

Report for Congress

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Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight

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Summary

The Federal Emergency Management Agency (FEMA) has the lead federal responsibility to help the nation prepare for and recover from significant catastrophes, including those that result from terrorist attacks. FEMA also provides planning and preparedness aid to state and local governments and coordinates federal emergency management activities and planning for the continuity of much of the federal government should national security be threatened.

The Homeland Security Act of 2002 (P.L. 107-296) transfers FEMA, along with its assets and responsibilities, to the Department of Homeland Security (DHS). For the most part, the mission of FEMA will be carried out within the Emergency Preparedness and Response directorate (EPR) of DHS. The Act also transfers to the EPR directorate specific functions of the Departments of Justice, Health and Human Services, and Commerce. EPR will administer most policies intended to lessen the impact of disasters and will aid recovery when disasters occur. One significant exception is that the Act transfers terrorism-related training and preparedness responsibilities of FEMA's Office of National Preparedness to the Office of Domestic Preparedness within the Border and Transportation Security directorate.

The transfer of FEMA (along with other entities) into DHS is intended to address homeland security deficiencies and problems. The implementation of the legislation will present Members of the 108th Congress with the opportunity to oversee how the Administration will resolve those problems and address related issues. Some of those issues include the following: the coordination of terrorism preparedness activities within DHS, the validity of the "all hazards" concept as a basis for federal policy, congressional action to address the requirements of citizens victimized by the most recent disaster in light of long-term policy concerns and resource constraints, and the continued applicability of the comprehensive emergency management framework.

Established in 1979, FEMA administers a range of authorities that enable the agency to serve as the primary source of federal technical and financial assistance for emergency management. The authorities identified in this report have been drawn from public sources. The report does not refer to classified authorities unavailable 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 significant actions pertinent to FEMA are taken to implement or amend the homeland security legislation.

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Introduction and Background

The Federal Emergency Management Agency (FEMA), established in 1979 as an independent agency, administers programs to reduce the loss of life and property and to protect the Nation from all types of hazards through a comprehensive emergency management program of mitigation, preparedness, response, and recovery.¹ FEMA's primary responsibilities include preparing the nation for emergencies,² working to prevent disasters or to lessen their impact if they cannot be prevented,³ and coordinating federal response efforts after a catastrophe overwhelms state and local resources.⁴

The Homeland Security Act of 2002 (P.L. 107-296) transfers FEMA, its responsibilities, assets, and liabilities to the Emergency Preparedness and Response Directorate of the new Department of Homeland Security (DHS).⁵ The transfer affects roughly 2,600 full-time employee positions distributed among FEMA's Washington headquarters, ten regional offices, and two area offices,⁶ as well as a cadre of three to four thousand disaster reserve employees.⁷ According to the Bush

¹ For information on the objectives of the agency see the FY2003 strategic plan at: [<http://www.fema.gov/library/strategicplanfy03.shtm>], visited Dec. 2, 2002.

² 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.

³ 42 U.S.C. 5170c.

⁴ 42 U.S.C. 5170a. Appendix A of this report lists and describes the 13 statutes and 19 unclassified presidential directives that set out the agency's mission. Other federal agencies, such as the Small Business Administration, the Farm Services Agency, and the Department of Transportation also provide disaster assistance. (See CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected Federal Assistance Programs*, by Ben Canada.) Generally, once a Governor requests federal assistance, the President determines whether a major disaster or an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act should be issued. 42 U.S.C. 5170, 5191.

⁵ Section 503(1) of P.L. 107-296.

⁶ U.S. Federal Emergency Management Agency, "FEMA Regional Offices," at [<http://www.fema.gov/regions/>], visited July 15, 2002.

⁷ Staff in ten regional and two area offices coordinate much of the work of the agency in the states and in the insular areas. Disaster assistance employees (DAEs) are dispatched (continued...)

Administration, roughly 5,000 FEMA employees will be transferred to DHS.⁸ The transfer also moves FEMA's budget authority to DHS—budget authority which (in constant 2001 dollars) has ranged from less than \$1 billion in some years to over \$12 billion in FY2002.⁹

The Homeland Security Act and FEMA . The Homeland Security Act of 2002 establishes the Emergency Preparedness and Response (EPR) Directorate within the Department of Homeland Security (DHS).¹⁰ Specific responsibilities for EPR set out in the legislation for all disasters, including terrorist attacks, include the following:

- ! help ensure the effectiveness of emergency responders;
- ! support the Nuclear Incident Response Team through establishing standards and certifying when they are met, conducting training exercises, and providing related funding to the Department of Energy and the Environmental Protection Agency;
- ! provide the federal response by managing, directing, overseeing, and coordinating specified federal resources;
- ! aid recovery;
- ! build an intergovernmental national incident management system to guide responses;
- ! consolidate existing federal response plans into one; and,
- ! develop programs for interoperative communications for emergency responders.¹¹

To accomplish these responsibilities, the law transfers the functions, personnel, assets, and liabilities of FEMA and other entities to EPR.¹² The Homeland Security

⁷ (...continued)

to major disaster sites as needed. For information on the tasks performed by DAEs see: [<http://www.fema.gov/ep/dae.shtm>], visited November 26, 2002.

⁸ If the number of DAEs approaches 4,000 and the number of employees is roughly 2,600, over 6,000 FEMA positions would be transferred to DHS. More precise information on the actual number of positions to be transferred may be forthcoming in 2003.

⁹ The amount of total budget authority for FEMA largely depends on the extent of federal disaster assistance required. Most of the funds are appropriated through supplemental appropriations legislation enacted as unexpected disaster relief needs arise. For background see: CRS Report RL31359, *Federal Emergency Management Agency Funding for Homeland Security and Other Activities*, by Keith Bea.

¹⁰ Sec. 501, P.L. 107-296.

¹¹ Sec. 502, P.L. 107-296. Summary information on Title V, and the entities transferred into the EPR Directorate, is presented in: CRS Report RS21367, *Emergency Preparedness and Response Directorate of the Department of Homeland Security*, by Keith Bea, William Krouse, Daniel Morgan, Wayne Morrissey, and C. Stephen Redhead.

¹² Section 503, P.L. 107-296. The other entities transferred include the Integrated Hazard Information System administered by the National Oceanic and Atmospheric Administration of the Department of Commerce, the National Domestic Preparedness Office of the FBI, the
(continued...)

