

GC-97-11-20  
Cumming

**History of FEMA Responsibility  
for Response to National Security Emergencies**

**I. 1988-1994**

From 1950 to 1994, three statutory schemes that involved civil-military relationships were separately administered and interpreted. These were the Federal Civil Defense Act, the Defense Production Act (DPA), and the successors to the first permanent disaster legislation that had been enacted in 1950, principally the Disaster Relief Act of 1970 and 1974. A key milestone in 1988 was the Congressional 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.

In 1994, for the first time two of the statutes were combined and the third cross-referenced. Since July 1979, the administration of those statutes had been housed in FEMA. In repealing the Federal Civil Defense Act in Public Law 103-337, and incorporating the authority in the Robert T. Stafford Act, the National Security Committee in the House of Representatives and the Armed Services Committee in the Senate, essentially surrendered oversight of FEMA to the Appropriations Committees and to the Banking (DPA) and Public Works (Stafford Act) Congressional Committees. Note that in the House of Representatives the key committee is Transportation and Infrastructure. These statutes were the crossover between the civil emergency management system and the military/national security establishment.

Because of the complications of integrating the policies and operations of the Federal departments and agencies in the national security arena where both military and law enforcement issues may have paramount importance, it is important to note that President Carter's signature on Reorganization Plan No. 3 of 1978, did not resolve the tensions in planning and preparedness that exist between the non-military civil agencies and the military agencies, and the tension between the law enforcement and non-law enforcement agencies. As a result, the repeated efforts of FEMA on an agency basis to resolve these well-documented tensions in order to facilitate humanitarian response and recovery to disasters and emergencies have been largely unsuccessful. Thus, scenarios that involve the national security community and those involving the law enforcement community have been left largely to be responded to on an ad hoc basis. Much of this controversy involves the period prior to 1994 and remained significant only to the participants until the National Security and law enforcement establishment under the prodding of Senators Sam Nunn and

**Richard Lugar, particularly in the runup to the 1996 Olympics became concerned about anti-terrorism and counter-terrorism preparedness.**

**The term *National Security Emergency* appears nowhere in the United States Code or Statutes at Large. The United States Code does have numerous references to the term *National Emergency* (approximately 278) and several studies of their utility in federal emergency planning, preparedness, and response exist. See Appendix A discussing the National Emergencies Act, 50 U.S.C. §1601 *et seq.* The first document utilizing the term *National Security Emergency* was NSDD-47 that remains partially in effect. Pursuant to a June 30, 1995, (copy attached) memorandum from the National Security Staff that NSDD is being reviewed for updating. NSDD-47 was issued in July 1982, and superseded in part by NSDD-188 (both documents declassified by the National Security Council in 2000).**

**On November 18, 1988, the President signed Executive orders 12656, *Assignment of Emergency Preparedness Responsibilities*. It replaces E.O. 11490 that had been issued in 1969. That Order was an attempt to bolster the emergency preparedness effort that had seen the publication by the Office of Emergency Planning in the Executive Offices of the White House of an Executive Branch Comprehensive Emergency Plan in 1964, signed by President Lyndon Johnson.**

**E.O. 12656, defines the term *National Security Emergency*. A contractor study of the term was completed in 1992 by the former Mobilization Preparedness Division of NP and is available from the present Resources Preparedness Division in PTE. The Executive order neither reflected nor utilized the concept of functional organization of emergency response assignments, that had been formally adopted in a June 27, 1988, memorandum to the Director of FEMA, from the National Security Advisor Colin Powell, subject, *Functional Response to National Security Emergencies*, (attachment to this paper) and instead relied on the mandate of §404 of Title 50 of the United States Code mandating maximum utilization of the existing facilities and resources of the Federal departments and agencies. See Appendix F.**

**The Disaster Relief Act of 1974 (and now the Robert T. Stafford Act signed into law five days after E.O. 12656 was issued) was not listed as an authority for E.O. 12656. The Constitution, §301 of Title 3 of the United States Code, the National Security Act of 1947, the Defense Production Act, and the Federal Civil Defense Act were the listed authority for this key planning and preparedness Executive order.**

**The current validity of E.O. 12656 was affirmed by this administration in a memorandum to key agencies from the Assistant to the President for National Security Affairs, subject "National Security Emergency Preparedness" dated February 28, 1995. (Copy attached) On June 30, 1995, however, the Assistant**

to the President requested FEMA to conduct an interagency review of certain key executive orders including E.O. 12656. That review has been substantially completed and is expected to be transmitted to the NSC staff by January 1998.

