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## **FEMA's Mission: Policy Directives for the Federal Emergency Management Agency**

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# FEMA's Mission: Policy Directives for the Federal Emergency Management Agency

## Summary

The Federal Emergency Management Agency (FEMA) assists states and localities overwhelmed by, or at risk from, disasters. FEMA also coordinates federal emergency management activities and planning for the continuity of government should national security be threatened.

Since 1979 FEMA has administered a range of authorities that enable the agency to serve as the primary source of federal technical and financial assistance for emergency management. Among the types of aid provided through FEMA programs are grants and material to help disaster victims meet pressing needs such as food and shelter, education and training programs to improve the response capabilities of non-federal officials, and mobile communications equipment. FEMA exercises little regulatory authority, but directives that underlie the agency's mission authorize the agency to establish standards for reconstruction of buildings after a disaster declaration is issued, for the construction of federal buildings in earthquake-prone areas, and for the operation of first responder equipment.

FEMA has responded to, and has helped communities prepare for, terrorist attacks in the United States. The Office of Homeland Security (OHS), established by President Bush subsequent to the attacks in 2001, has a similar, but more encompassing, mission related to disasters caused by terrorist actions. Congressional debate on the contours and framework for federal administration of homeland security might include consideration of FEMA's mission, the extent to which that mission overlaps with the assignments given the new OHS, and a new structure or set of authorities for the agency.

This report identifies authorities drawn from public sources. It does not refer to classified authorities not available to the public, does not include references to temporary authorities that require FEMA to provide assistance for specific disasters or needs, and does not include information on plans, regulations, or operating manuals developed to implement these policies. This report will be updated as the authorities governing the agency's mission undergo significant change.

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# FEMA's Mission: Policy Directives for the Federal Emergency Management Agency

## Basic Authorities

The Federal Emergency Management Agency (FEMA) is an independent agency, its mission “to reduce loss of life and property and protect our nation’s critical infrastructure from all types of hazards through a comprehensive, risk-based, emergency management program of mitigation, preparedness, response and recovery.”<sup>1</sup> FEMA provides disaster assistance to state and local governments, individuals, families, and certain nonprofit organizations, but generally not to businesses.<sup>2</sup> In addition to providing aid after disasters, FEMA administers programs to help communities prepare for catastrophes that might occur.

FEMA’s policy authorities have evolved over the years as new authorities have been created to meet emergent needs. Some of FEMA’s authorities deal with homeland security and terrorist attack — a matter that received attention before and after the events of September 11, 2001. This report discusses the evolution of FEMA’s central authority and identifies other authorities that Congress and the executive branch have given to FEMA. The report also reviews FEMA’s role in homeland security and discusses organizational issues that have arisen since the President’s creation of the Office of Homeland Security.

## Evolution of FEMA’s Basic Authority

The level of responsibility for disaster relief and emergency management has increased over the years. Before 1950 no single federal agency exercised lead agency emergency management (primarily disaster relief) duties, as Congress enacted *ad hoc* legislation after each major catastrophe that authorized the President to determine when federal disaster aid would be provided pursuant to the assistance specified in the legislation. In 1950, Congress enacted legislation that authorized the President to determine when federal assistance would be made available.<sup>3</sup> From 1950 to 1978, Congress enacted legislation that expanded the categories of federal assistance, established the amount of assistance to be provided, and set a range of requirements

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<sup>1</sup>U.S. Federal Emergency Management Agency, “About FEMA, Helping People Before, During, & After Disasters,” available at [<http://www.fema.gov/about/>], visited Jan. 8, 2001.

<sup>2</sup>For background on aid to small businesses, see CRS Report RS21061, *Small Business Disaster Assistance: Responding to the Terrorist Attacks*, by Bruce Mulock.

<sup>3</sup>P.L. [81]-875, 64 Stat. 1109.

for federal and non-federal officials.<sup>4</sup> Primary responsibility for implementation of these laws shifted first from the independent Federal Civil Defense Administration, to offices within the White House, and then to the Department of Housing and Urban Development. The resulting transfer of authorities and the lack of clear coordinative responsibility caused problems at all levels of government, leading observers in the 1970s to call for the consolidation of related functions.<sup>5</sup>

In 1977, congressional concern about the coordination of federal emergency assistance programs led to efforts by Members of Congress and state and local officials to reorganize federal disaster related functions.<sup>6</sup> Congress suspended its efforts when President Carter announced an ongoing review of the issue within the Office of Management and Budget (OMB).<sup>7</sup>

**Centralized Authority.** On June 19, 1978, President Carter submitted to Congress *Reorganization Plan Number 3* to establish FEMA.<sup>8</sup> After neither chamber passed a resolution of disapproval, the Plan took effect on April 1, 1979.<sup>9</sup> The reorganization plan and two related executive orders that created FEMA and transferred functions from other federal agencies included the following provisions:

- *Reorganization Plan Number 3 of 1978* — Created FEMA and transferred fire prevention, flood insurance, and emergency broadcast functions. Also transferred the National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control to the new agency.<sup>10</sup>

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<sup>4</sup>For a summary of the evolution of these authorities, see U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S.Doc. 104-4, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995), Appendix I.

<sup>5</sup>For example, see U.S. President (Nixon), “New Approaches to Federal Disaster Preparedness and Assistance,” H.Doc. 93-100, 93<sup>rd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1973); National Governor’s Association, 1978 Emergency Preparedness Project Final Report (Washington: 1978), p. 394. See also [<http://www.fema.gov/about/history.htm>].

<sup>6</sup>The principal 95<sup>th</sup> Congress bills were H.R. 7222, H.R. 7649, S. 526, and S. 1209.

<sup>7</sup>Results of the Administration study are found in: U.S. Office of Management and Budget, *Federal Emergency Preparedness and Response Historical Survey* (Washington: 1978), p. 70.

<sup>8</sup>Pursuant to general reorganization authority granted the President in the Reorganization Act of 1949, as amended (P.L. 95-17, 91 Stat. 29-35, 5 U.S.C. 901), reorganization plans submitted to the Congress for consideration were implemented if Congress did not pass resolutions of disapproval within sixty days. This reorganization authority expired in 1984.

<sup>9</sup>Both chambers held hearings on the plan and unfavorably reported resolutions of disapproval. See U.S. Congress, House Committee on Government Operations, *Reorganization Plan No. 3 of 1978 (Federal Emergency Management Agency)*, hearings, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 26 and 29<sup>th</sup>, 1978 (Washington: GPO, 1978), p. 168; U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Plan No. 3 of 1978 (Disaster Preparedness)*, hearings, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 20<sup>th</sup> and 21<sup>st</sup>, 1978 (Washington: GPO, 1978), p. 47.

