, but it has touched the heart and soul of the American people.

Now, having said that, the question is not only what happened, because we're not here to do either an anatomy nor an autopsy of the Alaskan situation, but the future. I'd like to get into the spirit of this stuff a minute.

General Becton, you're a "can do" guy. You're a field man. You're a general. When I saw—and this again is to get at the situa-



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# SAVE

Response to be inserted at the end of discussion on page 30:

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In any emergency the President must first invoke other Federal authorities available to him to meet the crisis. If there are other authorities, the role of the Federal Emergency Management Agency would be limited to providing technical assistance and coordinating the efforts of other Federal agencies under authorities granted to them under other Federal acts. Only after a determination that assistance under other Federal authorities is inadequate to meet the crisis may FEMA directly intervene. (emphasis added)

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Appendix H



Office of the Director

# Federal Emergency Management Agency

Washington, D.C. 20472

January 31, 1995

DIRECTOR'S POLICY - No. 1-95

SUBJECT: The Federal Response Plan and Disaster Operations

1. The Federal Response Plan (FRP), agreed to by 27 Federal departments and agencies and the American Red Cross, provides the system for delivering Federal assistance to State and local governments when the requirements of emergency response exceed State and local capabilities.
2. Our goal is an efficient, consistent, coordinated response throughout all phases of an emergency or disaster. Since the FRP with its associated processes and standard operating procedures has proved to be an effective mechanism for delivering Federal assistance, the policy of FEMA now is to broaden the scope and application of the FRP.
3. The FRP will be the basis for the Federal response in all emergencies coordinated by FEMA. The FRP will define linkages to other Federal interagency plans, will address the full range of emergencies and disasters, will address all types of Federal assistance (response, recovery and mitigation), and is the basis for FEMA activities in support of the plans of other departments and agencies.
4. All program offices are to ensure that their programs and responsibilities are appropriately reflected or referenced in the FRP. The organizational structures used in support of the FRP will be consistent with the principles of the Incident Command System now being used by many local, State and Federal response organizations. The appropriate FEMA elements are responsible for working with their partners in other Federal departments and agencies, State governments, and private/volunteer agencies to ensure that our collective efforts result in excellent service to our customers.

A handwritten signature in black ink, appearing to read "James L. Witt", is written over a horizontal line.

for James L. Witt  
Director

Distribution: Special  
C(HqBrChiefs)  
H(FldBrChiefs)



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Appendix 1  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 13, 1989

The Honorable Julius W. Becton, Jr.  
Director  
Federal Emergency Management Agency  
500 C Street, S.W.  
Washington, D.C. 20472

Dear *Julius* General Becton:

I am responding to your letter of October 20, 1988, in which you asked us to assess the implications of the National System for Emergency Coordination (NSEC) upon the existing Federal Radiological Emergency Response Plan (FRERP). Our review of these documents leads us to the view that FEMA's authority and responsibility in responding to radiological emergencies are undiminished. In addition, a preliminary review of Executive Order 12657, dated November 18, 1988, again indicates the vital nature of FEMA's role in supporting the overall Federal response and gives FEMA an expanded role under certain special circumstances.

Although our view of the implications of the NSEC on the FRERP may be somewhat different, we recognize and appreciate the issues you identified. The NRC acknowledges its overall responsibility as Cognizant Federal Agency (CFA) in response to radiological emergencies related to NRC licensed facilities and materials. Through the Memorandum of Understanding (MOU) with FEMA, dated October 22, 1980, and the FRERP, we believe that FEMA's support and that of the other Federal agencies assures an adequate Federal response for the full range of radiological emergencies at NRC licensed facilities. We believe that the two field exercises with Federal, State, and local organizations and utilities have clearly demonstrated the viability of this overall plan. In my view, it is a highly successful program of which all participating agencies can be proud.