The term National Security Emergency, while statutorily undefined is also utilized in E.O. 12472; *Assignment of national security and emergency preparedness telecommunications functions*. That order remains in effect and unamended. 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. Those regulations refer to the National Plan for Telecommunications Support in Non-Wartime Emergencies, although the plan itself has never been published in the Federal Register. A related system is the Telecommunication Service Priorities discussed in 47 CFR Part 64. These regulations are controlling on FEMA programs, functions, and activities.

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.

In November 1993, FEMA underwent a comprehensive reorganization. An Office of National Security Coordination was created in that reorganization. (Note that a separate Terrorism Unit was created for a six-month period effective October 1, 1997) One year later, November 1994, 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, was delegated to the new Preparedness, Training and Exercises Directorate.

## 2. 1994-1997

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 (particularly §611 of Title VI of the Robert T. Stafford Act) and Presidential delegation (E.O.12148, §2) 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.

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 was never finalized and is now the subject of a draft MOU between INS and FEMA.

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.

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 law enforcement events. The Robert T. Stafford Act clearly states that regardless of cause events surrounding a fire, flood, or explosion (terms undefined in the statute) may be declared by the President a 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, which resulted in both a declared emergency followed by a disaster declaration.

**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 "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. . ." See GCM 91-2-21. Since the date of that memorandum, it has also been made clear by President Clinton's issuance of PDD-39 that any terrorist event or involvement 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, 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. As of this date the hazardous materials incident and terrorism incident annexes to the FRP are not complete. Never adopted as final, the Immigration Annex to the FRP, provides some guidance since the key problems were coordinated between the Department of Justice and FEMA, and is now being incorporated in an MOU. INS, however, has never finalized and made public for comment the statutorily (See GCM-91-7-10 on Mass Immigration Emergencies) mandated Mass Immigration Emergency Plan.**

**At the present time, FEMA is in the process of completing several interagency reviews for NSC that FEMA has chaired. One was a modernization report on the Defense Production Act, transmitted to Congress on September 30, 1997. Also included is a review of E.O. 12148 and E.O.12656 pursuant to a June 30, 1995 (copy attached) NSC tasking and that review will be transmitted to NSC and OMB early in 1998. A review of department and agency capability to respond to the consequence of a terrorist event pursuant to PDD-39 (an unclassified extract of the PDD is now available. See House Reports 105-29 and 105-79 (See Appendix A)). Importantly, just as the National Security Act of 1947 requires the NSC to coordinate policy review of international, military, and domestic events for their impact on national security, the assessments of the national security impacts of a large-scale earthquake on national security are now over a decade old. Since then, the President has labeled threats as divergent as the threat of employment or actual explosion of a weapon of mass destruction (WMD) and environmental degradation in the international arena as national security issues (see President's 1997 National Security Strategy (U)). Therefore it is likely that close coordination on these issues will be necessary.**

**Additionally, FEMA was statutorily assigned several reports by the so-called Nunn-Lugar II amendments (actually Title XIV of the Defense Authorization Act of 1997 (Public Law 104-201)) the last of which is due Congress on December**



31, 1997, and will be a comprehensive survey of Federal, State, and local consequences of terrorism capability. See Appendix D to this paper.

FEMA, and its predecessor civil organizations, historically has been the keystone of civil-military programs involving continuity of government and resources preparedness. The original Continuity of Government program was an initiative of the Office of Civil and Defense Mobilization in DOD under the Federal Civil Defense Act of 1950. Since the Department of Justice is both by law and history preeminent in the area of law enforcement (See 28 CFR Part 65-Emergency Federal Law Enforcement Assistance, and under Title 10 of the United States Code, the Department of Defense in war-fighting, to the extent that FEMA's humanitarian assistance role overlaps these Departments, some tension is inevitable. It should be noted, however, that except for immediate lifesaving near a military post, DOD has very limited budget execution authority for domestic disasters, but DOD is mentioned in the Robert T. Stafford Act. Three DOD regulations largely govern civil-military relations. See 32 CFR Parts 185, 215, and 501. See Appendix C to this paper. Also, DOD does have an authorization and appropriations for a \$50 emergency fund created by Public Law 101-165 that contemplates reimbursement if an emergency or disaster is declared. Additionally, the Flood Control Act of 1941 (33 U.S.C. § 701n) has been amended to define natural disaster to include man-made events. The bottom line is that both the national security community and the law enforcement community have the same baseline requirement for FEMA, and the other civil agencies in domestic emergencies and disasters. Principally, development of an emergency response and recovery system that knows how, when, where, and with what resources, including contractor resources, it (FEMA and the civil agencies) will respond. The military and National Security establishment don't want the civil emergency job, but they always need to know what FEMA and the civil agencies can do since historically they have (sometimes through the National Guard) been the ultimate backstop in emergency response, although seldom in recovery.