<sup>10</sup>5 U.S.C. Appendix.

- *E.O. 12127* — Effectuated the reorganization plan and further specified the authorities and functions transferred from the Departments of Commerce and Housing and Urban Development.<sup>11</sup>
- *E.O. 12148* — Transferred additional functions from the Departments of Defense (civil defense) and Housing and Urban Development (federal disaster assistance), General Services Administration (federal preparedness), and the Office of Science and Technology Policy (earthquake hazards reduction). The Order also authorized FEMA to coordinate “all civil defense and civil emergency planning, management, mitigation, and assistance functions,” in addition to dam safety, “natural and nuclear disaster warning systems,” and “the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.” Other mandates set out in E.O. 12148 included working with non-federal entities, assessing federal civil defense and emergency management functions, and developing related policies. Finally, the Order mandated establishment of the Federal Emergency Management Council, composed of the FEMA and OMB directors, and others as designated by the President.<sup>12</sup>

The reorganization plan, and the succeeding executive orders were intended to invest in FEMA the first centralized set of authorities for emergency management. No single directive, however, sets out FEMA’s responsibility. Instead, 12 public laws and 19 unclassified presidential directives, including the three noted above, direct FEMA to provide assistance in four phases of emergency management: preparedness, response, recovery, and mitigation. The activities FEMA undertakes in each of these four areas include the following.

**Preparedness.** (1) Funds state and local disaster planning; (2) coordinates federal interagency planning for disaster response and continuity of government in the event of a federal government crisis; (3) administers the National Defense Executive Reserve program to identify business and government leaders willing to volunteer for government service in emergency situations; (4) awards grants to state and local governments for exercises and simulations; and (5) trains first responder units (firefighters, emergency rescue, hazardous materials teams).

**Response.** (1) Coordinates delivery of resources from other federal agencies and non-federal entities to communities stricken by major disasters; (2) administers funds to nonprofit organizations that aid the homeless; (3) monitors the response of

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<sup>11</sup>U.S. President (Carter), “Federal Emergency Management Agency,” Executive Order 12127, Mar. 31, 1979, 3 CFR, 1945-1989 Comp., p. 880.

<sup>12</sup>U.S. President (Carter), “Federal Emergency Management,” Executive Order 12148, July 20, 1979, 3 CFR, 1945-1989 Comp., p. 881, as amended by E.O. 12673. The Federal Emergency Management Council provision was rescinded in U.S. President (Clinton), “National Defense Industrial Resources Preparedness,” Executive Order 12919, June 3, 1994, 59 FR 29525, Sec. 904(8). Note: Reference in the Order to the Civil Defense Act (CDA) of 1950 as a base for authority is obsolete. The CDA was repealed and partially reenacted in 1994 (P.L. 103-337) when incorporated as Title VI of the Stafford Act, 42 U.S.C. 5195 et seq.



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Foreword by Alan S. Frumin

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federal interagency teams to hazardous material incidents; (4) awards funds for response associated with storage of chemical agents; and (5) offers assistance to state and local officials responding to major disasters and catastrophic situations.

**Recovery.** (1) Provides funds to individuals and families in need of temporary shelter or cash grants due to losses incurred in major disasters; (2) awards grants to state and local governments and certain nonprofit organizations for the reconstruction or repair of structures; and (3) reimburses insurance policy holders for losses from floods.

**Mitigation.** (1) Assists property owners seeking to reduce future losses by elevating, relocating, or reinforcing buildings in disaster-prone areas such as flood plains or earthquake zones; (2) awards grants to help non-federal fire agencies fight wildfires before they result in more catastrophic losses; (3) publishes flood zone maps and funds efforts to update the maps; (4) provides technical assistance and funding for updating land use plans and building codes; and, (5) funds certain efforts that prevent terrorist attacks (these also may be considered preparedness activities).

## Additional Authorities

In addition to the reorganization plan and the two executive orders noted above, statutes and other executive orders have assigned responsibilities to FEMA. These authorities are summarized below, grouped by topic.

### Dam Safety

*National Dam Safety Program Act* — Designates the Director of FEMA to be chair of the Interagency Committee on Dam Safety. Requires that the Director administer a national dam safety and research program and coordinate activities with the states.

The Director must establish annual targets through FY2002 for dam safety improvements, recommend federal and non-federal roles to carry out the implementation of the plan, and provide training and grants to the states. In administering the grant program, the Director must contract with each state to develop a work plan to reach performance levels set out in each contract. State dam safety plans and programs must be reviewed and approved by the Director. The statute authorizes the Director to establish a National Dam Safety Review board to monitor state implementation efforts and requires that the Director submit biennial reports to the Congress.<sup>13</sup>

### Disaster Assistance

*Robert T. Stafford Disaster Relief and Emergency Assistance Act* — Authorizes the President to provide federal assistance for preparedness and mitigation before

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<sup>13</sup>33 U.S.C. 467 et seq.

disasters occur. After a major disaster or emergency declaration is issued, requires that the President designate a federal coordinating officer to coordinate federal and non-federal disaster relief efforts. The President must also ensure that supplies needed for reconstruction are available, subject to a Governor's request. The Act also authorizes a range of assistance to communities, non-profit organizations, and individuals to help recovery efforts.

E.O. 12148 transferred the responsibility for administering much of the Stafford Act provisions, as amended, to the FEMA Director. Administration officials determine which areas are included in a declaration, award grants to communities and individuals affected by specified catastrophes, and ensure that grantees comply with statutory requirements. The Director also is charged with responsibility for preparing emergency response plans and administering preparedness grants to the states.<sup>14</sup>

## Earthquake Hazards Reduction

*Earthquake Hazards Reduction Act of 1977* — Mandates that FEMA has primary responsibility for coordinating and planning the National Earthquake Hazards Reduction program.

The Director must submit an annual program budget to the Office of Management and Budget (OMB), ensure implementation of the program by federal and non-federal agencies, submit plan updates to Congress, and prepare biennial reports to Congress. The FEMA Director must also administer grants to the states, prepare and execute a public education program, prepare and disseminate research on building codes, develop and coordinate the execution of federal interagency response plans, develop ways to combine earthquake hazard reduction with similar efforts for other hazards, and establish demonstration projects with states and localities.<sup>15</sup>

*E.O. 12699* — Establishes earthquake safety requirements for federal buildings. Requires the Director of FEMA to report to the President on implementation of the executive order, to support the Interagency Committee on Seismic Safety in Construction, and to collect information from other agencies to be included in annual reports to Congress.<sup>16</sup>

*E.O. 12941* — Requires that all federal agencies provide cost estimates on mitigating seismic risks in federal buildings to FEMA. Charges FEMA with the responsibility of notifying federal agencies of the executive order requirements and

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<sup>14</sup>42 U.S.C. 5121 et seq. Title VI of the Stafford Act includes civil defense (now referred to as emergency preparedness) provisions originally established in the Civil Defense Act of 1950, 50 U.S.C. App. 2251 et seq.

