

Report for Congress

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Proposed Transfer of FEMA to the Department of Homeland Security

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Proposed Transfer of FEMA to the Department of Homeland Security

Summary

The Federal Emergency Management Agency (FEMA) assists individuals, states and localities, and certain non-profit organizations that have been overwhelmed by, or are at risk from, significant catastrophes, including terrorist attacks. FEMA also coordinates federal emergency management activities and planning for the continuity of much of the federal government should national security be threatened.

Bills pending before the 107th Congress (H.R. 5005/S. 2452) would bring FEMA into the proposed Department of Homeland Security (DHS) to form the central component of the Emergency Preparedness and Response (EPR) division. The current discussion is a new manifestation of issues that have been debated for decades—how to organize and allocate resources between the tasks of managing natural disasters and homeland (national) security threats.

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 agency provides aid to non-federal entities and coordinates federal preparedness and response activities.

FEMA provided direct assistance to victims of the September 11 terrorist attacks and continues to help communities prepare for, and respond to, possible other attacks in the United States. Congressional debate on the contours and framework for the proposed DHS has included consideration of FEMA's mission as set forth in the authorities summarized in this report. Advocates of the integration of FEMA into the proposed new department may contend that the consolidation of the functions is consistent with the original intent behind the creation of FEMA—the consolidation and coordination of all federal emergency management authorities at the highest levels of government. Those opposing this integration argue that certain elements of FEMA's authority do not fit into, or will be overwhelmed by, homeland security activities.

The first part of this report discusses the issues in the current debate; the second part summarizes the 29 authorities for which FEMA currently bears administrative responsibility. 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 legislative action is taken on the homeland security legislation.

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Proposed Transfer of FEMA to the Department of Homeland Security

Summary of Congressional Debate

Both the House and the Senate are considering legislation to establish a Department of Homeland Security (DHS).¹ Some debate, summarized below, has occurred on provisions to transfer the Federal Emergency Management Agency (FEMA) into DHS.

Action in the House. As reported by the House Select Committee on Homeland Security on July 24, 2002, H.R. 5005 would have transferred FEMA to the proposed DHS by splitting the agency into two components. The functions, personnel, assets, and obligations of FEMA's Office of National Preparedness (ONP) (charged with administering grants to first responders, including fire fighters, emergency rescue staff, and others)² would have been transferred in Title IV of H.R. 5005 pertaining to border security and transportation. The remaining components of FEMA would have been transferred in Title V, which pertains to the emergency preparedness and response (EPR) functions of DHS.

As passed by the House on July 26, 2002, H.R. 5005 would transfer FEMA in its entirety (including ONP) into the EPR component of DHS. The bill also specifies that the agency must continue to carry out its current emergency management functions and mission related to preparedness for and recovery from all hazards, and mandates that the Federal Response Plan administered by FEMA be revised within 60 days of enactment. In addition, the bill requires that the Secretary of DHS submit a report to Congress every two years on federal emergency preparedness resources and requirements, and, within one year of enactment, assess the performance of DHS in implementing the Act and recommending changes.

Action in the Senate. Also on July 26, 2002, the Senate Governmental Affairs Committee marked up legislation (S. 2452) to establish the DHS.³ The bill would establish a Directorate of Emergency Preparedness and Response (EPR) in DHS that would be charged with administering the "emergency preparedness and response activities" of FEMA. In addition, the bill would transfer the "authorities,

¹For a comparison of all provisions in the bills see: CRS Report RL31513, *Homeland Security: Side-by-Side Comparison of H.R. 5005 and S. 2452, 107th Congress*, by the CRS Homeland Security Team.

²For summary information on ONP see: [http://www.fema.gov/nwz02/nwz02_03a.shtm], visited July 26, 2002.

³The text of the Senate bill is available at the Senate Governmental Affairs web site at: [http://www.senate.gov/~gov_affairs/072402bill.pdf], visited July 26, 2002.

functions, personnel, and assets” of FEMA (and other offices) into the EPR directorate. To the extent known, no amendments to S. 2452 would amend the bill’s provisions related to the transfer of FEMA into DHS. However, one pending amendment would establish an Office for Domestic Preparedness in the EPR directorate to administer terrorism preparedness programs, functions administered in part by ONP at present and proposed to be fully administered within ONP by the Bush Administration in FY2003.⁴

Agency Overview

The Federal Emergency Management Agency (FEMA) is an independent agency that administers programs “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.”⁵ The mission of FEMA stems from policy directives enacted by Congress and those issued as executive directives by Presidents.