Act specifically assigns the following responsibilities to FEMA in the new EPR directorate:

- ! the functions and authorities of the Robert T. Stafford Disaster Relief and Emergency Assistance Act;¹³
- ! reduction of losses from all hazards “by leading and supporting the nation in a comprehensive, risk-based emergency management program;” and
- ! responsibility for administering and revising the *Federal Response Plan*.¹⁴

One function the Bush Administration sought to consolidate within FEMA, and therefore within the EPR directorate, is federal terrorism preparedness assistance. For years this assistance has been provided by several agencies, notably FEMA’s Office of National Preparedness (ONP) and the Office of Domestic Preparedness (ODP),¹⁵ currently part of the Justice Department. The Act, however, does not transfer that authority to EPR. Instead, all terrorism preparedness grant programs will be administered by the ODP, which is to be transferred to the new department’s Border and Transportation Security (BTS) Directorate with expanded functions. To ensure that the terrorism preparedness functions of BTS are coordinated with the natural disaster preparedness functions of EPR, the Act requires ODP, “as the lead executive branch agency for preparedness of the United States for acts of terrorism,” to cooperate “closely” with FEMA, “which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States.”¹⁶

Reorganization Plan. The law requires the President to submit a reorganization plan on the transfer and consolidation of agencies to the DHS.¹⁷ The Administration released the plan the same day the President signed the legislation (November 25, 2002).¹⁸ According to the plan, on January 24, 2003, the President will “begin to appoint, upon confirmation by the Senate, or transfer pursuant to the

¹² (...continued)

Domestic Emergency Support Teams of the Department of Justice, and the Office of Emergency Preparedness, the National Disaster Medical System, the Metropolitan Medical Response System, and the National Strategic Stockpile of the Department of Health and Human Services.

¹³ 42 U.S.C. 5121 et seq.

¹⁴ Section 507 of P.L. 107-296.

¹⁵ The Homeland Security Act of 2002 provides that “those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism ... shall be consolidated within” ODP. Section 430(c), P.L. 107-296. ODP has “the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism.”

¹⁶ Section 430(c)(6), P.L. 107-296.

¹⁷ Section 1502, P.L. 107-296, 116 Stat. 2135 et seq.

¹⁸ The plan is available at: [<http://www.whitehouse.gov/>], visited Nov. 26, 2002.

transfer provisions of the Act,” the Under Secretary for the Emergency Preparedness and Response (EPR).¹⁹ On March 1, 2003, the President will transfer FEMA (and other specified entities) to DHS.

The plan generally describes the functions of EPR and ODP in terms that mirror the legislative mandate. The Director of ODP reports to the Under Secretary for BTS, must “cooperate closely” with FEMA, and supervise elements of FEMA’s Office of National Preparedness (ONP) that relate to terrorism. The plan states that the EPR directorate, consistent with the legislation, must administer and unify federal response and recovery efforts and develop programs for interoperative communications technology.²⁰

Issues for Congressional Consideration

Members of Congress, administration officials, and analysts generally agree that several years will be required before DHS and its component parts operate in an integrated fashion. Agency missions may be modified. The personnel of the transferred agencies will bring different institutional cultures and operational practices to the new department. Operating and information systems will need to be integrated and modified. New communication channels will be established.²¹ Members of the 108th Congress will likely assess and evaluate the implementation of the homeland security legislation, including issues specific to the transfer of FEMA. The four issues discussed below are among those that might be considered during the 108th Congress.

Coordination of Preparedness Activities. For years state and local officials, study commissions, and others have reported that federal terrorism preparedness functions are inappropriately dispersed among several federal agencies. As a result, applicants for federal assistance have reportedly been forced to work through a maze of bureaucracies.²² Program requirements, spending limitations, and inadequate funds have been cited as hampering the efforts of non-federal officials to deter future attacks or lessen their impact. The consolidation of all preparedness activities within the DHS is aimed at ameliorating such problems.

Some contend that the separation of ONP functions from FEMA runs counter to the goal of consolidating federal administrative authorities, particularly since

¹⁹ Ibid, p. 2,3.

²⁰ Ibid, p.. 13-15.

²¹ For a discussion of the challenges involved in establishing the new department, and suggestions for meeting those challenges, see: U.S. General Accounting Office, *Mergers and Transformation: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, GAO report GAO-03-293SP (Washington: November 14, 2002), at: [<http://www.gao.gov/new.items/d03293sp.pdf>], visited Nov. 26, 2002.

²² For a report on some of the difficulties experienced by state and local officials attempting to fund terrorism preparedness programs see: Jason Peckenpaugh, “Emergency Assistance,” *Government Executive*, vol. 34, Nov. 2002, pp. 19-27.

FEMA has administered grants for firefighters and emergency management managers for years. On the other hand, others argue that ODP, and not FEMA, has an established relationship with law enforcement agencies, as well as first responders, by administering grants for planning assistance, equipment, and training activities related to incidents involving weapons of mass destruction (WMD) incidents. The Bush Administration advocated the funding of a First Responder Initiative, whereby \$3.5 billion would be administered by ONP for all preparedness activities and ODP functions would be transferred to ONP. The 107th Congress instead opted to maintain ODP and transfer the functions from ONP. *To what extent will the new organization help or hinder efforts to coordinate federal terrorism preparedness efforts?*

The Homeland Security Act separates terrorism preparedness functions from those related to natural disasters (see “All Hazards” and “Comprehensive Emergency Management” sections below for more information on those issues). Since the 1970s local, state and federal officials have viewed emergency management as a continuum of needs and action that, at an optimum, reflect coordinated action. *How will the separation of terrorism preparedness funding affect efforts to improve coordination among emergency management community, including elected officials, planners, administrators, and first responders?*

Even though preparedness functions are separated between the EPR and BTS directorates, the under secretaries of both entities will report to the secretary of the DHS. As regulations, program guidance, and policy statements issued by both BTS and EPR components will reflect the uniform policy of DHS, one may assume that administrative policies will be coordinated. The Office for State and Local Government Coordination, established in the Office of the Secretary in the legislation, may be an important component in efforts to resolve difficulties and ensure that integration is achieved.²³ *Will the DHS Secretary effectively resolve any communication problems or implementation difficulties? How will the legislative mandate for ODP to cooperate with FEMA be carried out?*

All Hazards. The decision by the 107th Congress to separate terrorism preparedness funding from FEMA and the EPR directorate raises the issue of whether the all hazards concept remains a cornerstone of federal policy. For years emergency management officials have advocated adoption of the all hazards approach to disaster management, a principle that calls for emergency management plans and resources to be applicable and available for all catastrophes, regardless of cause. Whether the calamity is caused by an earthquake, terrorist attack, wind storm, or a combination of those events, emergency management professionals expect to use the same resources and follow the same procedures in preparing for and managing the crisis.