<sup>15</sup>42 U.S.C. 7701 et seq.

<sup>16</sup>U.S. President (Bush), "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," Executive Order 12699, Jan. 5, 1990, 55 FR 835,3 CFR 1991, p. 269.

preparing reports to Congress on seismic safety in federal buildings and the execution of the executive order.<sup>17</sup>

## Emergency Food and Shelter

*Stewart B. McKinney Homeless Assistance Act of 1987, Title III* — Directs the FEMA Director to constitute and serve as Chair of the Emergency Food and Shelter Program National Board.

The Director must provide administrative support to the board as specified, conduct annual audits, and award the full amount of appropriations to the board for implementation of the Act.<sup>18</sup>

## Fire Control

*Federal Fire Prevention and Control Act of 1974* — Established the United States Fire Administration (USFA) in the Department of Commerce, subsequently transferred to FEMA in Reorganization Plan No. 3 of 1978 and E.O. 12127.

The Administrator of the USFA reports to and is responsible to the FEMA Director. The National Fire Academy within FEMA is charged with advancing professional development of fire personnel. Its superintendent is appointed by the FEMA Director and subject to direction of the USFA Administrator. The Administrator oversees a program for testing and evaluating fire equipment, operates the National Fire Data Center, and assists states in preparing fire prevention and control plans. The Act authorizes the Administrator to review state and local fire prevention codes, suggest improvements, encourage owners of large properties to prepare fire safety statements, and to organize an annual conference. The Administrator must develop arson detection techniques, conduct studies, provide related training, collect data, and develop information on arson. The FEMA Director must forward claims for fire fighting on federal property to the Treasury Department for reimbursement. The Director must make annual reports to Congress on fire prevention and control. He is authorized to make grants to fire departments for specified purposes as well as to safety organizations for burn prevention programs. The Director must report to Congress on the results of such grants.<sup>19</sup>

## Hazardous Material

*Emergency Planning and Community Right-to-Know Act of 1986* — Authorizes funds for FEMA to provide grants to state and local governments and universities to

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<sup>17</sup>U.S. President (Clinton), “Seismic Safety of Existing Federally Owned or Leased Buildings,” Executive Order 12941, Dec. 1, 1994, 59 FR 62545, 3 CFR 1995, p. 955.

<sup>18</sup>42 U.S.C. 11331 et seq.

<sup>19</sup>15 U.S.C. 2201 et seq.

improve emergency planning, preparedness, mitigation, response, and recovery capabilities for hazardous chemical emergencies.<sup>20</sup>

*Hazardous Materials Transportation Act of 1994* — Charges the FEMA Director, in coordination with other agency heads, with developing, maintaining, and distributing a curriculum on hazardous material transportation incident response in order to train emergency response and preparedness teams.

Also, in coordination with other agency heads, the Director monitors and reviews pertinent response and training activities of federal agencies and provides technical assistance. As delegated by the Secretary of Transportation, the Director may receive and review grant applications.<sup>21</sup>

*Department of Defense Authorization Act of 1986* — Authorizes FEMA to award grants (using funds appropriated to and transferred from the Department of Defense (DoD)) to public agencies for preparedness and response activities related to the storage and disposal of lethal chemical agents held by DoD. The Director must submit annual reports to Congress on funded activities.<sup>22</sup>

*E.O. 12580* — Requires FEMA to serve on the National and Regional Response Teams established under the National Contingency Plan.<sup>23</sup> Delegates to FEMA responsibility for public comment on the plan, authority to consider revisions to the plan, consideration of indemnification of contractors, and consultation with the states on remedial actions.<sup>24</sup>

## Insurance

*National Flood Insurance Act of 1968* — As amended, authorizes the Director of FEMA to establish and administer a national flood insurance program.<sup>25</sup>

The National Flood Insurance Program, administered by the Federal Insurance Administration (FIA) within FEMA, provides insurance protection for properties not insured by the private sector.<sup>26</sup> In addition, the FIA is charged with administering

<sup>20</sup>42 U.S.C. 11005.

<sup>21</sup>49 U.S.C. 5115, 5116.

<sup>22</sup>50 U.S.C. 1521(c).

<sup>23</sup>The National Oil and Hazardous Substances Pollution Contingency Plan sets out procedures to be followed in responding to discharges of contaminants. See 40 CFR 300.

<sup>24</sup>U.S. President (Reagan), “Superfund Implementation,” Executive Order 12580, Jan. 23, 1987, 3 CFR 1945-1989 Comp., p. 817, as amended by E.O. 12777, 13016. See also President’s memorandum of August 19, 1993, 52 FR 2923, 3 CFR, 1994, p. 767.

<sup>25</sup>42 U.S.C. 4011 et seq.

<sup>26</sup>The position of the Federal Insurance Administrator was established in the Department of Housing and Urban Development (HUD) in 1968 (P.L. 90-448) and then in FEMA in 1979 (P.L. 96-153); see 42 U.S.C. 4129. E.O. 12127 transferred insurance authority FEMA. See

crime and property insurance policies that were made available to inner city residents but are no longer available for sale.<sup>27</sup>

## Interagency Committees

*E.O. 12265* — Names the FEMA Director to the interagency committee on consumer affairs.<sup>28</sup>

*E.O. 12661* — Names the FEMA Director to the Interagency Group on Countertrade to implement provisions of the Omnibus Trade Act with regard to international trade policy.<sup>29</sup>

*E.O. 12788* — Names the FEMA Director to the interagency Economic Adjustments Committee related to military base closures.<sup>30</sup>

*E.O. 12816* — Names the FEMA Director to the interagency committee on administrative management.<sup>31</sup>

*E.O. 13228* — Names the FEMA Director as a member of the Homeland Security Council.<sup>32</sup>

## National Security

*National Security Act of 1947* — Authorizes the FEMA Director to appoint and fix the compensation of personnel and to use federal resources to advise the President with regard to the coordination of military, industrial, and civilian mobilization at times of war. Policies and programs administered by the Director would address: the effective use of labor, natural, and industrial resources; the coordination of federal activities concerning the procurement and distribution of military or civilian supplies; the relationship of supplies to requirements for resources and facilities; the establishment and conservation of strategic and critical reserves; and, the relocation

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<sup>26</sup>(...continued)

44 CFR §2.31 for the mission of the Federal Insurance Administration.

<sup>27</sup>12 U.S.C. 1749bbb et seq.