## APPENDIX A

### NATIONAL EMERGENCY ACT (PUBLIC LAW 96-412) SEPTEMBER 14, 1976

The purpose of the National Emergency Act (hereinafter the "Act") was to terminate, as of two years from the date of enactment, the powers and authorities possessed by the President as a result of existing declarations of states of national emergency and to establish authority for the declaration of future national emergencies by establishing a process that allowed for regular congressional review of Presidential actions and assertions of Executive Branch authority. (See Senate Report No. 94-1168, August 26, 1976).

Title I, Section 101 (50 U.S.C. §1601) terminated as of two years from date of enactment (September 14, 1978) all powers and authorities possessed by the President as a result of any declaration of national emergency in effect on the date of enactment (September 14, 1976). At that time some declarations had been in effect for forty (40) years. Although the authority to exercise the powers and authorities existing by declaration were terminated, the statutory authorities were not repealed. In effect, the President was told to go back to square one and start again under the new rules. Any statute not requiring a declaration of national emergency was not affected by the Act.

Title II (50 U.S.C. §§1621, 1622) prescribes the new requirements. With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power or authority, the President is authorized to make such a declaration. Prior to the Act, a declaration of national emergency automatically activated provisions throughout the United States Code (almost 470 at the time of enactment in 1976, and now reduced to approximately 270). The new requirement permits the invocation of a national emergency, but now only needed provisions are activated without bringing into force the entire body of laws premised on such a declaration. §201(b) provides that the powers and authorities exercised during the period of declaration shall remain in effect (1) only when the President proclamation or Executive order is immediately published in the Federal Register and be immediately transmitted to the Congress. Also Title III, §301, 50 U.S.C. §1631, requires that the President specifies, in the proclamation or Executive order, the provisions of law under which he proposes that he or other officers will act. Thus, in order to legally be able to exercise emergency standby authority contained in a statute which had not been specified in his original declaration, or concurrent or subsequent Executive orders, the President must specify the specific statute in a new Executive order published in the Federal Register and transmitted to the Congress. Failure to do prevents lawful use of such additional authority, and would be contrary to law.



**Title IV, §401, 50 U.S.C. §1641, specifies the accountability and reporting requirements applicable during the duration of a national emergency. The President is required to maintain a complete file of proclamations and Executive orders, and executive branch departments and agencies are required to file and index all rules and regulations issued pursuant to the declaration. Every six months, the President must report to Congress the continuation of the national emergency, and a report of total expenditures on the emergency during the period.**

**The legislative branch expert on this statute, in addition to the members and staffs of the respective Judiciary Committees of the House and Senate, is Harold C. Relyea, a specialist in the American National Government Division of the Congressional Research Service of the Library of Congress. His phone number is (202) 707-8679.**



## APPENDIX B

For a review of Federal capability to respond to an NBC terrorist attack see the following reports.

(1) June 1996 Joint Report to Congress, *Preparedness and Response to a Nuclear, Radiological, Biological, or Chemical Attack*, prepared by the Department of Defense and Department of Energy in consultation with FEMA.

(2) House Document 105-29, January 21, 1997, *Policy Functions/Operational Roles of Federal Agencies in Countering the Domestic Chemical/Biological Threat*, Message from the President of the United States Transmitting A Report Describing the Respective Policy Functions and Operational Roles of Federal Agencies In Countering The Threat Posed By the Use or Potential Use of Biological and Chemical Weapons of Mass Destruction (WMD) Within the United States, Pursuant to Pub. L. 104-201, §1416(e) (110 Stat. 2724).

(3) House Document 105-79, May 5, 1997, *COMPREHENSIVE READINESS PROGRAM FOR COUNTERING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION*, Message from the President of the United States Transmitting A Report That Describes The United States Comprehensive Readiness Program For Countering Proliferation of Weapons of Mass Destruction, Pursuant to Public Law 104-201, §1443© (110 STAT 2729).

(4) *Department of Defense, Report to Congress, DOMESTIC PREPAREDNESS PROGRAM IN THE DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION*, May 1, 1997.

(5) General Accounting Office, NSIAD-97-254, 116 p., *Combating Terrorism: Federal Agencies' Efforts to Implement National Policy and Strategy*.