The 107th Congress, like its predecessors, as well as the Bush Administration, referred to the concept and expressed support for its applicability for the development

²³ The Office for State and Local Coordination is charged with the oversight and coordination of “departmental programs for and relationships with state and local governments. Section 801, P.L. 107-296.

of federal policy during debate on the Homeland Security Act of 2002. The legislation requires that FEMA “protect the Nation from all hazards.”²⁴ The Bush Administration expressed its commitment to the all hazards principle in the first homeland security strategy by calling for creation of an “all-discipline, all-hazard plan,” “a national incident management system to respond to terrorist incidents and natural disasters,” and preparing the emergency response community “to deal with all potential hazards.”²⁵ As noted in the first section of this report, these objectives are reflected in the authorization language for EPR. Also, the reorganization plan issued by the Administration the day the President signed P.L. 107-296 provides that the Under Secretary for EPR will be responsible for “helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies.”²⁶ *Do Congress and the Bush Administration continue to support the all hazards concept? If so, how will that support be reflected in the establishment of budget priorities?*

At present, few analysts appear to argue with the proposition that federal response and emergency assistance efforts share common elements regardless of the cause of the disaster. Some may argue, however, that terrorist attacks require unique preparedness or response activities (e.g., a linkage between law enforcement and foreign intelligence with response planning, the distribution of pharmaceutical supplies to help victims of a chemical or biological attack) that are not involved in planning for or responding to natural disasters.²⁷ In an editorial that discussed the events of September 11, one team of researchers familiar with the emergency management field concluded as follows:

This disaster event is also distinct because of the ongoing nature of the problem and the complexity of the situation. This is a disaster, overlaid with a search and rescue operation, overlaid with a crime scene, overlaid with threats to public health. Our nation has never experienced such an unending and multifaceted crisis.²⁸

Will obstacles confound efforts by the EPR directorate to meet the statutory mandate since preparedness activities will be administered within BTS? Does this mandate conflict with the decision to vest preparedness authority in ODP? Should past assumptions about training and response actions be modified?

²⁴ Section 507(a)(2), P.L. 107-296.

²⁵ U.S. Office of Homeland Security, *National Strategy for Homeland Security* (Washington: July 2002), p. 42-43.

²⁶ *Department of Homeland Security Reorganization Plan*, (Washington: 2002), p. 14.

²⁷ For example, SWAT team members in one city reportedly have expressed concern that protective suits used to carry victims from a hazardous material spill “have bells that ring if you stay still for too long. But the bells could reveal the location of SWAT members trying to take out a target.” Jason Peckenpaugh, “Emergency Assistance,” *Government Executive*, vol 34, Nov. 2002, p. 20.

²⁸ Lori A. Peek and James E. Beavers, “Role of the Natural Hazards and Disaster Field in the Aftermath of September 11,” *Natural Hazards Review*, vol. 3, Feb. 2002, p. 3.

History indicates that FEMA has experienced difficulty allocating resources between national security and natural disaster needs when disasters strike.²⁹ Support for the all hazards concept indicates that the policy-setting role of the federal government in emergency management will not change. In the past conflicts have arisen between some state and local officials and federal policymakers over emergency management priorities and needs, most publicly in the areas of development in flood plains and in nuclear power. Implementation of the homeland security legislation may once again bring those issues to the fore as state and local officials work with federal homeland security priorities. *As the federal government prepares to balance homeland security objectives with the need to manage natural disasters, will those disagreements arise again?*

Immediate Needs vs. Long Term Policy. In the aftermath of a catastrophic disaster, the unmet needs of victims become particularly evident. The 107th Congress and the Bush Administration rapidly agreed to legislation in 2001 to assist the airline industry, compensate victims and families of victims of attacks, and to appropriate billions of dollars after the terrorist attacks of the fall of 2001.³⁰ In similar fashion, Congress has, at times, enacted special legislation or stimulated reconsideration of administrative practices to address perceived gaps in federal policy, associated with the most current and significant disaster.³¹ For example, following the Alaska earthquake of 1964, Congress enacted special legislation to fund urban renewal, housing assistance, and home financing needs.³² Hurricane Betsy (1965) stimulated debate that led to enactment of the National Flood Insurance Program in 1968.³³ While no legislative changes occurred, the debacle associated with the response to Hurricane Andrew in 1992 led President Clinton and Director James Lee Witt to reorganize FEMA and establish a new organizational focus for the agency.

During much of the tenure of the 107th Congress, the attacks of September 11 dictated much of the debate on federal emergency management policy. Those debating the establishment of the DHS recognized, however, that terrorist attacks as

²⁹ Appendix B of this report provides information on the history of balancing national security priorities with responsibility for natural disaster management.

³⁰ For a list of legislation enacted in response to the terrorist attacks see: [<http://www.congress.gov/cgi-lis/bdquery>], visited November 29, 2002.

³¹ Congress has enacted assistance legislation, or authority to settle claims against the federal government, after certain disasters. See: CRS Report RL31464, *Federal Disaster Policies After Terrorist Strike: Issues and Options for Congress*, coordinated by Keith Bea, p. 11. Information on the linkages among emergency management policy developments and events, organizational changes, technological disasters, reports, and other elements are presented: *Disaster Time Line: Selected Milestone Events & U.S. Outcomes* and *Terrorism Time Line: Selected Milestone Events & U.S. Outcomes*, at [<http://www.disaster-timeline.com/>], visited June 10, 2002.

³² P.L. 88-451, 78 Stat. 505-507.