<sup>28</sup>U.S. President (Carter), “Federal Consumer Programs,” Executive Order 12265, Jan. 15, 1981, 46 FR 4665, 3 CFR, 1945-1989 Comp., p. 313, as amended by E.O. 12160.

<sup>29</sup>U.S. President (Reagan), “Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters,” Executive Order 12661, Dec. 27, 1988, 54 FR 779, 3 CFR, 1945-1989 Comp., p. 299, as amended by E.O. 12697, 12716.

<sup>30</sup>U.S. President (Bush), “Defense Economic Adjustment Program,” E.O. 12788, Jan. 15, 1992, 57 FR 2213, 3 CFR, 1993, p. 273.

<sup>31</sup>U.S. President (Bush), “Management Improvement in the Federal Government,” E.O. 12816, Oct. 14, 1992, 57 FR 47562, 3 CFR, 1992, p. 313.

<sup>32</sup>U.S. President (Bush), “Establishing the Office of Homeland Security and the Homeland Security Council,” E.O. 13228, Oct. 8, 2001, 66 FR 51812.

of government and private sector activities to ensure continued operation and national security.<sup>33</sup>

*Defense Production Act of 1950* — Authorizes the FEMA Director to coordinate federal agencies' decisions concerning the construction of government-owned facilities, or the provision of federal assistance for other facilities, and to ensure the dispersal of such facilities in the interest of national defense.<sup>34</sup>

*Defense Against Weapons of Mass Destruction Act of 1996* — Authorizes the Director of FEMA to coordinate efforts with other federal agency heads to provide training to civilian personnel who must respond to the use or threatened use of weapons of mass destruction (WMD). Requires the FEMA Director, in consultation with other agency heads, to incorporate guidance in federal response plans and programs on the use of an Armed Forces domestic terrorism rapid response team in emergencies that involve such weapons.

The FEMA Director also works with other agency heads in testing and improving responses to emergencies involving nuclear, radiological, chemical, and biological weapons. The FEMA Director compiles and maintains a master inventory of federal equipment and assets that could be used to assist non-federal entities involved in responding to WMD emergencies, and incorporates guidance on accessing and using equipment in response plans. The FEMA Director also maintains a database on chemical and biological agents to be accessed by federal and non-federal government officials and serves on the Committee on Nonproliferation within the National Security Council.<sup>35</sup>

*E.O. 10789* — Authorizes the Director of FEMA to issue contracts for services and property considered necessary or appropriate for purposes of national defense.<sup>36</sup>

*E.O. 12472* — Established the National Communications System and requires the FEMA Director to consult with the President, the National Security Council (NSC), and others on emergency telecommunications matters, including preparedness for attack.

Other agency heads consult with the FEMA Director to ensure that National Communications System activities are coordinated with federal emergency management responsibilities. The FEMA Director operates and maintains telecommunications services, works with non-federal entities to ensure that plans and procedures comply with federal plans and national security and emergency

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<sup>33</sup>50 U.S.C. 404, 405.

<sup>34</sup>As amended by the Defense Production Act Amendments of 1992, P.L. 102-558, 106 Stat. 4201, 50 U.S.C. App. 2062.

<sup>35</sup>50 U.S.C. 2312.

<sup>36</sup>U.S. President (Eisenhower), "Authorizing Agencies of the Government to Exercise Certain Contracting Authority in Connection with National Defense Functions and Prescribing Regulations Governing the Exercise of such Authority," Executive Order 10789, Nov. 14, 1958, 3 CFR, 1945-1989 Comp., p. 832, as amended by Sec. 5-204, E.O. 12148.

preparedness requirements, and oversees, in conjunction with the Federal Communications Commission, the Emergency Broadcast System.<sup>37</sup>

*E.O. 12656* — Requires the FEMA Director to advise the NSC and the Homeland Security Council (HSC) on national security emergency preparedness matters including mobilization, civil defense, continuity of government and technological disasters.<sup>38</sup>

The Director helps implement and manage processes established by the President for the NSC and the HSC, as well as implementing, coordinating (with federal and non-federal entities), and reporting on national security emergency preparedness policy. All federal agency heads consult and coordinate with the Director to ensure that activities and plans are consistent with NSC guidelines and policies. The Director consults with specified officials to develop and coordinate emergency preparedness planning in matters related to the following:

- agriculture,
- industrial development,
- enemy attack estimates,
- hazards from nuclear weapons and related resources,
- labor,
- plans for civilian and military support needs during national security emergencies,
- dissemination of emergency preparedness material during such emergencies,
- civil defense information related to emergency human services, and
- transportation preparedness planning.

In addition to consulting with other agency heads, the FEMA Director has lead responsibility for coordinating federal national security emergency preparedness programs and plans, guiding non-federal entities in emergency preparedness planning, and providing assessments to the President on such capabilities. The Director develops and coordinates civil defense programs, and provides advice on civil emergency planning. He also supports federal agency heads to engage in preparedness planning, including shelter management in the event of attack.<sup>39</sup>

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<sup>37</sup>U.S. President (Reagan), “Assignment of National Security and Emergency Preparedness Telecommunications Functions,” Executive Order 12472, Apr. 3, 1984, 49 FR 13471, 3 CFR, 1945-1989 Comp., p. 946. Note: Reference in the Order to the Civil Defense Act (CDA) of 1950 as a base for authority is obsolete. The CDA was repealed and partially reenacted in 1994 (P.L. 103-337) when incorporated as Title VI of the Stafford Act, 42 U.S.C. 5195 et seq.

<sup>38</sup>U.S. President (Bush), “Executive Order Establishing Office of Homeland Security,” Executive Order 13228, *Federal Register*, vol. 66, Oct. 8, 2001, p. 51812-51817.

<sup>39</sup>U.S. President (Reagan), “Assignment of Emergency Preparedness Responsibilities,” Executive Order 12656, Nov. 18, 1988, 53 FR 47491, 3 CFR, 1945-1989 Comp., p. 887, as amended by E.O. 13074. Note: Reference in the Order to the Civil Defense Act (CDA) of 1950 as a base for authority is obsolete. The CDA was repealed and partially reenacted in 1994 (P.L. 103-337) when incorporated as Title VI of the Stafford Act, 42 U.S.C. 5195 et

(continued...)