## **APPENDIX C**

### **DOD AUTHORITY FOR MILITARY/CIVIL INTERFACE**

#### **TITLE 10—UNITED STATES CODE—ARMED FORCES**

##### **CHAPTER 13—THE MILITIA**

##### **CHAPTER 15—INSURRECTION**

##### **CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES**

##### **CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE [INTERNATIONAL ONLY]**

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#### **TITLE 10—UNITED STATES CODE—ARMED FORCES**

##### **CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS**

###### **Sec.**

- 382. Use of information collected during military operations.**
- 382. Use of military equipment and facilities.**
- 382. Training and advising civilian law enforcement officials.**
- 382. Maintenance and operation of equipment.**
- 382. Restriction on direct participation by military personnel.**
- 382. Support not to affect adversely military preparedness.**
- 382. Reimbursement.**
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- 382. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.**
- 382. Enhancement of cooperation with civilian law enforcement officials.**

**382. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense.**

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

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**§ 371. Use of information collected during military operations**

**(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, state, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.**

**(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.**

**(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to civilian law enforcement officials.**

**§372. Use of military equipment and supplies**

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

**(b) Emergencies involving chemical and biological agents. --**

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



assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.

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

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

**§ 373. Training and advising civilian law enforcement officials**

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

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under §372 of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

**§ 374. Maintenance and operation of equipment**

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

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

(A) a criminal violation of a provision of law specified in paragraph (4)(A); or

**(B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar law.**

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

**(A) Detection, monitoring, and communication of the movement of air and sea traffic.**

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

**(C) Aerial reconnaissance.**

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

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

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

**(i) the transportation of civilian law enforcement personnel; and**

**(ii) the operation of a base of operations for civilian law enforcement personnel.**

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

**(4) In this subsection:**

**(A) The term “Federal law enforcement agency” means an agency with jurisdiction to enforce any of the following:**

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

**(ii) Any of §§274 through 278 of the Immigration and Nationality Act (8 U.S.C. §§1324-1328) (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. §1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) or any other territory or possession of the United States.**

**(iii) A law relating to the arrival or departure of merchandise.**

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

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

**§ 375. Restriction on direct participation by military personnel**

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

**§ 376. Support not to affect adversely military preparedness**

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

**§ 377. Reimbursement**

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

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

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

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

**§ 378. Nonpreemption of other law**

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

**§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes**

**(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.**

**(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)----**

**(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and**

**(2) as are otherwise within the jurisdiction of the Coast Guard.**

**(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of law listed in section 374(b)(4)(B) of this title.**

**(d) In this section, the term "drug-interdiction area" means an area outside the land area of the United States (as defined in section 374(b)(4)(B) of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.**

**§ 380. Enhancement of cooperation with civilian law enforcement officials**

**(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.**

**(b) Each briefing conducted under subsection (a) shall include the following:**

**(1) An explanation of the procedures for civilian law enforcement officials---**

**(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and**

**(B) to obtain surplus military equipment.**



**(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.**

**(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.**

**(c) The Attorney General and the Administrator of general Services shall--**

**(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and**

**(2) make available to civilian law enforcement personnel nationwide, taller telephone communication with such office or offices.**

**§ 381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense**

**(a) Procedures. ----**

**(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:**

**(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:**

**(i) A request for law enforcement equipment.**

**(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.**



**(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).**

**(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures, as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.**

**(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.**

**(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.**

**(b) Reimbursement of administrative costs. --- In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.**

**(c) GSA catalog. ---The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under the procedures established by the Secretary under this section.**

**(d) Definitions. ---In this section:**

**(1) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.**

**(2) The term "unit of local government" means any city, county, township, town, borough, parish, village, or other**

**general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.**

**3) The term "law enforcement equipment suitable for counter-drug activities" has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.**

**§ 382. Emergency situations involving chemical or biological weapons of mass destruction**

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

- (1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and**
- (2) The Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.**

**(b) Emergency situations covered. ----In this section, the term "emergency situation involving a biological or chemical weapon of mass destruction" means a circumstance involving a biological or chemical weapon of mass destruction---**

- (1) that poses a serious threat to the interest of the United States; and**
- (2) in which---**

**(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved:**

**(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved;**

**(C) enforcement of section 175 or 2332c of title 18 would be seriously impaired if the Department of Defense assistance were not provided.**