³³ P.L. 90-448, 83 Stat. 476.

well as natural disasters still occur and will continue to threaten the United States.³⁴ The war on terrorism presents the United States with a threat that is potentially more dangerous than all but the most catastrophic natural disaster. Economic instability, the destruction of elements of representative government, and millions of lives lost are some of the results that could result from terrorist attacks in the future. By comparison, the effects of even the most devastating earthquake or hurricane are most dramatically felt at the local or regional level. *Will priorities shift if another significant terrorist attack does not occur? Will compensation, assistance, or liability protection be considered for victims of future disasters, whether or not they are associated with attacks?*

The sharp memory of the terrorist attacks of the fall of 2001 may blur as other attacks or disasters occur. The 108th Congress will undoubtedly closely monitor developments pertinent to significant policy changes affecting response to future catastrophic disasters or attacks.³⁵ Whereas the general argument in the early 1990s was that FEMA had given inadequate attention to natural disasters, some may contend that disasters associated with terrorist attacks have not been given enough attention, even after the bombings of the World Trade Center (1993) and the Murrah building in Oklahoma City (1995), and the attacks of 2001. Conversely, some may be concerned that attention to natural disasters will suffer. In addition, some may question whether congressional action taken after the September 11 attacks will serve as precedent for future legislation. Some view the victim compensation legislation enacted after the September 11 attacks as meeting a unique need, whereas others ask whether victims of other terrorists attacks or other types of disasters should receive commensurate assistance.³⁶ Some may view the Homeland Security Act to presage a policy shift that resets the extent and boundaries of federal responsibility. *What effect would a possible future attack have on federal emergency management policy and spending priorities?*³⁷

Comprehensive Emergency Management. As noted above, the separation of terrorism preparedness functions from EPR might result in a reexamination of the all hazards concept. In similar fashion, the concept of

³⁴ In calendar year 2002 President Bush issued 45 major disaster declarations, all of which involved natural disasters. See: [<http://www.fema.gov/library/diz02.shtm#diz>], visited November 29, 2002.

³⁵ Research on the sociological implications of disasters, and policies and practices that address (or fail to address) risks is presented in: E. L. Quarantelli, *Disasters Theory and Research*, (Beverly Hills, CA: Sage Publications, Ltd, 1978). Thomas E. Drabek, *Human System Responses to Disaster*, (New York: Springer-Verlag, 1986).

³⁶ Lisa Belkin, "Just Money," *The New York Times Magazine*, Dec. 8, 2002, p. 92-97, 122, 148-149.

³⁷ One news report stated that the debate over the FY2003 funding levels will involve a reconsideration of emergency assistance spending, as follows: "The task is a difficult one, requiring nearly \$15 billion in cuts to remove spending the original FY03 bills contained over the administration's request, counting regular appropriations, emergency spending and highway money." Bill Ghent, "Senate Appropriators Plan Cutbacks in FY03 Measures ...," *Congress Daily AM*, Dec. 11, 2002, at: [<http://nationaljournal.com/pubs/congressdaily/>], visited Dec. 13, 2002.

comprehensive emergency management (CEM) may be scrutinized. Largely through the efforts of state emergency management officials, researchers in the 1970s developed the CEM concept, which identifies four phases of disaster management: preparedness and mitigation before disasters occur, and response and recovery in the aftermath. In the decades since the development of the CEM concept the emergency management profession has evolved through policies that have been enacted to address needs evident in each of these phases. In the past some have proposed that all federal disaster assistance policies be administered by one department or agency. Policymakers, however, have disagreed, authorizing some agencies such as the Small Business Administration and the Departments of Defense and Agriculture to implement disaster relief policies in addition to fulfilling their regular missions.

Some may view the Homeland Security Act of 2002 as presenting DHS administrators with an anomalous situation—requiring FEMA to carry out “its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program”³⁸— but not administering terrorism preparedness activities vested in ODP. To implement the legislation, the President’s reorganization plan vests primary responsibility in ODP “for the preparedness of the United States for acts of terrorism, including ... all matters pertaining to combating terrorism, including training, exercises, and equipment support.”³⁹ The text of the reorganization plan that implements the legislation identifies seven primary tasks for the EPR directorate, all of which involve response functions.⁴⁰ Unlike the CEM concept, the legislation and the reorganization plan separate preparedness activities. Members of the 108th Congress might wish to review the CEM concept in the context of the Homeland Security Act of 2002. *Is it feasible for federal administrators to address all four phases of emergency management? How are resources to be allocated among the phases? What should be the areas of primary federal responsibility?*

The provision adopted by the 107th Congress differs from the initial proposal submitted by President Bush to Congress in 2002 to vest all preparedness activities within the Office of National Preparedness (ONP) within FEMA. The FY2003 budget President Bush submitted to Congress sought \$3.5 billion for a first responder initiative to be administered by ONP.⁴¹ Other grant-in-aid programs that provide preparedness assistance to state and local governments will remain the responsibility of FEMA, including grants to fire fighters, emergency management performance

³⁸ Section 507(1)(2) of P.L. 107-296.

³⁹ *Department of Homeland Security Reorganization Plan*, (Washington: 2002), p. 13, at: [<http://www.whitehouse.gov/>], visited Nov. 26, 2002.

⁴⁰ *Department of Homeland Security Reorganization Plan* (Washington: 2002), p. 14-15, at: [<http://www.whitehouse.gov/>], visited Nov. 26, 2002.

⁴¹ For background on the proposal see: CRS Report RL31475. *First Responder Initiative: Policy Issues and Options*, by Ben Canada.

grants, and hazard mitigation assistance.⁴² *How can the separation of the programs be managed to assure appropriate coordination?*

In evaluating the impact of the separation of terrorism preparedness grants from FEMA, it may be useful to refer to the goals established by FEMA for the First Responder Initiative:

- ! provide states and localities with the proper balance of guidance and flexibility so that the funds are used in the local areas where they are needed most;
- ! establish a consolidated, simple, and quick method for disbursing federal assistance to states and localities;
- ! foster mutual aid across the nation so that the entire local, state, federal and volunteer network can operate together seamlessly;
- ! create an evaluation process to make sure that all programs are producing results and to direct the allocation of future resources, and;
- ! involve all Americans in programs to make their homes, communities, state and nation safer and stronger.⁴³

What will be the effect of the reorganization on state and local governments which have established state emergency management agencies that, like FEMA, reflect the unified CEM concept?

⁴² For information on these programs see: U.S. Library of Congress, Congressional Research Service, *Selected Federal Funding for State and Local Terrorism Preparedness*, by Ben Canada, CRS general distribution memorandum, (Washington, November 25, 2002); CRS Report RL31227, *Terrorism Preparedness: A Catalog of Federal Assistance Programs*, by Ben Canada; CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger; CRS Report RL31359, *Federal Emergency Management Agency Funding for Homeland Security and Other Activities*, by Keith Bea.

⁴³ U.S. Congress, House Committee on Appropriations, Subcommittee on VA, HUD, and Independent Agencies, *Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 2003*, hearing, 107th Cong., 2nd sess., March 6, 2002 (Washington: GPO, 2002), p. 7.