*E.O. 12742* — Authorizes the FEMA Director to issue regulations concerning the mobilization of industrial resources necessary for national security requirements. Provides the Director authority to amend or revoke certain administrative actions issued pursuant to the Defense Production Act of 1950, as amended. Proposed agency regulations must be coordinated by the Director with appropriate agencies.<sup>40</sup>

*E.O. 12919* — Authorizes the FEMA Director to advise the NSC on national security resource preparedness matters, coordinate plans and programs associated with authorities delegated in the executive order, establish procedures to resolve conflicts, and report to the President on related activities. Agency delegation of authorities must be furnished to the FEMA Director. Also, the FEMA Director coordinates the National Defense Executive Reserve program to ensure that, in the event of an emergency, trained personnel are ready to assume federal executive positions, if needed. Other agency heads are required to consult with the FEMA Director to identify labor and manufacturing information needs.<sup>41</sup>

## **Nuclear Facilities**

*E.O. 12241* — Authorizes the Director of FEMA to coordinate federal activities set out in the National Contingency Plan in the event of the accidental release of radioactive material at a nuclear facility.<sup>42</sup>

*E.O. 12657* — Authorizes FEMA to assist nuclear power plant licensees in the development of emergency preparedness plans in the event state or local governments in the surrounding areas fail to develop such plans. The FEMA Director may enter into interagency Memoranda of Understanding and provide advice and technical assistance to satisfy emergency planning requirements. FEMA also ensures that adequate resources exist in the absence of state or local commitments. FEMA also evaluates such plans and take actions to ensure compliance with Nuclear Regulatory Commission requirements.<sup>43</sup>

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<sup>39</sup>(...continued)  
seq.

<sup>40</sup>U.S. President (Bush), “National Security Industrial Responsiveness,” Executive Order 12742, Jan. 8, 1991, 56 FR 1079, 3 CFR, 1992, p. 309.

<sup>41</sup>U.S. President (Clinton), “National Defense Industrial Resources Preparedness,” Executive Order 12919, June 3, 1994, 59 FR 29525, 3 CFR, 1995, p. 901.

<sup>42</sup>U.S. President (Carter), “National Contingency Plan,” Executive Order 12241, Sept. 29, 1980, 45 FR 64879, 3 CFR, 1945-1989 Comp., p. 887.

<sup>43</sup>U.S. President (Reagan), “Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants,” Executive Order 12657, Nov. 18, 1988, 53 FR 47513, 3 CFR, 1945-1989 Comp., p. 911. Note: Reference in the Order to the Civil Defense Act (CDA) of 1950 as a base for authority is obsolete. The CDA was repealed and partially reenacted in 1994 (P.L. 103-337) when incorporated as Title VI of the Stafford Act, 42 U.S.C. 5195 et seq.



## Terrorist Attacks and Homeland Security

Pursuant to authorities identified above, FEMA has an important role with regard to the threat of terrorist attack through coordinating federal disaster response and improving the preparedness. As of November 13, 2001, FEMA had provided almost \$7 billion for debris removal, reconstruction, and rescue assistance at the site of the World Trade Center (WTC) collapse.<sup>44</sup> In addition, over \$10 million has been expended or reserved by FEMA for similar activities in Virginia following the attack on the Pentagon.<sup>45</sup> Since the attacks, FEMA has also made \$220 million available to improve state and local preparedness and deterrence capabilities.<sup>46</sup> The President's FY2003 budget request further expands the agency's role. It includes a "First Responder Initiative" for planning, training, equipment, and simulations, to be funded at roughly \$3.5 billion and administered by FEMA.<sup>47</sup>

For years, analysts have raised questions about the assignment of primary responsibility for coordinating homeland security responsibilities.<sup>48</sup> Roughly a decade ago, Congress also called for a resolution of the issue by enacting a Sense of Congress resolution that called on the President to:

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.<sup>49</sup>

Although the OHS is a new federal entity intended by the Bush Administration to resolve these questions, the issue of assigning responsibility for coordinating federal efforts in preparation for and as a consequence of terrorist attacks is not new and might not be a settled matter. It may be argued that some, not all, of the functions vested in OHS were envisioned years ago to be the responsibility of FEMA.

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<sup>44</sup>U.S. Federal Emergency Management Agency, Office of Congressional and Intergovernmental Affairs, personal communication with the author, Nov. 13, 2001.

<sup>45</sup>"FEMA Pledges to Stay for as Long as it Takes," FEMA News Release, Oct. 11, 2001, available at [[http://www.fema.gov/nwz01/nwz01\\_145.htm](http://www.fema.gov/nwz01/nwz01_145.htm)], visited Jan. 25, 2002.

<sup>46</sup>In P.L. 107-38 Congress appropriated \$40 billion for the response, recovery, and military action associated with the 2001 terrorist attacks and for homeland security costs. From that appropriation, \$2 billion was allocated to FEMA by OMB for response and relief activities on September 21, 2001, and \$4.6 billion was set-aside for FEMA in P.L. 107-117 for disaster relief and for state and local government equipment and training needs.

<sup>47</sup> U.S. President [Bush], *Fiscal Year 2003 Appendix, Budget of the United States Government*, (Washington: 2002), p. 933.

<sup>48</sup>See the discussion of major reports in "Commissions' Recommendations," by Steve Bowman, in the *CRS Electronic Briefing Book on Terrorism*, available at [<http://www.congress.gov/brbk/html/ebter93.html>], visited Feb. 11, 2002.

<sup>49</sup>P.L. 103-160, 107 Stat. 1855-56.

## Genesis of FEMA's Role

That FEMA has a responsibility with regard to terrorist attacks in the United States is a view that has been held for years. From its beginning, FEMA was created by President Carter and Congress to be the federal agency with the primary role of improving the nation's preparedness for all disasters and coordinating the federal response to the consequences of civil emergencies and disasters, including terrorist attacks. An OMB study, prepared pursuant to a directive of President Carter said:

[F]ederal emergency preparedness functions not related to war or to natural disaster are assuming increasing importance ... this new range of problems and potential problems, including threats or acts of terrorism, peacetime nuclear emergencies, critical shortages of vital supplies such as petroleum, and disruptions of essential services such as electricity or transportation, have demanded increasing federal attention .... There appears to be ample justification for taking into account crises and emergencies of non-war and non-natural disaster origin in designing an improved overall organization for federal civil emergency preparedness and response. There may be a need to obtain, through legislation, clarification of authorities in this area.<sup>50</sup>

The intent of *Reorganization Plan No. 3 of 1978* was to consolidate federal emergency authorities without interfering with the basic functions of individual departments and agencies. As summarized in President Carter's message to Congress that accompanied the *Plan*, the transfer of emergency management functions from other agencies into FEMA would preserve certain existing authorities to ensure that "emergency responsibilities should be extensions of the regular missions of federal agencies." The President explained this principle as follows:

The primary task of the Federal Emergency Management Agency will be to coordinate and plan for the emergency deployment of resources that have other routine uses. There is no need to develop a separate set of federal skills and capabilities for those rare occasions when catastrophe occurs.<sup>51</sup>

In a hearing on the plan to establish FEMA, the Director of OMB noted that the functions to be transferred to FEMA included "coordination of preparedness and planning to reduce the consequences of major terrorist incidents."<sup>52</sup> Consistent with the principle of keeping emergency response capabilities as an extension of the regular mission of each agency, however, OMB Director McIntyre noted that this arrangement would "not alter present executive branch responsibilities for the prevention and control of terrorist incidents."<sup>53</sup> The viewpoint that FEMA would manage the consequences of terrorist incidents led to the following exchange during the House hearing on the plan:

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<sup>50</sup>U.S. Office of Management and Budget, *Federal Emergency Preparedness and Response Historical Survey* (Washington: unpublished, 1978), p. 60, 65.