Roughly 2,000 full-time employee positions (“workyears”) are funded through appropriations to FEMA, not including a cadre of disaster reserve employees dispatched to major disaster sites as needed. Over the past decade, the budget for the agency has ranged from \$2.7 billion (FY1998) to almost \$7.5 billion (FY2002) in constant dollars, depending on the extent of federal disaster assistance required.⁶ Staff in ten regional and two area offices coordinate much of the work of the agency in the states and in the insular areas.⁷

FEMA has primary responsibility to prepare the nation for emergencies,⁸ work to prevent disasters or to lessen their impact if they cannot be prevented,⁹ and to coordinate federal response efforts after a catastrophe overwhelms state and local resources.¹⁰ (Other federal agencies, such as the Small Business Administration, the Farm Services Agency, and the Department of Transportation also provide disaster assistance.)¹¹ Generally, once a Governor requests federal assistance, the President

⁴The text of the amendment, offered by Senator Stevens, may be found at the committee web site at: [http://www.senate.gov/~gov_affairs/stevens3.pdf], visited July 26, 2002.

⁵U.S. Federal Emergency Management Agency, “About FEMA, Helping People Before, During, & After Disasters,” available at [<http://www.fema.gov/about/>], visited Jan. 8, 2001.

⁶For background see: CRS Report RL31359, *Federal Emergency Management Agency Funding for Homeland Security and Other Activities*, by Keith Bea.

⁷U.S. Federal Emergency Management Agency, “FEMA Regional Offices,” at [<http://www.fema.gov/regions/>], visited July 15, 2002.

⁸U.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.

⁹42 U.S.C. 5170c.

¹⁰42 U.S.C. 5170a.

¹¹See CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected* (continued...)

determines whether a major disaster or an emergency declaration under the Stafford Act should be issued.¹²

The first part of this report provides background information that will assist Members of Congress as they consider the debate associated with the transfer of FEMA into the Department of Homeland Security. The second part summarizes policy directives currently administered by FEMA to provide the reader overview information on the current mission of the agency.

Issues of Debate

The 107th Congress is considering legislation (H.R. 5005 and S. 2452) that would establish a Department of Homeland Security (DHS).¹³ Among other significant changes, the bills, as introduced, would transfer FEMA into the DHS. The Emergency Preparedness and Response (EPR) division or directorate of DHS would be responsible for administering federal activities designed to improved preparedness throughout the nation for future terrorist attacks and natural disasters. In addition, EPR would coordinate federal and non-federal consequence management activities when catastrophes of any kind overwhelm state and local capabilities.

The proposed transfer of FEMA into DHS has generated some debate. Advocates of the transfer contend that FEMA would be an essential part of the department. For years, many analysts and policymakers have contended that federal emergency management and national security policies require coordination and administration at the highest levels of government. It may be argued that the creation of EPR within DHS, along with the transfer of FEMA, responds to that concern.

The proposed transfer of FEMA, however, has raised questions about the mission of the agency. Some argue that activities not associated with homeland security would suffer if relocated to a large department dedicated to issues essentially related to national security. Opponents of the transfer contend that the agency's hazard mitigation, flood insurance, earthquake hazards reduction, and other efforts are integral parts of FEMA's mission that have no bearing on homeland security.¹⁴

¹¹(...continued)

Federal Assistance Programs, by Ben Canada.

¹²42 U.S.C. 5170, 5191. Federal law provides an exception to the requirement that a Governor request federal assistance. The President is authorized to issue an emergency declaration without a gubernatorial request "when he determines that an emergency exists for which the primary responsibility for response rests with the United States..." 42 U.S.C. 5191(b)

¹³The Senate bill refers to a Department of National Homeland Security, as well as a DHS. This report uses the acronym DHS to refer to a department charged with homeland security responsibilities, regardless of the title selected by Congress. These are the two bills Congress is acting upon. Other legislation has also been introduced to reorganize the executive branch to address homeland security concerns, including H.R. 4660, H.R. 1158, H.R. 3378, H.R. 3600, S. 1534, S. 1735, S. 1867, and S. 2020.