**(c) Forms of assistance. ---The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.**

**(d) Regulations. ---**

**(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.**

**(2) (A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:**

**(i) Arrest.**

**(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c of title 18.**

**(iii) Any direct participation in the collection of intelligence for law enforcement purposes.**

**(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:**

**(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.**

**(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.**

**(e) Reimbursements. --**

**The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.**

**(f) Delegations of authority. ---**

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

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

**(g) Relationship to other authority. ----Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997.**



**IV. TITLE 18 United States Code**

**TITLE 18—CRIMES AND CRIMINAL PROCEDURE  
CHAPTER 67—MILITARY AND NAVY**

**§1385. Use of Army and Air Force as posse comitatus**

**Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.**

**V. 32 CODE OF FEDERAL REGULATIONS --NATIONAL DEFENSE**

**PART 185-MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA)**

**PART 215-EMPLOYMENT OF MILITARY RESOURCES IN THE  
EVENT OF CIVIL DISTURBANCES**

**PART 226-SHELTER FOR THE HOMELESS**

**PART 501-EMPLOYMENT OF TROOPS IN AID OF CIVIL  
AUTHORITIES**

**PART 502-RELIEF ASSISTANCE**

**PART 503-APPREHENSION AND RESTRAINT**

**V. TITLE 33 CODE OF FEDERAL REGULATIONS--NAVIGATION AND  
NAVIGABLE WATERS**

**PART 203-EMERGENCY EMPLOYMENT OF ARMY AND OTHER  
RESOURCES, NATURAL DISASTER PROCEDURES**

**PART 214-EMERGENCY SUPPLIES OF DRINKING WATER**

**VI. DEPARTMENT OF DEFENSE DIRECTIVES**

**MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA)- 3025.1  
(JANUARY 15, 1993)**

**MILITARY ASSISTANCE FOR CIVIL DISTURBANCES (MACDIS)-  
3025.12 (FEBRUARY 4, 1994)**

**MILITARY ASSISTANCE TO CIVIL AUTHORITIES (MACA)- 3025.15  
(FEBRUARY 18, 1997)**

**DOD COOPERATION WITH CIVILIAN LAW ENFORCEMENT  
OFFICIALS- 5525.5 (JANUARY 15, 1986)**

## **APPENDIX D**

### **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.**



## **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.**

-----  
**[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, and 12673.]**

**APPENDIX E**

**PUBLIC LAW 104-201**

**TITLE XIV--DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION**

**Extract from House Conference Report No. 104-724**

***Domestic Preparedness***

**Enhancing the nation's ability to prevent, and, if necessary, to respond to a terrorist incident involving nuclear, radiological, chemical, or biological weapons or materials is the cornerstone of this program. The conferees note that an interagency group, composed of the Federal Response Plan signatory agencies led by the Federal Emergency Management Agency (FEMA) [emphasis supplied] completed and forwarded to the President on July 1, 1996, a report titled "Consequences Management for Nuclear, Biological, and Chemical (NBC) Terrorism." The report documents the inadequacy of the Federal Response Plan to deal with NBC terrorist incidents and makes specific recommendations regarding capability enhancements. The conferees agree to a provision (§1411) that would require the President to take immediate action to enhance the capability of the Federal Government to respond to such incidents and to provide enhanced support to improve the capabilities of State and local emergency response and law enforcement agencies to respond to such incidents. The provision would further require the President to provide to the Congress by January 31, 1997, [published in the Congressional Record on February 26, 1997] a report containing an assessment of such capabilities, improvements required, and measures that should be taken to achieve such improvements, including additional resources and legislative authority that might be necessary.**

**The conferees agree to recommend \$50.0 million for the establishment of a domestic emergency assistance program for the Department of Defense to immediately begin sharing its unique expertise, experience, and equipment in dealing with chemical and biological weapons and materials with local emergency first respondents (firemen, policemen, and medical workers).**

**The conferees expect that the Secretary of Defense will work expeditiously with the Secretary of Health and Human Services in providing DOD resources and expertise to the Office of Emergency Preparedness for the formation of emergency medical teams that are trained and equipped to handle incidents involving weapons of mass destruction.**

**The conferees agree to provide \$15.0 million for DOD to conduct interagency exercises that will focus on testing and improving the U.S. Government's ability to respond to incidents involving weapons of mass destruction.**