Conclusion

Implementation of the Homeland Security Act of 2002 poses considerable challenges to the administrators of the DHS. FEMA's existing mission and responsibilities, set out in 13 statutes and 18 unclassified presidential directives, will be transferred to the new department. The incorporation of FEMA as an independent agency will likely ease some transition problems as the mission of the agency has not changed, but questions might be raised during the first year of implementation. The transfer of terrorism preparedness functions out of ONP and into the Border and Transportation Security directorate may lead to questions about the applicability of the comprehensive emergency management concept to the new department, particularly if the EPR directorate's primary function will be response to disasters, including attacks.

Appendix A: Summary of FEMA Authorities

Until enactment of the Homeland Security Act of 2002, no single directive had set out FEMA's responsibility. Prior to 2002, 13 public laws and 18 unclassified presidential directives directed or authorized FEMA to provide assistance in four phases of emergency management: preparedness, response, recovery, and mitigation. The activities FEMA has undertaken in each of these four areas pursuant to these authorities include the following.

Preparedness. FEMA (1) provides financial assistance for 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 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).

The remainder of Appendix A provides summaries of and citations to the public laws and presidential directives that establish the mission for FEMA.

Organizational Authorities

Federal disaster relief and emergency management policies and responsibilities have evolved throughout the nation's history, generally increasing in complexity and the amount of assistance provided. Before 1950 no single agency coordinated federal emergency management (primarily disaster relief) activities. Instead, Congress enacted *ad hoc* legislation after each major catastrophe to authorize specified federal agencies or officers to administer the types and amounts of federal disaster aid set out in the legislation.⁴⁴ In 1950, Congress enacted legislation that authorized the President, on a continuing basis, to determine, within certain constraints, when federal assistance would be made available.⁴⁵ The legislation set out the boundaries of that aid by specifying categories of eligible recipients ("states and local governments," "public facilities," and "public and private lands") and the types of aid to be provided (federal resources, surplus property, debris clearance aid, and emergency repairs).⁴⁶

Since 1950 Congress has enacted legislation to expand categories of federal assistance, establish the amount of assistance to be provided (through appropriations as well as authorization legislation), and set administrative requirements for federal and non-federal officials.⁴⁷ Throughout, the President has retained authority to determine when federal assistance is to be provided.⁴⁸ However, responsibility for administering federal disaster assistance agency shifted from 1950 to 1978, involving departments, the White House, and independent agencies, all with varying degrees of authority set out in statutes and presidential directives.⁴⁹ The lack of consistent responsibility for coordinating federal aid caused problems at all levels of

⁴⁴ For a list of legislation enacted from 1803 through 1943 see: Rep. Harold Hagen, remarks in the House, *Congressional Record*, vol. 96, Aug. 7, 1950, p. 11900-11902.

⁴⁵ P.L. [81]-875, 64 Stat. 1109. The legislation authorized the President to direct federal agencies to provide aid after a "major disaster," defined as "any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe" that warrants federal assistance.

⁴⁶ Section 3 of P.L. [81]-875, 64 Stat. 1110.

⁴⁷ 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, 104th Cong., 1st sess. (Washington: GPO, 1995), Appendix I. Issues raised during debate on H.R. 5005, the Homeland Security Act of 2002, and the historical background relevant to that debate are presented in the following archived CRS report available from the author: CRS Report RL31510, *Proposed Transfer of FEMA to the Department of Homeland Security*, by Keith Bea.

⁴⁸ For a summary of the evolution of definitions of the terms "major disaster" and "emergency" and a related discussion see: CRS Report RL31464, *Federal Disaster Policies After Terrorist Strike: Issues and Options for Congress*, coordinated by Keith Bea, pp. 14-26.

⁴⁹ For a discussion of the shifts in administrative responsibilities see: CRS Report 78-103 (GOV), *Emergency Preparedness and Disaster Assistance: Federal Organizations and Programs*, by Clark Norton (available from the author).

government, and subsequently led to the consolidation of related functions and the creation of FEMA in 1978.⁵⁰

Establishment as an Independent Agency. On June 19, 1978, President Carter submitted to Congress *Reorganization Plan Number 3* to establish FEMA.⁵¹ After neither chamber passed a resolution of disapproval, the *Plan* took effect on April 1, 1979.⁵² The reorganization plan and two related executive orders that created FEMA and transferred functions from other federal agencies including 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.⁵³

E.O. 12127 — Effectuated the reorganization plan and specified that fire and emergency broadcast authorities and functions would be transferred from the Department of Commerce, as would flood insurance authorities held by the Department of Housing and Urban Development (HUD).⁵⁴

E.O. 12148 — Transferred additional functions from departments including civil defense from the Department of Defense, federal disaster assistance from HUD, federal preparedness from the General Services Administration, and earthquake hazards reduction from the Office of Science and Technology Policy. 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.

⁵⁰ For example, see U.S. President (Nixon), “New Approaches to Federal Disaster Preparedness and Assistance,” H.Doc. 93-100, 93rd Cong., 1st 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.shtm>].

⁵¹ 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.

⁵² 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, 95th Cong., 2nd sess., June 26 and 29, 1978 (Washington: GPO, 1978), p. 168; U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Plan No. 3 of 1978 (Disaster Preparedness)*, hearings, 95th Cong., 2nd sess., June 20 and 21, 1978 (Washington: GPO, 1978), p. 47.

⁵³ 5 U.S.C. Appendix.

⁵⁴ U.S. President (Carter), “Federal Emergency Management Agency,” Executive Order 12127, Mar. 31, 1979, 3 CFR, 1945-1989 Comp., p. 880.

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.⁵⁵

Homeland Security Act of 2002 — Transfers FEMA’s director and “functions, personnel, assets, and liabilities” to the Emergency Preparedness and Response (EPR) directorate of the Department of Homeland Security (DHS).⁵⁶ However, not all of FEMA’s functions will be administered within EPR. The “elements of the Office of National Preparedness ... which relate to terrorism” are the responsibility of the Office for Domestic Preparedness within the Border and Transportation Security directorate.⁵⁷

Other Authorities

In addition to the reorganization plan, the two executive orders noted above, and the Homeland Security Act, 27 statutes and 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.⁵⁸

⁵⁵ 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.

⁵⁶ Section 503, P.L. 107-296. Components of the Departments of Commerce, Justice, and Health and Human Services are also transferred to EPR under this authority.

⁵⁷ Sec. 430(c)(8), P.L. 107-296.

⁵⁸ 33 U.S.C. 467 et seq.