¹⁴The former director of FEMA, James Lee Witt, has noted that, "Over the last decade (continued...)"

Agency resources dedicated to those functions, they argue, have already been, and would continue to be, diverted to the homeland security mission, resulting in diminished federal capabilities for non-national security activities.

The Bush Administration proposal to transfer FEMA into the DHS has raised a number of questions or concerns that might be combined into two general issues—one concerning the mission and responsibilities of the agency, the other involving the options for organizing to administer those functions. Within each of these issue areas specific questions have been raised, some of which are noted below.

1. Should some parts or all elements of the agency's mission be transferred into the DHS?
 - a. If not all, which activities should be transferred to other departments or agencies?
 - b. What are potential disadvantages of consolidating all federal activities proposed to be brought into DHS?
 - c. What is the history of debate on the allocation of resources between homeland (national) security and natural disaster activities?
 - d. Are criteria needed to differentiate among the agency's natural disaster and homeland security responsibilities?

2. Should FEMA be incorporated into a cabinet level department (DHS); should some functions be returned to the White House; or should FEMA remain an independent agency?
 - a. Does the federal emergency management function require representation by a cabinet level official?
 - b. What are the advantages and disadvantages of maintaining FEMA as an independent agency?
 - c. What issues have been raised in past reorganizations that are applicable to the current debate on transferring FEMA into DHS?

The information in the first section of this report addresses each of the two main issues and provides background information that Members may wish to consider in answering the above questions, as well as others that might arise.

Mission Discernment. Questions and answers that have been discussed over the proposed transfer of FEMA to DHS mirror those raised in 1978 when President Jimmy Carter and the 95th Congress considered the consolidation of various agency functions into a new emergency management agency. Which functions (civil defense, firefighting assistance, flood insurance, among others) should be moved into FEMA and which should remain in independent agencies or cabinet level departments? Should certain emergency management functions be distinguished

¹⁴(...continued)

FEMA has responded to more than 500 emergency and major disaster events. Two of these were related to terrorism (Oklahoma City and New York City).” James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

from others? Which responsibilities of federal agencies that are applicable to normal as well as emergency situations should be transferred? Which should not?

In attempts over the years to resolve these questions, discussion over the reach of federal emergency policies resulted in congressional approval of two concepts—dual use and all hazards. Adoption of these concepts has led to the consensus that federal emergency resources should be used for both natural disasters and enemy attack.

The dual use concept, approved by Congress before the establishment of FEMA, authorized the use of civil defense funds for all disaster assistance.¹⁵ The all hazards concept, considered by Congress but not enacted into law,¹⁶ has been followed by emergency managers at the federal, state, and local levels for years. As included in the first strategic goal for the agency, a central mission for the agency was identified as “Protect lives and prevent the loss of property from all hazards.”¹⁷

The debate on establishment of the DHS, however, indicates a lack of unanimity of opinion on this matter.¹⁸ In considering arguments against the transfer of FEMA into DHS, Members of Congress may wish to evaluate the advantages and disadvantages of the dual use and all hazards concepts. As part of this process, information on how the original intent in creating FEMA relates to the proposal to transfer FEMA into DHS may be of assistance.

Discussion and Resolution. FEMA was created by President Carter, with the concurrence of the Congress, to improve the nation’s preparedness for all disasters and coordinate the federal response to the consequences of civil emergencies and disasters, including enemy and terrorist attacks. The national strategy for homeland security, issued by the Bush Administration, likewise assumes that federal emergency response resources and efforts will continue to be based on the “all hazards” concept, as follows:

¹⁵In 1976 Congress amended the Civil Defense Act of 1950 to recognize “that the organizational structure established jointly by the federal government and several states and their political subdivisions for civil defense purposes can be effectively utilized, without adversely affecting the basic civil defense objectives of this Act, to provide relief and assistance to people in areas of the United States struck by disasters other than disasters caused by enemy attack.” Such allocations, however, were made “under such terms and conditions as” prescribed by the civil defense administrator. P.L. 94-361, 90 Stat. 931-932.