We also share your views that it may be appropriate to update and improve the FRERP and believe that the lessons learned from the Zion Field Exercise, the Chernobyl accident, and the reentry of COSMOS 1900 provide a basis for such improvements. However, we believe that revisions to the FRERP must carefully evolve because of the extensive close working relationships it has fostered among the Federal organizations, State and local governments, private corporations, and Federal facilities. Use of the established interagency process for revising the FRERP would appear to be the best method for implementing any necessary changes.

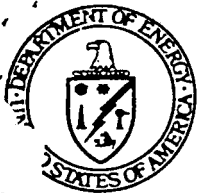
We are particularly pleased that FEMA is prepared to continue to support the NRC in a response to a major radiological emergency. This support is important to the NRC, and we request that you continue to budget for and implement existing responsibilities in this regard.

On a related matter, I have requested the NRC staff to provide any assistance that would be helpful to you in the development and revision of appropriate plans and programs responsive to Executive Order 12657. Mr. Edward L. Jordan, Director of the Office for Analysis and Evaluation of Operational Data, continues to have overall responsibility for development and implementation of NRC programs related to the FREPP, and Dr. Thomas Murley, Director of Nuclear Reactor Regulation, has the responsibility for licensing matters and plant specific emergency planning. Please feel free to have members of your staff contact them directly for assistance and coordination.

Sincerely,



Lando W. Zech, Jr.



Appendix J

Department of Energy  
Washington, DC 20585

December 20, 1988

Honorable Julius W. Becton, Jr.  
Director  
Federal Emergency Management Agency  
Washington, D.C. 20472

Dear General Becton:


This is in response to your letter of November 1, 1988, requesting this Department's views on a restructuring of the Federal Radiological Emergency Response Plan (FRERP), in the light of the recently signed National System for Emergency Coordination (NSEC). I have had the two documents reviewed and am pleased to provide you with the following comments:

First, we cannot agree that there is necessarily a major incompatibility between the NSEC and the FRERP, since the first paragraph of the NSEC states that the NSEC is not intended to supercede or replace existing interagency agreements and procedures. In any case, since the FRERP is an existing, fully understood plan which has been successfully practiced in major exercises, while the NSEC is as yet only a policy statement, we have no equivalent confidence in the "functional" approach as a solution to the radiological emergency. It does not make sense to abandon a proven system unless there is reasonable assurance that the alternative will work.

While we agree that the NSEC calls for an examination of the role of FEMA relative to that of the Cognizant Federal Agency (CFA), especially in the areas of support for offsite activity, it would appear that a more efficient approach to resolving these issues would be through the interagency process rather than having each potential Lead Agency submit proposals to FEMA. In that respect, the existing Federal Radiological Preparedness Coordinating Committee (FRPCC) would seem to be the proper forum for addressing changes to the FRERP.

In order to be responsive to your request, however, we are providing you with some general topics designated for FEMA in the FRERP which the Department of Energy feels represents tasks which FEMA should continue to budget for and carry out to support the CFA in a radiological emergency. These ideas may form the basis for interagency discussions in the FRPCC:

Appendix L

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- o Promote coordination among Federal agencies and their interactions with the State, including in conjunction with the Department, as CFA, the provision of Federally developed or evaluated recommendations to the States or other appropriate offsite authorities responsible for implementing those recommendations.
- o Promote coordination of non-radiological offsite activities with onsite response activities of Federal or State agencies; and
- o In coordination with the CFA, serve as an information source on the status of the overall Federal response effort.

With respect to the issue of restructuring the FRERP to accommodate interagency functional groups as discussed in the NSEC, we do not feel that this is required. The NSEC specifically states that only those functional groups found necessary by the National Coordinator need to be activated for a particular emergency. From our perspective, the major operational organization within the FRERP, the Federal Radiological Monitoring and Assessment Center, is in effect an interagency functional group which will always be needed for a radiological emergency. This equivalence is recognized by NSEC in that the National Coordinator is specifically designated as being provided for in certain emergencies which are the same as the selections of the CFA under the FRERP. To radically restructure the FRERP to conform exactly to the functional group format would reduce its flexibility and its effectiveness in dealing with the various radiological emergencies.