<sup>51</sup>*Message of the President, Reorganization Plan No. 3 of 1978*, 5 U.S.C. Appendix

<sup>52</sup>U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Plan No. 3 of 1978*, p. 5.

<sup>53</sup>*Ibid.*

MR. McINTYRE: We think the consequences of terrorist acts can be quite similar to the consequences of major natural and man-made disasters. For example, in both instances there will be serious disruptions of essential services or resources, or certainly could be, and I would emphasize the new Agency would be involved only with the consequences of terrorism and not with the incident itself. I want to underscore that point.

MR. LEVITAS: That is the point I am most concerned about.

MR. McINTYRE: And so we felt that if you were going to have a broad-based agency to respond to emergency situations, that since the consequences of these terrorist acts could be expected to be similar to other emergencies, that this agency should be in a position to respond.<sup>54</sup>

One public witness said that FEMA's task of responding to the consequences of terrorist incidents was an emergency function not then "assigned to any specific federal agency."<sup>55</sup> The Senate report that accompanied the legislation on the Reorganization Plan concurred with this observation, and noted that while the National Security Council had responsibility for incident management of terrorist actions, gaps were to be filled by FEMA, as follows:

By contrast, the responsibilities for consequences management are not clear. As a result, federal agencies are reluctant to plan or commit resources. The President has no one source he can turn to for reports on the damage incurred, the resources available to respond, and the relief actions underway. To fill the void, the new agency will monitor terrorist incidents in progress and, as required, report the status of consequences management efforts to the President. Consequences management in terrorism will thus be a capability in the broad all-risk, all-emergency functions of the agency. The vulnerability assessment activities of the new agency will be directed toward identification of physical actions that might be taken to reduce damage against specific kinds of targets, and identification of areas and types of scenarios that will require consequences management.

Immediately after a terrorist attack in cases where the domestic situation would be so serious as to become a matter of national security concern, it is anticipated that the [National Security Council] and the White House Emergency Management Committee would meet together and develop joint recommendations on response for the President.<sup>56</sup>

The Carter Administration and Congress established FEMA in 1978 to take responsibility for the management of emergencies, including terrorist incidents. After

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<sup>54</sup>U.S. Congress, House Committee on Government Operations, *Reorganization Plan No. 3 of 1978*, p. 52.

<sup>55</sup>*Ibid.*, testimony of Mylio S. Kraja, National Legislative Commission, The American Legion, p. 155.

<sup>56</sup>U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Plan No. 3 of 1978, Establishing a New Independent Agency, the Federal Emergency Management Agency*, report to accompany S.Res. 489, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 95-1141 (Washington: GPO, 1978), p. 27. As noted previously (see footnote 12 of this report), the Federal Emergency Management Council authority was rescinded in E.O. 12919.





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By William N. LaForge

# Testifying Before Congress



more than two decades of FEMA stewardship, there is general agreement that, to some extent, the intent of the 1978 reorganization plan has been achieved. FEMA serves as the federal coordinative agency for consequence management that draws upon, and does not re-create, the specific skills and resources maintained by departments and agencies.

However, in the intervening years, turf battles, questions of agency jurisdiction, and disagreements on FEMA's authority have surfaced. In the past, some observers questioned FEMA's reach and the degree to which its coordination mission intruded on the authorities of other agencies. During the Reagan Administration, for example, Attorney General William French Smith argued against provisions in a draft executive order that assigned FEMA a role that he said exceeded "its proper function as a coordinating agency for emergency preparedness."<sup>57</sup> Executive Order 11490,<sup>58</sup> issued in 1969, was accordingly modified by President Reagan and the allocation of emergency preparedness authorities was reconfigured and reissued in E.O. 12656 (summarized above). Also of note, roughly a decade later, President George H. W. Bush established a Presidential Task Force, headed by a cabinet level officer (Andrew Card, then Secretary of Transportation and current Chief of Staff to President George W. Bush), to take coordinating responsibility for the federal relief effort after Hurricane Andrew devastated south Florida in 1992. The administrative difficulty was summarized in a FEMA evaluation report, as follows:

The designation of a Presidential Task Force for Florida created confusion among federal, state, and local officials and the public at large concerning the respective roles and responsibilities of the Task Force and the Federal Coordinating Officer (FCO).<sup>59</sup>

With the backdrop of this history, coordination responsibilities have been debated in subsequent years, especially with regard to dealing with the consequences of terrorist attack. In an attempt to resolve these questions, Clinton Administration officials agreed to a *Concept of Operations Plan* (generally referred to as the CONPLAN) "to provide overall guidance to federal, state and local agencies concerning how the federal government would respond to a potential or actual terrorist threat or incident that occurs in the United States, particularly one involving Weapons of Mass Destruction (WMD)."<sup>60</sup> While the CONPLAN may have resolved some of the discussion, for some it appeared that more needed to be accomplished. In the months preceding the attacks of September 11, 2001, for example, the Bush Administration revisited the issue and called for the creation of a new office in FEMA.

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<sup>57</sup>William French Smith, Attorney General, letter to Robert C. McFarlane, Assistant to the President for National Security Affairs, Washington, Aug. 2, 1984.

<sup>58</sup>U.S. President (Nixon), "Assigning Emergency Preparedness Functions to Federal Departments and Agencies," Exec. Order No. 11490, Oct. 28, 1969, 34 FR 17567.

<sup>59</sup>U.S. Federal Emergency Management Agency, *Andrew, Iniki, Omar: FEMA Evaluation of Federal Response and Recovery Efforts*, (Washington: 1993), p. 36. An FCO is established after each major disaster declaration to coordinate federal and non-federal response efforts (42 U.S.C. 5143).

<sup>60</sup>*United States Government Interagency Domestic Terrorism Concept of Operations Plan* (Washington: 2001), p. iii.