**The conferees have agreed to an additional provision (§1414) that would require DOD to establish at least one Chemical-Biological Emergency Response Team for rapid response to domestic terrorism. The conferees expect that such teams would be similar in concept to the Nuclear Emergency Search Team and Accident Response Groups that are maintained by DOE for response to a nuclear incident. The conferees note in the joint DOD/DOE report [prepared in consultation with FEMA] to the Congress, "Preparedness and Response to a Nuclear, Radiological, Biological, or Chemical Terrorist Attack," dated June 13, 1996, that the DOD is attempting to establish such a capability. The conferees note that many of the capabilities sought for such teams are already present in the Army's Technical Escort Unit, Edgewood Research, Development, and Engineering Center, and Chemical Defense and Infectious Disease Medical Research Institutes. The conferees also note the Counterproliferation Program Review Committee's "Report on Activities and Programs for Countering Proliferation", dated May 1996, which states that the U.S. Marine Forces, Atlantic was scheduled to activate a Department of the Navy/Marine Corps Chemical/Biological Incident Response Force on June 1, 1996, to respond to chemical and biological incidents (terrorist or otherwise) occurring on naval installations and Department of State legations worldwide. The conferees understand that the unit has been activated and is now in training.**

**In §1416, the conferees agree to provide authority, very narrowly defined and carefully constructed, for the President and the Attorney General to request military support to local authorities in incidents involving chemical and biological weapons. This authority is in addition to the authorities otherwise provided in Chapter 18 of title 10, U.S. Code. The conferees agree that the use of the military in any emergency situation involving biological or chemical weapons or materials should be limited both in time and scope to dealing with the specific chemical or biological weapons-related incident.**

**Finally, the conferees have included a provision (§1417) that would require Federal Response Plan agencies to develop and maintain an inventory of equipment and other assets that could be made available to aid State and local officials in search and rescue and other disaster management and mitigation efforts associated with an emergency involving weapons of mass destruction, and would require FEMA to maintain a comprehensive master list of the inventory. The provision would also require FEMA to establish a database on chemical and biological agent and munitions characteristics and safety precautions and to develop a system to provide federal, State, and local officials access to the database and to the master inventory.**

**Appendix F**

**Extract from National Security Act of 1947  
Section 404 of Title 50 Appendix of the United States Code**

**§404. Emergency preparedness**

**(a) Employment of personnel. The Director of the Federal Emergency Management Agency, subject to the direction of the President, is authorized, subject to the civil-service laws and the Classification Act of 1949, to appoint and fix the compensation of such personnel as may be necessary to assist the Director.**

**(b) Functions. It shall be the function of the Director of the Federal Emergency Management Agency to advise the President concerning the coordination of military, industrial and civilian mobilization, including--**

**(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war;**

**(2) programs for the effective use in time or war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;**

**(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;**



**(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;**

**(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves;**

**(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security;**

**(c) Utilization of Government resources and facilities. In performing his functions, the Director of the Federal Emergency Management Agency shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.**

**Appendix G**

**SENSE OF CONGRESS**

**§1704 OF PUBLIC LAW 103-160, SIGNED NOVEMBER 30,  
1993, PROVIDED THAT:**

**“It is the sense of Congress that the  
President should strengthen Federal  
interagency emergency planning by the  
Federal Emergency Management Agency  
and other appropriate Federal, State, and  
local agencies for development of a  
capability for early detection and warning  
of and response to-----**

**(1) potential terrorist use of chemical  
or biological agents or weapons; and**

**(2) emergencies or natural disasters involving  
industrial chemicals or the widespread outbreak  
of disease.”**

**THE WHITE HOUSE**

**WASHINGTON**

**June 30, 1995**

**MEMORANDUM FOR THE VICE PRESIDENT**  
**THE SECRETARY OF STATE**  
**THE SECRETARY OF THE TREASURY**  
**THE SECRETARY OF DEFENSE**  
**THE ATTORNEY GENERAL**  
**THE SECRETARY OF INTERIOR**  
**THE SECRETARY OF AGRICULTURE**  
**THE SECRETARY OF COMMERCE**  
**THE SECRETARY OF LABOR**  
**THE SECRETARY OF HEALTH AND HUMAN SERVICES**  
**THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT**  
**THE SECRETARY OF TRANSPORTATION**  
**THE SECRETARY OF ENERGY**  
**THE SECRETARY OF EDUCATION**  
**THE SECRETARY OF VETERANS AFFAIRS**  
**ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY**  
**DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**  
**DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY POLICY**  
**DIRECTOR, CENTRAL INTELLIGENCE AGENCY**  
**CHAIRMAN, BOARD OF GOVERNORS OF THE FEDERAL**  
**RESERVE**  
**CHAIRMAN, JOINT CHIEFS OF STAFF**  
**ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION**  
**DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT**  
**CHAIRMAN, NUCLEAR REGULATORY COMMISSION**  
**CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION**  
**DIRECTOR, THE FEDERAL EMERGENCY MANAGEMENT AGENCY**  
**UNITED STATES POSTMASTER GENERAL**  
**CHAIRMAN, INTERSTATE COMMERCE COMMISSION**  
**MANAGER, NATIONAL COMMUNICATIONS SYSTEM**

**SUBJECT: National Security Emergency Resources Preparedness**

In a recent memorandum to Departments and Agencies, I emphasized the importance for the Administration to continue emergency preparedness activities as stated in Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, November 23, 1988, and to make appropriate arrangements for the continuity of essential operations in response to any catastrophic or disastrous



incident. To that end, I directed the Federal Emergency Management Agency (FEMA) to prepare an assessment of the existing continuity of operations (COOP) and continuity of government (COG) programs that I understand is well underway.