The only significant difference between the two documents in practice is that the lead agency operationally is not the same as the agency which coordinates the planning. In this case, however, it is our opinion that FEMA should continue to coordinate the planning for the FRERP using the FRPCC as the interagency process.

We are pleased to have this opportunity to provide you with our views on this vital Federal response program. We agree that the NSEC will require some modest changes but overall we believe that our basic agency roles should, and will, continue as before. My staff is anxious to get on with the work of updating the FRERP.



The primary contact for this effort will be Joseph E. Fitzgerald, Director, Office of Safety Policy and Standards. Mr. Fitzgerald can be reached on 353-5392. Questions relating to the NSEC and overall emergency preparedness matters should be directed to Capt. Jay G. McDonald, USN, Director of Emergency Operations, at 586-6231.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Salgado', with a large circular flourish on the left side.

Joseph F. Salgado  
Deputy Secretary



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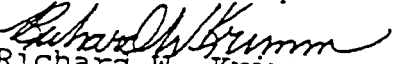
Federal Emergency Management Agency  
Washington, D.C. 20472

SEP 3 1993

MEMORANDUM FOR:

James L. Witt  
Director

FROM:

  
Richard W. Krimm  
Deputy Associate Director  
State and Local Programs and Support  
Directorate

SUBJECT:

Decision Paper Concerning Integration of the  
Federal Radiological Emergency Response Plan  
with the Federal Response Plan


Attached for your consideration is a Decision Paper outlining an issue involving the relationship between the Federal Response Plan (FRP) and the Federal Radiological Emergency Response Plan (FRERP). The fact that these two plans have been published and could be used by the Federal government in responding to a radiological emergency impacting this country has created confusion among the Federal agencies and States as to which plan would be used. We have prepared the attached Decision Paper to frame out the issue and have proposed a solution which we believe will resolve the problem. This paper is a product of the Offices of Technological Hazards and Emergency Management in the State and Local Programs and Support Directorate and reflects the general consensus of the Federal agencies on the Federal Radiological Preparedness Coordinating Committee.

I strongly endorse the recommendation contained in the Decision Paper and request your approval of this recommendation as soon as possible. I will be happy to discuss this issue with you at your earliest convenience.


Attachment  
As Stated

Appendix **M**

DIRECTOR'S  
DECISION  
ON ATTACHED.

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## DECISION PAPER

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### PROBLEM STATEMENT:

There are currently two plans published, the Federal Response Plan (FRP) and the Federal Radiological Emergency Response Plan (FRERP), which could be used by the Federal government in responding to a radiological incident/catastrophe impacting this country. The purpose of this paper is to establish FEMA's position on the relationship between these two plans.

### BACKGROUND:

The FRP implements the Stafford Act as amended and provides the foundation for Federal support to States in a Presidentially declared disaster/emergency or in anticipation of such a declaration. The FRERP is required by Public Law 96-295 (Section 304) enacted June 30, 1980, and is directed by Executive Order 12241 to be published in Federal Register. Five Federal Agencies have statutory requirements and responsibilities as Lead Federal Agencies for responding to various types of radiological incidents and the FRERP is designed to support the LFAs through individual agency radiological response plans and memoranda of agreement.

The FRERP was established as an operational technical support plan designed to coordinate Federal support for the States and Lead Federal Agencies (LFA) response to a radiological emergency. The FRERP may be implemented to the extent necessary to respond to any radiological incident whether or not there is an anticipated or an actual declaration in accordance with the authorities of signatory agencies which assume responsibilities for their costs.

### DISCUSSION:

A survey conducted during the past three months, concerning mechanisms for the integration of the FRERP into the FRP, shows strong support among the 16 FRPCC agencies for a Federal Response System and for integration of the FRERP in the FRP. However, key issues have been identified which must be addressed in designing an acceptable plan for integration. The integration must (1) recognize the statutory authorities of Federal agencies which own or regulate the potential threat of source of a radiological incident, (2) recognize that in many scenarios the threat may not lead to a Presidential declaration, (3) recognize the importance of existing bilateral and multilateral interagency agreement for mutual support in a radiological incident, (4) recognize the concept of operations and the Lead Federal Agency concept contained in the FRERP, (5) recognize the unique contributions and importance of Federal Agencies' technical offices which may not normally be involved with emergency planning or response under the FRP, and (6) recognize the rulemaking process employed by FRERP planners.