¹⁶S. 1697, H.R. 3399, 103rd Cong.

¹⁷U.S. Federal Emergency Management Agency, *Strategic Plan: Partnership for a Safer Future* (Washington: 1997), p. 15. The wording of this strategic goal for the agency was modified in the second strategic plan to read: “Protect lives and prevent the loss of property from natural and technological hazards.” U.S. Federal Emergency Management Agency, *Strategic Plan: FY2000 Through FY2006* (Washington: 2000), p. 9.

¹⁸For example, see: David Firestone and Elizabeth Becker, “House Leadership Bows to President on Security Dept.,” *New York Times*, July 19, 2002, p. A1, A12; Walter Pincus, Juliet Eilperin and Bill Miller, “Details of Homeland Plan Assailed,” *Washington Post*, July 11, 2002, p. A1.

Because response efforts to all major incidents entail the same basic elements, it is essential that federal response capabilities for both terrorist attacks and natural disasters remain in the same organization. This would ensure the most efficient provision of federal support to local responders by preventing the proliferation of duplicative “boutique” response entities.¹⁹

Similarly, S. 2452, to be considered in the Senate, assigns as one of the responsibilities of the Secretary of DHS to “plan, coordinate, and integrate those federal government activities relating to ... all-hazards emergency preparedness, response, recovery, and mitigation.”²⁰

The proposal to integrate FEMA’s functions into the DHS arguably is consistent with, and brings to fruition, the original intent of President Carter and the 95th Congress with 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.²¹

The authors of a related OMB study 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.²²

¹⁹U.S. Office of Homeland Security, *National Strategy for Homeland Security* (Washington: 2002), p. 42.

²⁰§102(b)(5), S. 2452, 107th Congress.

²¹U.S. Office of Management and Budget, *President’s Reorganization Project: Federal Emergency Preparedness and Response Historical Survey* (Washington: 1978), pp. 1-2.

²²U.S. Office of Management and Budget, *Federal Emergency Preparedness and Response Historical Survey* (Washington: unpublished, 1978), pp. 60, 65.

The documentation submitted to Congress in 1978 by the Carter Administration indicates that, to the extent reported, most, if not all, parties interested in the establishment of FEMA advocated the integration of these functions. One Member of Congress presented the issue to the Director of OMB, James T. McIntyre, as follows:

As you undoubtedly know, one of the classic questions in emergency preparedness has been the problem of preparing for both natural and civil defense preparedness. While everyone supports “dual use” of facilities, there is great fear that more immediate natural disaster functions will swallow up civil defense preparedness. From your organization chart, it looks like this has happened. There is no mention of civil defense. What institutional arrangements do you have to preserve the civil defense role?²³

The written response by the OMB Director seems to summarize congressional support for the “dual use” concept when he responded that: “Our study, and extensive dialogue with state and local governments, has led to the conclusion that attack preparedness will be weakened rather than strengthened by its segregation from natural and accidental disaster preparedness, particularly at the state and local levels.”²⁴ In response to similar questions posed by Members of Congress, witnesses who all spoke on the subject reiterated the need to maintain the “dual use” concept and integrate it into one agency.²⁵ No statements in opposition to the integration of the functions appear to have been made.

At present, few, if any, argue with the proposition that federal response and assistance efforts require coordination regardless of the cause of the disaster. Some may contend, 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. 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.²⁶

²³U.S. Congress, House Committee on Government Operations, Subcommittee on Legislation and National Security, *Reorganization Plan No. 3 of 1978 (Federal Emergency Management Agency)*, hearing, 95th Cong., 2nd sess., June 26, 1978 (Washington: GPO, 1978), p. 32.

²⁴Ibid; p. 33.

²⁵For example, see: Ibid; p. 44-46, 52, 72-75, 83, 85, 88, 90, 92-93, 101. See also: U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Intergovernmental Relations, *Reorganization Plan No. 3 of 1978 (Disaster Preparedness)* hearing, 95th Cong., 2nd sess., June 21, 1978 (Washington: GPO, 1978), pp. 13-14, 24, 35-40,

²⁶Lori A. Peek and James E. Beavers, “Role of the Natural Hazards and Disaster Field in the (continued...)”