I have also asked my Senior Director for Defense Policy and Arms Control, within the framework of an Ad Hoc interagency working group, to begin review of broader national security emergency resource preparedness responsibilities under Executive Orders 12656, 12919, 12148, 12742 and related orders and directives. Following a review of specific FEMA proposals to modify certain national security emergency resource preparedness functions, the group will conduct an overall review of which resource preparedness requirements need to be updated and streamlined to ensure our nation remains prepared to meet a broad range of national security threats and future challenges.

For that reason, and as a parallel effort to the ongoing COOP/COG review, I am asking the Director, FEMA to coordinate a preliminary assessment of the national security emergency resource preparedness requirements set forth in Executive Orders 12656, 12919, 12148, 12742 and other related documents, in light of current world trends and evolving threats. The Director, FEMA will contact you for participation in this effort; I request your full and earnest support. This assessment should be forwarded to the NSC Senior Director for Defense Policy and Arms Control by January 31, 1996 for use by the Ad Hoc working group in their ongoing review of resource preparedness policy.



Anthony Lake  
Assistant to the President  
for National Security Affairs

THE WHITE HOUSE  
WASHINGTON

February 28, 1995

MEMORANDUM FOR THE VICE PRESIDENT  
THE SECRETARY OF STATE  
THE SECRETARY OF THE TREASURY  
THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE SECRETARY OF INTERIOR  
THE SECRETARY OF AGRICULTURE  
THE SECRETARY OF COMMERCE  
THE SECRETARY OF LABOR  
THE SECRETARY OF HEALTH AND HUMAN SERVICES  
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
THE SECRETARY OF TRANSPORTATION  
THE SECRETARY OF ENERGY  
THE SECRETARY OF EDUCATION  
THE SECRETARY OF VETERANS AFFAIRS  
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET  
DIRECTOR OF CENTRAL INTELLIGENCE  
DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY  
POLICY  
ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION  
AGENCY  
DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT  
AGENCY  
ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION  
CHAIRMAN OF THE NUCLEAR REGULATORY COMMISSION  
DIRECTOR OF THE UNITED STATES INFORMATION AGENCY  
ADMINISTRATOR OF GENERAL SERVICES  
DIRECTOR OF SELECTIVE SERVICE  
ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION  
UNITED STATES POSTMASTER GENERAL  
DIRECTOR OF TENNESSEE VALLEY AUTHORITY  
DIRECTOR OF PERSONNEL MANAGEMENT  
CHAIRMAN OF FEDERAL COMMUNICATIONS COMMISSION  
CHAIRMAN OF FEDERAL RESERVE BOARD  
CHAIRMAN OF INTERSTATE COMMERCE COMMISSION  
ACTING ARCHIVIST OF THE UNITED STATES  
MANAGER OF NATIONAL COMMUNICATIONS SYSTEM.

SUBJECT: National Security Emergency Preparedness

The President has stated in his National Security Strategy of Engagement and Enlargement, "Protecting our nation's security -- our people, our territory and our way of life -- is my

Administration's foremost mission and constitutional duty." To this end, continued all-hazard emergency preparedness by all Federal departments and agencies, to include continuity of government and continuity of operations, remains a crucial national security requirement.

Nuclear, biological and chemical weapons of mass destruction, and the global proliferation of related technologies and materials, collectively remain one of the greatest current and future threats to U.S. national security. Natural disasters and other emergencies, which may cause widespread or prolonged disruption of critical Federal Government functions, also warrant continued consideration as potential national security challenges.

Accordingly, it remains the policy of the United States to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national emergency. Specifically, it is the policy of this Administration to continue the preparedness activities cited in Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, November 23, 1986. These responsibilities involve preparedness for any occurrence, including natural disaster, military attack, technological emergency or other emergency that seriously degrades or seriously threatens the national security. Your ability to conduct your operations under all such adverse conditions is basic to the national security. Further, even though elements of continuity of government programs may be classified, they should be addressed as an integral part of a risk-based, all-hazard national security emergency preparedness capability.