The FRERP is analogous to the National Contingency Plan (NCP), which as part of the Federal Response System, is linked to the Federal Response Plan through ESF #10. The incorporation of the FRERP as an integral part of the Federal Response System, through an annex to the FRP which will allow the FRERP to be implemented separately, is not only analogous to how hazardous materials incidents are dealt with under the FRP, but is similar to many State Plans which append the Radiological Plans as Annexes.

Recognizing the extensive input by the other FRPCC agencies and with the agreement of the Offices of Technological Hazards and Emergency Management in the State and Local Programs and Support Directorate, the recommendation below is the most efficient way to achieve the integration of the two plans.

**RECOMMENDATION:**

That FEMA support the development of an annex to the FRP which will establish a formal linkage between the FRERP and FRP for Federal Agency relationships in a Presidentially declared radiological emergency/disaster. If this recommendation is adopted, it will necessitate a modification to the FRERP and an annex to the FRP to clarify the linkage.

**CONCURRENCE:**

Office of Technological Hazards

Office of Emergency Management

State and Local Programs and  
Support Directorate

*CSW 9/3/93*

*James H. Culbert & McVey 9/3/93*

*Richard L. Brown 9/3/93*

**DIRECTOR'S DECISION:**

APPROVE

*James J. Witt 9-5-93*

DISAPPROVE



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CHAIRMAN

Appendix L  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

March 25, 1992

Mr. Wallace E. Stickney, Director  
Federal Emergency Management Agency  
500 C Street, S.W.  
Washington, D.C. 20472

Dear Mr. Stickney:

I have received your letter dated January 31, 1992, requesting that the U.S. Nuclear Regulatory Commission sign a Letter of Agreement to support the Federal Response Plan. Based on the NRC staff's review of the Plan, the Commission supports the overall concept of operations. Since a proposed radiological Emergency Support Function Annex to the Plan is still being developed and the current Plan does not address the NRC role in a response, the NRC believes it is appropriate to revise the proposed Letter of Agreement to recognize NRC statutory authorities and the existing Memorandum of Understanding between the Federal Emergency Management Agency and the Nuclear Regulatory Commission for Incident Response.


The Commission is confident that the Federal Radiological Emergency Response Plan (FRERP) will function within the framework of the Federal Response Plan without significant change to existing NRC procedures and training and without change to State and NRC licensee radiological response plans and procedures.

We have enclosed a revised executed Letter of Agreement that has been coordinated with your staff.

Sincerely,

  
Ivan Selin

Enclosure:  
As stated

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Appendix N


## LETTER OF AGREEMENT

The Federal Response Plan (for Public Law 93-288, as amended), hereafter referred to as the Plan, establishes the basis for the provision of Federal assistance to a State and its affected local governments impacted by a catastrophic or significant disaster or emergency which results in a requirement for Federal response assistance.

The Plan is based on the fundamental assumption that a significant disaster or emergency will overwhelm the capability of State and local governments to carry out the extensive emergency operations necessary to save lives and protect property. Consequently, resources of Federal departments and agencies, grouped into Emergency Support Functions, will be used to provide Federal response assistance to the State. Departments and agencies have been assigned primary and support agency responsibilities for each of these functions. The Plan does not supplant the Federal Radiological Emergency Response Plan (FRERP) that was developed for response to a radiological emergency under department and agency statutory authorities other than Public Law 93-288, as amended.

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended) the President will appoint a Federal Coordinating Officer (FCO) as his representative to coordinate the overall delivery of Federal assistance. Federal departments and agencies will provide response assistance directly to the State, under the overall direction of the FCO.