Disaster Assistance. *Robert T. Stafford Disaster Relief and Emergency Assistance Act* —Authorizes the President to provide federal assistance for preparedness and mitigation before 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 delegated 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.⁵⁹

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.⁶⁰

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.⁶¹

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

⁵⁹ 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.

⁶⁰ 42 U.S.C. 7701 et seq.

⁶¹ 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.⁶²

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.⁶³

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.⁶⁴

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 improve emergency planning, preparedness, mitigation, response, and recovery capabilities for hazardous chemical emergencies.⁶⁵

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.

⁶² 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.

⁶³ 42 U.S.C. 11331 et seq.

⁶⁴ 15 U.S.C. 2201 et seq.

⁶⁵ 42 U.S.C. 11005.

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.⁶⁶

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.⁶⁷

E.O. 12580 — Requires FEMA to serve on the National and Regional Response Teams established under the National Contingency Plan.⁶⁸ 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.⁶⁹

Insurance. *National Flood Insurance Act of 1968* — As amended, authorizes the Director of FEMA to establish and administer a national flood insurance program.⁷⁰ The Federal Insurance and Mitigation Administration (FIMA), established in June 2001, administers the agency’s mitigation and federal insurance functions related to floods, including flood insurance underwriting, rate-making, actuarial analysis, claims payment and loss mitigation.⁷¹

Interagency Committees. *E.O. 12265* — Names the FEMA Director to the interagency committee on consumer affairs.⁷²

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.⁷³

⁶⁶ 49 U.S.C. 5115, 5116.

⁶⁷ 50 U.S.C. 1521(c).

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ 42 U.S.C. 4011 et seq.

⁷¹ Rawle King of the Government and Finance Division, CRS, contributed to this entry.

⁷² 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.

⁷³ 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.

E.O. 12788 — Names the FEMA Director to the interagency Economic Adjustments Committee related to military base closures.⁷⁴

E.O. 12816 — Names the FEMA Director to the interagency committee on administrative management.⁷⁵

E.O. 13151 — Names the FEMA Director to the interagency committee charged with development of the Global Disaster Information Network.⁷⁶

E.O. 13228 — Names the FEMA Director to the Homeland Security Council.⁷⁷

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 of government and private sector activities to ensure continued operation and national security.⁷⁸

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.⁷⁹

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.

⁷⁴ U.S. President (Bush), "Defense Economic Adjustment Program," E.O. 12788, Jan. 15, 1992, 57 FR 2213, 3 CFR, 1993, p. 273.

⁷⁵ U.S. President (Bush), "Management Improvement in the Federal Government," E.O. 12816, Oct. 14, 1992, 57 FR 47562, 3 CFR, 1992, p. 313.

⁷⁶ U.S. President (Clinton), "Global Disaster Information Network," E.O. 13151, Apr. 27, 2000, 65 FR 25619.

⁷⁷ U.S. President (Bush), "Establishing the Office of Homeland Security and the Homeland Security Council," E.O. 13228, Oct. 8, 2001, 66 FR 51812.

⁷⁸ 50 U.S.C. 404, 405.

⁷⁹ As amended by the Defense Production Act Amendments of 1992, P.L. 102-558, 106 Stat. 4201, 50 U.S.C. App. 2062.

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.⁸⁰

E.O. 10789 — Authorizes the Director of FEMA to issue contracts for services and property considered necessary or appropriate for purposes of national defense.⁸¹

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 preparedness requirements, and oversees, in conjunction with the Federal Communications Commission, the Emergency Broadcast System.⁸²

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.⁸³

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

⁸⁰ 50 U.S.C. 2312.

⁸¹ 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.

⁸² 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.

⁸³ U.S. President (Bush), “Executive Order Establishing Office of Homeland Security,” Executive Order 13228, *Federal Register*, vol. 66, Oct. 8, 2001, p. 51812-51817.

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.⁸⁴

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.⁸⁵

E.O. 12919 — Mandates that the FEMA Director 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 is to coordinate the National Defense Executive Reserve program to ensure that, in the event of an emergency, trained personnel are ready to assume federal executive

⁸⁴ 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 seq.

⁸⁵ U.S. President (Bush), “National Security Industrial Responsiveness,” Executive Order 12742, Jan. 8, 1991, 56 FR 1079, 3 CFR, 1992, p. 309.

positions, if needed. Other agency heads are required to consult with the FEMA Director to identify labor and manufacturing information needs.⁸⁶

E.O. 13231 — Established the President’s Critical Infrastructure Protection Board to ensure protection of information systems for critical infrastructure for the telecommunications, financial services, and utility sectors, among others. The Director of FEMA serves on the Board.⁸⁷

⁸⁶ U.S. President (Clinton), “National Defense Industrial Resources Preparedness,” Executive Order 12919, June 3, 1994, 59 FR 29525, 3 CFR, 1995, p. 901.

⁸⁷ U.S. President (Bush), “Critical Infrastructure Protection in the Information Age,” E.O. 13231, Oct. 16, 2001, 66 FR 53063.

Appendix B: All Hazard Policies

Federal All Hazard Developments

Background. The integration of all of FEMA’s functions into DHS arguably is consistent with the original intent behind the establishment of FEMA in 1978. As envisioned by the Office of Management and Budget (OMB) team charged by President Carter with designing the initial framework for the agency, three “major components of the total civil emergency preparedness and response activity” were identified as follows:

(1) War-related measures (or national security measures) such as civil defense, continuity of government, and resource management measures—the latter including industrial mobilization, materials stockpiling and economic stabilization planning. (2) Disaster preparedness and response measures related mainly to natural disasters. (3) An intermediate category of civil emergency preparedness and response measures, not necessarily related either to wartime contingencies or to natural disasters, but related to man-made situations such as threats or acts of terrorism, peacetime nuclear emergencies, or critical shortages or disruptions of essential resources or services such as petroleum, electricity, or transportation.⁸⁸

The authors of an OMB study on the reorganization proposal concluded as follows:

[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.⁸⁹

One team of authors who examined the issue shortly after FEMA’s establishment in the early 1980s concluded, on the other hand, that distinctions should be drawn among types of disasters, as follows:

The hazards of technology pose different managerial problems than those arising from nature Natural hazards tend to have relatively well-understood “hazard chains”... making opportunities for control intervention relatively clear; the hazard chains for technological hazards, by comparison, are often poorly

⁸⁸ U.S. Office of Management and Budget, *President’s Reorganization Project: Federal Emergency Preparedness and Response Historical Survey* (Washington: 1978), pp. 1-2.