A similar concern was expressed by one team of authors who examined the issue shortly after FEMA's establishment in the early 1980s:

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 understood, particularly when the consequences are chronic and the sources of exposure multiple.²⁷

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 on a range of sectors in the development of a disaster management system 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).²⁸

While, in theory, the all hazards concept may be advocated, experience indicates that the balance is not easily achieved. During the 1980s, FEMA maintained a separate unit to administer national security concerns. While the natural disaster and national security functions were organizationally united, there was little interaction between those concerned with national security and those administering disaster assistance.

During debate on the establishment of the DHS, some have pointed out that certain functions administered by FEMA, notably emergency food and shelter, flood insurance, natural hazard mitigation, and the maintenance of data on fires, have little application to homeland security.²⁹ One issue that arguably bridges both homeland security and natural disaster functions is dam safety, an infrastructure element that may be the target of terrorist attacks as well as natural threats. Of interest to the debate on the establishment of the DHS, one unit in FEMA, the Federal Insurance and Mitigation Administration, is responsible for dam safety as well as flood insurance.³⁰

²⁶(...continued)

Aftermath of September 11," *Natural Hazards Review*, vol. 3, Feb. 2002, p. 3.

²⁷Roger 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.

²⁸Nasim Uddin, P.E. and Dennis Engi, "Disaster Management System for Southwestern Indiana," *Natural Hazards Review*, vol. 3, Feb. 2002, pp. 19-30.

²⁹For example, see: Reps. Waxman and Obey, letter to the Honorable Tom Ridge on the Bush Administration proposal to establish a DHS, July 9, 2002, p. 5, available at [http://www.house.gov/reform/min/pdfs/pdf_com/pdf_terrorism_ridge_july_9_let.pdf], visited July 20, 2002.

³⁰See [<http://www.fema.gov/fima/aboutfima.shtml>], visited July 20, 2002.

The difficulties of administering policies related to the two missions became most evident in 1992 when Hurricane Andrew devastated south Florida. Questions about deficient administrative practices resulted in the development of considerable opposition with regard 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.³¹

This viewpoint was reflected by legislation reported by the Senate committee that "natural disasters should once again be FEMA's top priority."³²

While Congress did not enact legislative changes in response to these concerns, it became clear that natural disasters, not attack, should be the focus of federal policy. Some Members of Congress continued to express support for continuation of the "all hazards" concept.³³ The incoming director of FEMA, James Lee Witt, also affirmed his support for this concept in his nomination hearing.³⁴ Throughout the 1990s, however, concern over natural hazard preparedness and response dominated; national security threats, including those posed by terrorist attacks, received relatively little attention.³⁵

The emphasis in the 1990s on natural disasters reflects one facet of the development of federal emergency management policy. Historically, congressional

³¹U.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.

³²U.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: 1994), p. 17.

³³*Ibid.*, p. 1. "S. 1697 ... seeks to... shift the emphasis of [FEMA] to an all hazards, risk-based approach, and to emphasize FEMA's mission to provide for mitigation, preparedness, response, and recovery for all hazards."

³⁴U.S. Congress, Senate Committee on Governmental Affairs, *Nomination of James Lee Witt*, hearing, 103rd Cong., 1st sess., (Washington: 1993), pp. 11, 31, 45. However, one statement submitted for the record urged "that FEMA be reorganized and exclusively focus on domestic response to natural and man-made disasters." Statement of Alfred K. Whitehead, General President of the International Association of Fire Fighters, p. 61.

³⁵This is perhaps best exemplified by the reorganization of FEMA in 1993, which eliminated the directorate concerned with national security policy and reallocated personnel and resources to directorates that, in name, addressed all hazards, if not primarily natural disasters. Refer to "Administrative Issues" section of this report for information on the reorganization in 1993.

debate and action on federal emergency management policies reflects the concerns (perceived gaps) associated with the most current and significant disaster.³⁶ For example, following the Alaska earthquake of 1964, Congress enacted special legislation to fund urban renewal, housing assistance, and home financing needs.³⁷ Hurricane Betsy (1965) stimulated debate that led to enactment of the National Flood Insurance Program in 1968.³⁸ The problems reported after the debacle associated with Hurricane Andrew similarly drove the policy debate. In 2002, accordingly, debate on federal policy is largely driven by the most recent catastrophe, the attacks of September 11. Those debating the establishment of the DHS recognize that terrorist attacks as well as natural disasters will continue to threaten the United States.