The Nuclear Regulatory Commission agrees to support the overall concept of operations of the Plan. In accordance with language in the Memorandum of Understanding Between the Federal Emergency Management Agency and the Nuclear Regulatory Commission for Incident Response dated October 22, 1980, we understand that the Federal Emergency Management Agency will not issue any assignments to the NRC, or other Departments and agencies supporting the NRC during an emergency, that would interfere with NRC's ability to meet its statutory responsibilities or NRC's implementation of the Federal Radiological Emergency Response Plan. The Nuclear Regulatory Commission also agrees to continue headquarters and regional planning and exercise activities in order to maintain the overall Federal response capability under the FRERP and the Federal Response Plan.

  
\_\_\_\_\_  
Signature



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# Federal Emergency Management Agency

Washington, D.C. 20472

DEC 20 1993

Emergency Response Division  
Superfund Docket Clerk  
Docket Number NCP-R2/A  
Superfund Docket Room M2427  
U.S. Environmental Protection Agency  
401 M St. S.W.  
Washington, DC 20460



Dear Sirs:

The proposed rule for the National Oil and Hazardous Substances Pollution Contingency Plan has been reviewed by the Federal Emergency Management Agency. We offer the following comments:

FEMA has recently realigned functions within the agency. The functions listed for FEMA 300.175(3) and in appendix E section 6.4.7 are now performed within the Preparedness, Training, and Exercises Directorate and the Response and Recovery Directorate. The State and Local Programs and Support Directorate does not exist in the new FEMA structure.

It has been FEMA's experience that the discussion of the Area Committees and the Regional Response Teams (RRTs) as presented in 300.115, 300.170, and in appendix E do not reflect reality as it occurs at the regional level. Because the RRT regions are not, in many cases, synonymous with Area Committee areas of responsibility, agencies representatives are different on RRTs and on Area Committees. This works a hardship in coordinating RRT and Area Committee activities. To the extent that Areas can be changed to conform to RRT boundaries, better coordination could be achieved.

The discussion of the Federal Response Plan (FRP) as presented in Appendix E section 4.2 is adequate. The listing of Emergency Support Functions (ESFs) on page 54703 does not contain the exact titles of some of the ESFs. A listing of the twelve ESFs in section 4.2 of appendix E would serve to clarify the function of the FRP and provide a better appreciation of how ESF #10 operates within the FRP.

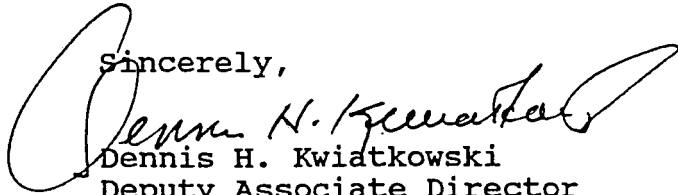
The revised section 300.125(a) adequately addresses the concerns of FEMA in regard to notification. The definition of a "potential

major disaster" will be clarified in a written agreement between FEMA and the National Response Center (NRC) at a later time.



Should you wish to discuss the substance of the comments please feel free to contact me. Thank you for your efforts in revising this document.

Sincerely,



Dennis H. Kwiatkowski  
Deputy Associate Director  
Preparedness, Training, and Exercises  
Directorate



# Federal Emergency Management Agency

Washington, D.C. 20472

February 21, 1991

MEMORANDUM FOR: Wallace E. Stickney  
Director

THROUGH: Jerry D. Jennings  
Deputy Director

FROM: George W. Watson *George W. Watson*  
Acting General Counsel

SUBJECT: Application of Section 501(b) of the Stafford Act

You have asked for my comments concerning emergency assistance under Section 501(b) of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, Public Law 93-288, as amended by Public Law 100-707, 42 U.S.C. 5121, et seq. (the Stafford Act). As discussed below, the Stafford Act and the implementing regulations provide a procedure for the declaration of an emergency and the delivery of the necessary assistance. However, reliance on Section 501(b) raises significant issues. In virtually every case, the authorities of Sections 501(a), 502, and 503 are adequate for the provision of emergency assistance to State and local governments.