I therefore strongly encourage you to support all measures to accomplish the objectives of Executive Order 12656 and to make appropriate arrangements for the continuity of your essential operations in response to any catastrophic or disastrous incident. In this regard, and in keeping with its management responsibilities under the Executive Order, I have directed the Federal Emergency Management Agency to prepare an assessment of the existing continuity of operations and continuity of government programs. The Director, Federal Emergency Management Agency (FEMA) will inform you of the documentation that is needed to complete this assessment. The National Security Council Senior Director for Defense Policy and Arms Control will review and advise me of the results of the FEMA assessment.



Anthony Lake  
Assistant to the President for  
National Security Affairs



U. H.  
Federal Emergency Management Agency: *Page 1*  
Washington, D.C. 20472  
*2 130 2*

CS

July 7, 1988

MEMORANDUM FOR: Associate Directors  
Administrators  
Office Directors  
Regional Directors  
FROM: *William C. Tidball*  
William C. Tidball  
Chief of Staff  
SUBJECT: Functional Response to National Security  
Emergencies

Attached is a copy of a memorandum from LTG Colin L. Powell,  
Assistant to the President for National Security Affairs, subject  
as above, for your information. Please note that NP is the action  
office regarding this document.

Attachment

Distribution: A (Firstaff)  
E (RegDirs)

THE WHITE HOUSE

WASHINGTON

June 27, 1988

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF THE TREASURY  
THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE SECRETARY OF THE INTERIOR  
THE SECRETARY OF AGRICULTURE  
THE SECRETARY OF COMMERCE  
THE SECRETARY OF LABOR  
THE SECRETARY OF HEALTH AND HUMAN SERVICES  
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
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THE SECRETARY OF EDUCATION  
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET  
THE DIRECTOR, UNITED STATES INFORMATION AGENCY  
THE POSTMASTER GENERAL  
THE ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION  
THE ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION  
THE DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT  
THE CHAIRMAN, NUCLEAR REGULATORY COMMISSION  
THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY  
THE DIRECTOR, SELECTIVE SERVICE SYSTEM  
✓ THE DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY  
THE CHAIRMAN OF THE BOARD OF TRUSTEES OF THE  
TENNESSEE VALLEY AUTHORITY  
THE ADMINISTRATOR OF VETERANS AFFAIRS  
THE ARCHIVIST OF THE UNITED STATES  
THE MANAGER, NATIONAL COMMUNICATIONS SYSTEM

SUBJECT: Functional Response to National Security  
Emergencies

It is imperative that the United States Government be prepared to respond to all large-scale emergencies that could confront the Nation, especially those that could adversely affect our national security.

To assure effective interagency coordination of Federal activities in response to domestic disasters of national significance, the President approved the National System for Emergency Coordination (NSEC) in January, 1988. The functional approach of the NSEC has already been adopted for specific Federal interagency

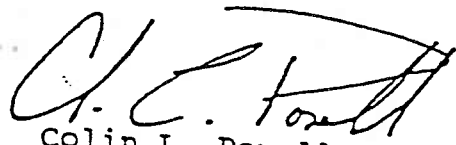
emergency responses, e.g. the Plan for Federal Response to a Catastrophic Earthquake. It now is appropriate to develop a National Security Emergency Plan with a functionally-oriented structure as a companion approach to national security emergencies. This will assure a consistent response by the Federal Government regardless of the nature of an emergency and will eliminate the need to change response mechanisms in the midst of a crisis.

Functional groups shall be established at the national and, as appropriate, regional/field levels in the areas of: economics, energy, human services, legal and law enforcement, telecommunications, and transportation. Additional functional groups may be established when appropriate. Each functional group will be chaired by a lead department or agency which will be responsible for identifying group members, emergency responsibilities, operating procedures and emergency actions, and for coordinating its emergency response activities with those of other functional groups. In addition, the Plan shall include provisions for the President to designate leadership responsible for coordinating the overall Federal response.

The lead agencies are as follows:

Economics	Department of the Treasury
Energy	Department of Energy
Human Services	Department of Health and Human Services
Legal and Law Enforcement	Department of Justice
Telecommunications	Office of Science and Technology Policy/National Communications System
Transportation	Department of Transportation

The Director of the Federal Emergency Management Agency in his role as an advisor to the National Security Council and to assist the Assistant to the President for National Security Affairs shall coordinate the development of the Plan. Departments and agencies should continue to work closely with the Federal Emergency Management Agency in order to assure that this very important NSEP priority is met.

  
Colin L. Powell