Congressional debate on H.R. 5005 and S. 2452 will continue the debate. Whereas the general argument in the early 1990s was that FEMA had given inadequate attention to natural disasters, some advocate in 2002 that greater resources must be rededicated to homeland security. A central question for the 107th Congress is: Should the “all hazards” concept be endorsed or should responsibility for preventing, preparing for, and responding to natural disasters and enemy attack be split? This question leads to the question of administrative structure.

Administrative Issues. As Members of the 107th Congress debate the proposal to establish the DHS, they will consider one issue discussed in 1978 that remains relevant today—should federal emergency policy be administered from the White House, by a cabinet level secretary, a division or office within a department, or by an independent agency? The Bush Administration, and many in the House and Senate, agree that emergency management should be a component of the department charged with the broad mission of administering homeland security policies.

Like the reorganization plan that brought several offices into one entity to create FEMA, the proposal to bring FEMA into the DHS has been characterized as furthering the goal of ensuring that civil emergencies receive attention “at the highest levels.” This section presents information on past developments and analysis of the management of federal emergency policies.

In evaluating the recent history of FEMA’s reorganization and the transition of the agency from being an object of criticism to a model agency, one analyst stated the opinion that:

Given the increasing vulnerability of the United States population to natural and man-made disasters and the rudimentary steps taken toward sustainable

³⁶Information on the linkages among emergency management policy developments and events, organizational changes, technological disasters, reports, and other elements are presented in two time lines: *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.

³⁷P.L. 88-451, 78 Stat. 505-507.

³⁸P.L. 90-448, 83 Stat. 476.

development, access to the President and the elevation of FEMA to cabinet level seem to be critical first steps in ensuring presidential support into the future.³⁹

Since the end of World War II, Congress and successive Presidents had debated and modified the administrative arrangements for civil defense and preparedness for enemy attack as well as natural disaster response.⁴⁰ Responsibility for these functions has moved from one agency or department to another, including the White House and the Executive Office of the President.⁴¹ **Table 1** summarizes the most significant organizational arrangements created through statute or executive order for federal emergency management functions since 1950.

Table 1. Federal Emergency Organizational Developments, 1950-2002

Function	Agency or Department	Authority
1950		
Civil defense	Federal Civil Defense Administration (FCDA) within Executive Office of the President (EOP)	E.O. 10186
Civil defense	FCDA established as an independent agency	Civil Defense Act, 64 Stat. 1245
Disaster relief	The President, delegated to Housing and Home Finance Administration	P.L. 875, 64 Stat. 1109, E.O. 10221
Mobilization activities	Office of Defense Mobilization (ODM)	Defense Production Act, 64 Stat. 798
1952		
Preparation of federal emergency plans	FCDA	E.O. 10346

³⁹R. Steven Daniels and Carolyn L. Clark-Daniels, *Transforming Government: The Renewal and Revitalization of the Federal Emergency Management Agency* (Arlington, VA: The PricewaterhouseCoopers Endowment for the Business of Government, 2000), p. 8. The author referred to the “renewal” of FEMA as “an example of a best practice in agency transformation.” p. 6. See also: Mark Murray, “A Tough Act to Follow at FEMA,” *National Journal*, June 2, 2001, p. 1664.

⁴⁰A summary of debate for the first thirty years of the civil defense program has been compiled in: Harry P. Yoshpe, *Our Missing Shield: The U.S. Civil Defense Program in Historical Perspective* (Washington: FEMA, Contract No. DCPA 01-79-C-0294, 1981).

⁴¹For a summary see: Peter J. May, *Recovering from Catastrophes* (Westport, Conn.: Greenwood Press, 1985), pp. 48-68; CRS Report 78-103 GOV (archived, April 18, 1978), *Emergency Preparedness and Disaster Assistance: Federal Organization and Programs*, by Clark Norton.