## I. Issues Raised by Section 501(b) of the Stafford Act

I have attached Sections 501, 502, and 503 of the Stafford Act (Attachment A), but for emphasis, I set out below Section 501(b):

Certain Emergencies Involving Federal Primary Responsibility. The President may exercise any authority vested in him by Section 502 or 503 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).



Five situations come to mind where "under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority." The first is in an area where State and local authority has been preempted by a Federal statute, such as the regulation of commercial nuclear power. The second is where the United States owns or has control over the affected property, irrespective of the emergency. The third is where, by statute, the United States conducts a regular (non-emergency) activity. For example, the Department of Veterans Affairs operates a network of hospitals; in a disaster or emergency, the protection of patients in those hospitals is exclusively or preeminently a Federal responsibility. Fourth, in a national security emergency, a national security zone may be established under the exclusive control of the United States.

The fifth instance involves Federal responsibilities under Article IV, Section 4 of the Constitution:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

For the President unilaterally to invoke this Article makes a statement that the State government is unable or has otherwise failed effectively to govern, to carry out the essential functions of protecting life and liberty and public health and safety. This is always an extraordinary political action. It is an act of such Constitutional gravity that it should only be done on the advice of the Attorney General.

## II. The Relationship of Section 501(a) of the Stafford Act to Section 501(b)

In analyzing the appropriate use of Section 501(b) of the Stafford Act, I have found it important to keep in mind that the authority which it confers on the President is exactly the same as the authority conferred by Section 501(a). In both instances, the actions which the President is authorized to take are those specified in Sections 502 and 503. The difference between these sections is the condition which must be satisfied before any of the actions listed in section 502 and 503 may be taken. In the case of Section 501(a) the condition is that there be a request from a Governor which meets the requirements discussed later in this memorandum. In the case of 501(b), the condition is a determination by the President 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.

For the reasons discussed above, Section 501(b) should not be viewed as a substitute for a request from a Governor when communications with the Governor are difficult or impossible to establish. That difficulty may be overcome by other means. To be specific, I recommend that FEMA obtain from every Governor a list of officials, by title, whom the Governor authorizes to request a declaration of emergency if the Governor is unavailable for any reason. The issue is not succession to the office of Governor. It is simply one of delegation of authority.

### III. Procedures for the Declaration of an Emergency

The essential elements of an emergency declaration procedure are set out in Section 501(a) of the Stafford Act. The attached sample documents could be used to implement such a procedure. The key points are:

1. The request must be initiated by the Governor of the affected State (although there is no prohibition against the Governor's delegating that authority to others);
2. The Governor must find, and the request should state, that the situation prompting the request is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary;
3. The Governor must direct execution of the State's Emergency response plan and generally take appropriate action to meet the emergency, and describe the efforts and resources which have been or will be used to alleviate the emergency; and
4. The Governor should specify the type and extent of Federal aid required.

These provisions of the Stafford Act are reflected in FEMA's regulations which describe the procedure for a Governor to request a declaration of an emergency. 44 C.F.R. 206.35. The decision whether or not to declare an emergency is within the discretion of the President. FEMA's role is to make a recommendation to the President. However, the regulation does not establish standards or criteria by which FEMA will make its recommendation to the President. Those standards and criteria ought to be established and published in the Federal Register, in order to satisfy the requirements of the Administrative Procedures Act. 5 U.S.C. 552.



Wallace E. Stickney, Director  
Declaration of an Emergency  
February 21, 1991, Page 4.

The attachments to this memorandum are listed below. Please let me know if you would like to discuss these issues further.

Attachments:

- A. Sections 501, 502, and 503 of the Stafford Act;
- B. Sample Request for Declaration of Emergency Under Section 502(a) of the Stafford Act;
- C. Sample Separate Request for 502(b) Assistance;
- D. Sample Declaration of an Emergency under Section 501(a);
- E. Sample Authorization of Additional Assistance under Section 502(b);
- F. Sample Letter from the White House to the Director, FEMA.

cc: Grant Peterson



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