## Office of National Preparedness

On May 8, 2001, President Bush directed FEMA to create an Office of National Preparedness (ONP) to coordinate “all federal programs dealing with weapons of mass destruction consequence management.”<sup>61</sup> The new office, said the President, was also to “work closely with state and local governments to ensure their planning, training, and equipment needs are addressed.” The President’s directive reflected concerns about duplications, gaps, and inconsistency among federal policies established to prepare for and manage the consequences of terrorist incidents.<sup>62</sup> FEMA director Joe M. Allbaugh implemented the directive on June 5, 2001, when he announced a functional realignment of FEMA which combined offices administering disaster preparedness, relief, and mitigation programs; created the ONP; and transferred to ONP the national security and information security functions that had been the responsibility of other FEMA offices.<sup>63</sup>

Since establishment of the ONP and the terrorist attacks in 2001, steps have been taken to staff the Office and delineate its mission. A statement provided on the FEMA website explains the mission of the ONP, as follows:

When fully operational, the office will coordinate all federal programs dealing with weapons of mass destruction consequence management within the Departments of Defense, Health and Human Services, Justice, and Energy, the Environmental Protection Agency, and other federal agencies.<sup>64</sup>

In Senate testimony following the terrorist attacks, the FEMA Director summarized the role of the ONP as follows:

The principal goal of ONP is to develop a coordinated, local, tribal, state and federal effort to deal with the consequences of mass destruction in the U.S. On June 5th, I announced the restructuring of FEMA, which included creating ONP, to be headed by an Executive Director who reports directly to me. The ONP will have FEMA employees, detailees from the relevant federal departments and agencies and, as appropriate, state, tribal and local representatives. On July 2, we activated ONP at FEMA headquarters.<sup>65</sup>

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<sup>61</sup>“President Bush on Domestic Preparedness Against Weapons of Mass Destruction,” available on the FEMA website at [[http://www.fema.gov/nwz01/nwz01\\_33.htm](http://www.fema.gov/nwz01/nwz01_33.htm)], visited Jan. 24, 2001.

<sup>62</sup>One such compilation is U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Related Recommendations*, GAO report 01-822 (Washington: Sept. 20, 2001).

<sup>63</sup>U.S. Federal Emergency Management Agency, *Functional Realignment*, memorandum from Director Allbaugh to FEMA employees, June 5, 2001.

<sup>64</sup>“Office of National Preparedness,” available on the FEMA website at [[http://www.fema.gov/nwz02/nwz02\\_03a.htm](http://www.fema.gov/nwz02/nwz02_03a.htm)], visited Jan. 25, 2002.

<sup>65</sup>“Testimony (As Written), Joe M. Allbaugh, Director, Federal Emergency Management Agency, Before the Committee on Environment and Public Works, U.S. Senate,” Oct. 16, 2001, available at [<http://www.fema.gov/library/jma101601a.htm>], visited Jan. 25, 2002.

On January 7, 2002, longtime FEMA employee Bruce Baughman was appointed head of the ONP by FEMA Director Allbaugh. The responsibilities of his new office, however, and those of the new Office of Homeland Security, which President Bush had established two months earlier, arguably appear redundant.

## Office of Homeland Security

On October 8, 2001, President Bush established the Office of Homeland Security (OHS) within the Executive Office of the President “to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.”<sup>66</sup> The executive order requires OHS to coordinate federal agency efforts “to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.” Among the 12 functions set out in Section 3 of the executive order are the following three:

- **Preparedness and mitigation (deterrence).** Coordinate efforts of federal and nonfederal entities “to prepare for and mitigate the consequences of terrorist threats or attacks.”
- **Protection.** “Coordinate efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks.”
- **Response and recovery.** Work with federal and nonfederal entities “to ensure rapid restoration of transportation systems, energy production, transmission, and distribution systems; telecommunications; other utilities [and] coordinate federal plans and programs to provide medical, financial, and other assistance to victims.”<sup>67</sup>

E.O. 13228 gives the director of OHS, who is the Assistant to the President for Homeland Security, primary responsibility “for coordinating the domestic response efforts of all departments and agencies” when a terrorist threat or attack is evident. The director is to “review plans and preparations for ensuring the continuity of the federal government” in the event of an attack. President Bush has created OHS to ensure that federal and non-federal resources and information are coordinated and directed toward the protection of civilians.

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<sup>66</sup>“Executive Order Establishing Office of Homeland Security,” available at [<http://www.whitehouse.gov/news/releases/2001/10/20011008-2.html>], visited Jan. 25, 2002. For background and discussion of the mission of OHS, see “Office of Homeland Security,” by Ronald C. Moe, in the *CRS Electronic Briefing Book on Terrorism*, available at [<http://www.congress.gov/brbk/html/ebter178.html>], visited Jan. 25, 2002.

<sup>67</sup>*Ibid.*

## Issue Discussion

OHS coordinates federal domestic security strategies to improve homeland defense. The mission, set forth in E.O. 13228, names the OHS director a coordinator with coordinative power beyond that granted to FEMA — e.g., with regard to prevention of terrorism. But with regard to preparedness, mitigation, response, and recovery, there appears to be some degree of duplication in the missions of OHS and FEMA.

Prior to the attacks of September 11, 2001, some had questioned the coordination and management of federal efforts to prepare for, manage, and respond to terrorist incidents. Duplication of effort among agencies and conflicts had been identified as problems that needed resolution. As of May 8, 2001, the President viewed the creation of the ONP within FEMA to be one approach toward resolving these problems. The establishment of the OHS on October 8, 2001, indicates that additional measures were deemed necessary.

Sorting out the missions of homeland security and terrorism preparedness for FEMA vis-a-vis the authorities for other agencies remains an unresolved issue that may lead some to argue that the authorities for FEMA and OHS need to be reconciled. It may be inferred from information provided by FEMA, however, that the missions of the agencies are not in conflict, as follows:

The Office of National Preparedness supports the Office of Homeland Security (OHS) by providing information on how FEMA coordinates all-hazards preparedness, response and recovery activities for natural and man-made disasters; setting up the Homeland Security-Emergency Support Team; detailing two staff members to OHS, and recently completing a state assessment to provide real-time information regarding state terrorism readiness and planning. These efforts will help the Office of Homeland Security determine the allocation of funding needed to meet state capability enhancement needs and to ensure Governor Ridge's goal of creating a national strategy to deal with the broad range of terrorism issues that is truly representative of all levels of government.<sup>68</sup>

This FEMA statement indicates a flow of information from FEMA to OHS and cooperation between the two federal entities. The mandate for OHS, as set forth by President Bush in Executive Order 13228, appears to overlap the preparedness and consequence management responsibilities that Congress has assigned to FEMA. In addition, the role of the ONP within FEMA remains unclear, particularly in light of the current responsibilities assigned to and administered by the Department of Justice in training and equipping non-federal first responders.<sup>69</sup>

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<sup>68</sup>“Office of National Preparedness,” available on the FEMA website at [[http://www.fema.gov/nwz02/nwz02\\_03a.htm](http://www.fema.gov/nwz02/nwz02_03a.htm)], visited Jan. 25, 2002.