⁸⁹ U.S. Office of Management and Budget, *Federal Emergency Preparedness and Response Historical Survey* (Washington: unpublished, 1978), pp. 60, 65.

understood, particularly when the consequences are chronic and the sources of exposure multiple.⁹⁰

Others may contend that developments in research and technology ease some of these difficulties. For example, researchers and administrators in Indiana have developed a process (the vital issues process, or VIP) that integrates data and resources that could be used to identify losses, casualties, and response needs in disasters caused by nature (tornado), terrorist attack (destruction of a bridge with explosives), or infrastructure failure (transformer failure that results in transportation and power disruptions).⁹¹

While the all hazards concept may continue to be the approach that is to be followed after FEMA is incorporated into the DHS, lessons from the past indicate that balancing resources and activities between attack and natural disasters may be difficult to achieve. The development of the “dual use” concept during the Reagan Administration may be of particular relevance to the new homeland security mission. Dual use is similar to the all hazards concept—that federal funds could be used for natural hazards as well as those associated with enemy attack.

Dual Use. Through the 1970s the concept of dual use gained acceptance as the perception of threats changed and federal resources stimulated state and local planning efforts.⁹² In 1976 Congress enacted legislation that authorized states to use civil defense funds for planning associated with all disasters, not just those caused by attacks.⁹³ The debate over priorities continued, and in 1981 Congress amended the Civil Defense Act of 1950 to authorize states to use civil defense funds for natural disasters as long as such use did not detract from “attack-related civil defense preparedness.”⁹⁴

Concerned with perceived threats from the Soviet Union, the Reagan Administration requested increased funds for civil defense preparedness and required that FEMA emergency preparedness grants be used by states and localities to make preparations for nuclear war. FEMA issued national planning objectives and operational standards to be followed by applicants for federal civil defense grants, the

⁹⁰ Roger E. Kasperson and K. David Pijawka, “Societal Response to Hazards and Major Hazard Events: Comparing Natural and Technological Hazards,” *Public Administration Review*, vol. 45, Jan. 1985, p. 8.

⁹¹ Nasim Uddin, P.E. and Dennis Engi, “Disaster Management System for Southwestern Indiana,” *Natural Hazards Review*, vol. 3, Feb. 2002, pp. 19-30.

⁹² GAO attributed the promotion of the dual use concept in the 1970s, along with the availability of federal funds, as a catalyst for the development of state and local emergency preparedness activities. U.S. General Accounting Office, *Statement of Fred J. Shafer, Director, Logistics and Communications Division Before the Subcommittee on Military Installations and Facilities, House Committee on Armed Services* (NTIS Document 100115: Feb. 7, 1977), p. 9.

⁹³ P.L. 94-361, 90 Stat. 931.

⁹⁴ P.L. 97-86, 95 Stat. 1112.

primary source of federal emergency management assistance. As summarized by the FEMA General Counsel:

The eligibility of state and local governments to receive federal financial support for salaries and administrative expenses under Section 205 and other forms of financial and technical support under the [Civil Defense] Act, will be conditioned upon a determination by FEMA that state and local civil defense plans meet and are consistent with minimum standards and criteria, and that prescribed goals for the civil defense program are adequately addressed in such plans.⁹⁵

The priority given by the Reagan Administration to nuclear preparedness was not accepted by some state and local officials, who argued that natural disasters, not nuclear attack, were the primary threats to the population.⁹⁶ Municipalities held public hearings, some local officials refused to take steps recommended by FEMA, and ordinances in opposition to the plan were passed.⁹⁷ One author explored the evolution of emergency management organizational plans and authorities over the decades leading to the establishment of FEMA and summarized the lack of consensus on the balancing of priorities among all hazards as follows:

Rather than saying that natural disaster activities have been deemphasized in the new agency, it is probably more correct to say that they have been overshadowed by other agency priorities. The latter include power plant-accident response planning and exercises, and nuclear attack-related civilian protection planning. A key aspect of the civilian protection effort is proposed increases in the levels of funding for planning evacuation of "risk areas" in the event of an imminent nuclear attack. The extent to which that emphasis detracts from natural disaster planning and preparedness depends to a large degree on the validity of the "dual use" concept. Some argue that civil defense activities have substantial spin-offs for building capacity to plan for and respond to other than attack-related disasters. Suffice it to note that there is considerable difference of opinion among disaster experts about the validity of that argument.⁹⁸

⁹⁵ Memorandum for the FEMA Office of Public Affairs from George W. Jett, General Counsel for FEMA, May 7, 1981.

⁹⁶ See, for example: Jennifer Leaning and others, "Programs for Surviving Nuclear War: A Critique," *Bulletin of the Atomic Scientists*, vol. 39, June/July 1983, pp. 1S-16S.

⁹⁷ A summary of the debate is presented in: Michael Reed, "Coast-to-Coast Protests Greet Reagan's Civil Defense Buildup," *National Journal*, vol. 14, March 27, 1982, pp. 554-556.

⁹⁸ Peter J. May, *Recovering From Catastrophes: Federal Disaster Relief Policy and Politics* (Westport, CT: Greenwood Press, 1985), p. 62.

Reagan administration officials and some state officials debated the issue for years, with two states (Washington and Oregon) foregoing federal funding.⁹⁹ The debate eventually was resolved through congressional action that amended the Civil Defense Act of 1950 to include the all hazards concept.¹⁰⁰ This legislation defined “hazard” as an “emergency or disaster” caused by a natural disaster or an accidental or “man-caused” event.

Administrative Ramifications. The task of administering the all hazards concept influenced organizational decisions within FEMA. Through the 1980s its national security programs were administered by a unit separate from the others responsible for natural disaster management. This led to an apparent inequity of resources and attention within the agency and contributed to perceived failures when the agency was challenged by the task of assisting the State of Florida when Hurricane Andrew devastated south Florida in 1992.

While fewer than 10 deaths were attributed to Hurricane Andrew, the property damage exceeded \$20 billion, and days elapsed before essential services were systematically provided to victims. During this time broadcast and print media reported on deficient response operations. According to former Director Witt, the “intention to have FEMA as the one focal point for emergencies was subsumed, during the 1980's, by FEMA's civil defense component. This helps to explain the lackluster responses to Hurricanes Hugo and Andrew.”¹⁰¹ (Subsequent investigations revealed that, in addition to failures within FEMA, problems at the state and local levels compounded the difficulties.¹⁰²) While natural disaster and national security functions were organizationally united within FEMA, there was little interaction between those concerned with national security and those administering disaster assistance. A major cause of the problem, concluded the National Academy of Public Administration, was the development of “stovepipe” cultures within FEMA, particularly between the national security directorate and other offices.¹⁰³

⁹⁹ For example, the Governors of Washington State and Oregon expressed opposition to “the federal government’s ‘nuclear war or nothing’ attitude in planning for disasters. See: Office of the Governor, State of Washington, News Release, “Gardner Lauds Goldschmidt on FEMA Decision,” Oct. 28, 1988.