<sup>69</sup>The Bush Administration's FY2003 budget proposes the transfer of the resources and authority from the Department of Justice to FEMA. See U.S. President, *Fiscal Year 2003 Appendix, Budget of the United States Government* (Washington: 2002), p. 937.



## Legislative Options

At least five legislative options exist with regard to clarifying the potential overlap of FEMA and OHS missions:

1. Do nothing, assuming that OHS and FEMA coordination authorities do not create difficulties;
2. Modify or overturn the President's creation of ONP in FEMA through legislation;
3. Support the President's decision to create ONP by passing authorizing legislation for the office or appropriating funds for it;
4. Clarify the boundaries between FEMA and OHS responsibilities through legislation specifying authority for OHS or FEMA;
5. Appropriate funds to allocate resources between FEMA and OHS.

*Option 1.* Congress may choose to keep FEMA's existing authorities intact and allow the President to staff ONP within FEMA through transfers from other federal agencies. Prior to the attacks of September, 2001, the Director of FEMA reportedly "requested 75 personnel positions and \$25 million" for the ONP, with "a number" of those positions to be filled by transfers from other agencies, including the Departments of Defense and Justice.<sup>70</sup> Exercising this option arguably might meet a short term need to provide the Bush Administration maximum flexibility in organizing the federal government to prepare for and deal with terrorist threats. Some observers would argue, however, that congressional action is needed to ensure that the shared responsibilities do not lead to administrative difficulties.

*Option 2.* Congress may consider prohibiting an expansion of FEMA's mission by enacting legislation that would halt staffing of ONP or would modify its mission. Advocates of this position may argue that duplication and overlap between FEMA and OHS could be prevented through such legislation. In addition, it may be argued that if FEMA is given additional authority for preparedness for, and consequence management of, terrorist attacks, the share of FEMA's resources for natural disaster response and relief might be reduced. This concern arises because after Hurricane Andrew devastated southern Florida in 1992, some analysts argued that FEMA officials' decision not to integrate national security and disaster response assets contributed to FEMA's reportedly inefficient response to that disaster. Opponents may contend that the Executive is in a better position to judge what structure is needed to effectively administer these large and growing responsibilities.

*Option 3.* Congress might reinforce the President's decision to establish the ONP within FEMA and specify the authorities of the office. Precedents exist for Congress to specify that certain components be established in the agency. The positions of both the Flood Insurance Administrator and the U.S. Fire Administrator within FEMA were created through legislation (42 U.S.C. 4011 and 15 U.S.C. 11331, respectively) prior to the establishment of FEMA and placed, respectively, within the Departments of Housing and Urban Development and Commerce. Those functions were

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<sup>70</sup>"Allbaugh Advocates 'Common Sense' Approach to Flood Control Decisions," *Emergency Preparedness News*, vol. 25, June 5, 2001, p. 113.

transferred to FEMA in *Reorganization Plan No. 3 of 1978* and E.O. 12127. Legislation to establish the ONP with FEMA would indicate congressional approval of the expanded role of FEMA, and could help resolve perceptions of blurred lines of authority. Through such legislation, for example, Congress could require that the Director of ONP report regularly to Congress on the coordination of OHS and FEMA activities. Opponents of this option might argue that it is premature and unnecessary at this time to legislatively define the duties of the ONP especially in light of the unique and fluid situations presented by terrorist threats.

*Option 4.* Congress could investigate and possibly enact legislation to resolve apparent duplication in the missions of FEMA and the OHS. As noted previously in this report, FEMA's mission derives from 31 statutes and executive orders, including a reorganization plan, not from a unified statute. OHS authority derives from E.O. 13228. Such legislation could specifically resolve questions about the authority of the directors to coordinate federal preparedness and response activities. Opponents of this approach would likely argue that such legislation would be premature and could be seen as limiting the President's flexibility at a difficult time.

*Option 5.* Using the appropriations process, Congress could direct the allocation of resources, and therefore capabilities, between the two agencies. This option has, to a limited extent, already been exercised by the Congress. Conferees on the VA-HUD Independent Agencies Appropriations legislation (P.L. 107-73) noted the need to clarify the role of FEMA in homeland security. The conferees withheld funds for ONP in the FY2002 appropriations pending evaluation of "a comprehensive plan outlining FEMA's role in dealing with terrorism and its consequences."<sup>71</sup> Similar language was included in the conference report that accompanied the FY2002 supplemental appropriations (P.L. 107-117), as follows:

The conferees are concerned about the continuing lack of information regarding a new Office of National Preparedness within FEMA and agree, that while a portion of the funding provided by this appropriation may be used to establish the Office, FEMA must inform the Congress of the structure, responsibilities, and roles of this new Office, with particular emphasis on its relationships to the Office of Homeland Security and the Department of Justice.<sup>72</sup>

The conferees required that FEMA report on this matter to Congress in 2002.<sup>73</sup>

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<sup>71</sup>U.S. Congress, Conference Committees, 2001, *Conference Report on H.R. 2620, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002*, conference report to accompany H.R. 2620, H.Rept. 107-272, 107<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: 2001), in *Congressional Record*, vol. 147, Nov. 6, 2001, p. H7828.

<sup>72</sup>U.S. Congress, Conference Committees, 2001, *Conference Report on H.R. 3338, Department of Defense Appropriations Act, 2002*, conference report to accompany H.R. 3338, H.Rept. 107-350, 107<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: 2001), in *Congressional Record*, vol. 147, Dec. 19, 2001, Book II, p. H10818.

<sup>73</sup>*Ibid.*

## Conclusion

Through statutory and administrative directives, FEMA officials administer 31 non-classified policies. The scope of these authorities range from broad coordinative and assistance responsibilities (the Stafford Act, the Defense Production Act) to specific tasks associated with certain risks or potential threats (dam safety, emergency food and shelter aid).

While all of these authorities arguably fall within the jurisdiction of a broadly defined emergency management function, some, notably those concerning preparedness for and consequence management of terrorist incidents, touch upon the jurisdictions of other agencies. The broad mandate for FEMA differs from that of OHS, but in some areas it arguably overlaps responsibilities set out in E.O. 13228. Congress may consider the need to legislatively define the functions of FEMA and OHS. Congress might also conduct oversight hearings on the authorities and mission of the agency and then identify and evaluate legislative options.

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