¹⁰⁰ P.L. 103-160, 107 Stat. 1963. The provision is currently codified at 42 U.S.C. 5195a.

¹⁰¹ James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished. Note that in addition to difficulties with the management of FEMA resources, considerable information is available on the failures of state and local governments, land use patterns, and other factors that contributed to the response to Hurricanes Hugo and Andrew.

¹⁰² See: Governor’s Disaster Planning and Response Review Committee, *Final Report*, (Tallahassee, FL: 1993).

¹⁰³ National Academy of Public Administration, *Coping with Catastrophe: Building an Emergency Management System to Meet People’s Needs in Natural and Manmade Disasters* (Washington: 1993), p. 41

Subsequent to Hurricane Andrew, questions about deficient administrative practices led to considerable congressional opposition to FEMA's emphasis on national security events. Some Members argued that FEMA's priorities were skewed too heavily toward the threat of enemy attack and should be reoriented toward natural disasters. As summarized by the chair of the Senate committee that investigated FEMA's response to Hurricane Andrew:

We are no longer fighting the Cold War. That is history. But recent reports in the media have indicated that during the Cold War, FEMA spent a much greater proportion of its funds on nuclear war preparedness than natural disaster relief.... I think it is time for that to change ... I think we must change FEMA's focus from nuclear attack to civil emergencies and natural disasters.¹⁰⁴

This viewpoint was reflected by legislation reported by the Senate committee that "natural disasters should once again be FEMA's top priority."¹⁰⁵ While Congress did not enact legislation to reorganize FEMA or significantly modify its mission, it did agree to reconsider the balance of priorities between natural disasters and civil defense. The provisions of the Civil Defense Act of 1950 were repealed, enacted as a "restatement," and incorporated into the Stafford Act as "emergency preparedness" authority.¹⁰⁶ Whereas civil defense and national security had overshadowed natural disasters in FEMA during the 1980s, the latter became the dominant policy direction in the 1990s.¹⁰⁷ The emphasis on natural disasters was solidified with enactment of the Disaster Mitigation Act of 2000, the purpose of which was "to reduce the loss of life and property, human suffering, economic disruption, and disaster assistance costs resulting from natural disasters."¹⁰⁸ The legislation did not address civil defense, national security, or terrorist threats.

Current Perspectives. Months before the terrorist attacks of September 11, the Bush Administration indicated that the national security functions of FEMA would be renewed. On May 8, 2001, President Bush directed FEMA to create an Office of National Preparedness (ONP) to coordinate "all federal programs dealing

¹⁰⁴ U.S. Congress, Senate Committee on Governmental Affairs, *Rebuilding FEMA: Preparing for the Next Disaster*, hearing, 103rd Cong., 1st sess., May 18, 1993 (Washington: GPO, 1994), p. 2.

¹⁰⁵ U.S. Congress, Senate Committee on Governmental Affairs, *Federal Disaster Preparedness and Response Act of 1994*, report to accompany S. 1697, 103rd Cong., 2nd sess., S.Rept. 103-400 (Washington, GPO: 1994), p. 17.

¹⁰⁶ P.L. 103-337, 108 Stat. 3100-3111.

¹⁰⁷ Note that some interest remained keeping attack-related functions as well as natural disasters in FEMA's mission. The National Defense Authorization Act for FY1994, P.L. 103-160, called upon the President to strengthen planning by FEMA "and other appropriate federal, state, and local agencies" for development of a detection, warning, and response capability for terrorist attacks and emergencies or disasters involving chemicals or disease outbreaks. 50 U.S.C. 1522 note

¹⁰⁸ P.L. 106-390, 114 Stat. 1553.

with weapons of mass destruction consequence management.”¹⁰⁹ 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.” Accordingly, 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.¹¹⁰ The national security function not only was restored as a major unit in FEMA, it was given considerable and higher visibility with the creation of the ONP.

Following the attacks of September 11, attention turned to the establishment of a homeland security department. As a result, debate over the all hazards concept revived. The Bush Administration proposed that the new department, “building on the strong foundation already laid by FEMA, will lead our national efforts to create and employ a system that will improve our response to all disasters, both manmade and natural.”¹¹¹

Not all agreed with the proposal. Some Members of Congress agreed with the former director of FEMA, James Lee Witt, who opposed the consolidation of all of FEMA into DHS on the grounds that the legislation should “separate FEMA’s natural disaster responsibilities from its national or homeland security responsibilities.”¹¹² To this end, former Director Witt contended that “FEMA’s Office of National Preparedness and all national security related programs should be moved to the Department of Homeland Security, but the rest of FEMA should be left in place as an independent agency.”¹¹³ Support for this position was evident from some Members of Congress. For example, the House Committee on Transportation and Infrastructure reported out the bill with FEMA’s status as an independent agency intact.

According to coverage of the Committee’s proceedings, Members were concerned that some of FEMA’s functions, such as search and rescue and disaster relief, would be compromised by the incorporation of the agency into DHS.¹¹⁴ This view apparently carried the day, as the Homeland Security Act of 2002 separated the

¹⁰⁹ “President Bush on Domestic Preparedness Against Weapons of Mass Destruction,” available on the FEMA website at [http://www.fema.gov/nwz01/nwz01_33.shtm], visited Jan. 24, 2001.

¹¹⁰ U.S. Federal Emergency Management Agency, *Functional Realignment*, memorandum from Director Allbaugh to FEMA employees, June 5, 2001.

¹¹¹ U.S. Office of Homeland Security, *National Strategy for Homeland Security* (Washington: 2002), p. 41.

¹¹² James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

¹¹³ *Ibid.*

¹¹⁴ For a summary of the committee markup and discussion of the issue see: [<http://nationaljournal.com/members/markups/2002/07/200219211.htm>], visited Nov. 26, 2002.

functions of ONP from FEMA and the Emergency Preparedness and Response Directorate and placed them within the Office of Domestic Preparedness, part of the Border and Transportation Security Directorate.