Function	Agency or Department	Authority
1953		
Disaster relief	Delegated to FCDA	E.O. 10427
1955		
Strategic and critical material stockpiles	ODM	E.O. 10638
1958		
Civil defense, disaster relief, and defense mobilization	Office of Defense and Civilian Mobilization (ODCM), in the Executive Office of the President ^a	Reorganization Plan No. 1
1961		
Civil defense and defense mobilization	ODCM, renamed the Office of Civil and Defense Mobilization (OCDM)	untitled legislation, 72 Stat. 861 ^b
Civil defense	Office of Civil Defense (OCD), established in Department of Defense (DoD)	E.O. 10952
Medical supplies and equipment stockpiling	Dept. of Health, Education and Welfare (HEW)	E.O. 10958
Food stockpiling	Department of Agriculture	E.O. 10958
Civil defense, disaster relief, and defense mobilization	OCDM, renamed the Office of Emergency Planning (OEP) ^c	P.L. 87-296, 75 Stat. 630, E.O. 11051
1964		
National defense executive reserve	OEP	E.O. 11179
1968		
Emergency preparedness	OEP, renamed Office of Emergency Preparedness (OEmP)	supplemental appropriations, 82 Stat. 1194
1969		
Disaster relief	OEmP	E.O. 11495

Function	Agency or Department	Authority
1972		
Civil defense	OCD in DoD replaced by Defense Civil Preparedness Agency (DCPA)	administrative action by Secretary of DoD
1973		
Civil emergencies and disasters	OEmP terminated, duties transferred to Dept. of Housing and Urban Development (HUD) ^d	Reorganization Plan No. 1
Continuity of government, mobilization and stockpiling	OEmP terminated, duties transferred to General Services Administration (GSA) ^d	Reorganization Plan No. 1
1978		
Emergency management, including civil defense	FEMA established, functions generally consolidated	Reorganization Plan No. 3, E.O. 12127, E.O. 12148
1994		
Emergency preparedness ^e	FEMA	P.L. 103-337, 108 Stat. 3100
2002		
Emergency preparedness and response	Department of Homeland Security (proposed)	H.R. 5005/S. 2452

^a Reorganization Plan No. 1 consolidated the FCDA and the ODM into the ODCM in the EOP. Functions previously delegated to FCDA and ODM redelegated through E.O. 10773.

^b Transfer of functions to ODCM accomplished through E.O. 10782, E.O. 10819.

^c Emergency preparedness management and advisory functions, stockpiling of survival supplies, and strategic industrial relocation duties transferred to the Director of OEP through E.O. 11051/1962.

^d Federal Disaster Assistance Administration (FDAA) established in HUD to administer disaster relief. Office of Preparedness, later renamed Federal Preparedness Agency, established in GSA to assume mobilization, emergency preparedness, stockpiling, and continuity of government duties.

^e Civil defense authorities set out in the Civil Defense Act of 1950, as amended, restated in Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The difficulties of placing the emergency management function in the federal organizational complex are also reflected by one unsuccessful effort to reorganize. In 1971 President Nixon proposed the establishment of four new departments, one of which, the Department of Community Development, would have incorporated federal disaster assistance activities (but not civil defense functions). This recommendation was not adopted by the 93rd Congress.

Debate over the Options. During the evaluation of the options for consolidating emergency management in the Carter Administration, placement in a department was considered, but ultimately rejected, by the study team. Just as the 107th Congress and the Bush Administration are grappling with the best organizational structure to ensure that the homeland security and natural disaster functions are not subsumed or undermined, past Congresses and Administrations have struggled with the same dilemma. As summarized by the OMB Director in 1978:

We looked at a number of alternatives for consolidating these functions. We also considered attaching the new agency to an existing department or an agency and, although there were some definite advantages to this alternative, we felt that these advantages were greatly outweighed by the disadvantages.

We found that subordinating your coordinative authorities to subdepartmental levels has not worked out since the 1973 reorganization. Layering low visibility and inevitable conflicts with other departmental priorities made this alternative unacceptable.

Finally, in this area, subordination within a civil agency could be seen as an unacceptable downgrading of the attack preparedness functions in favor of the natural disaster activities. On the other hand, assignment to the Department of Defense would extend the military influence into civilian matters far more than is presently the case.

While we resisted recommending independent agency status for some time, we did finally agree that it was essential that we pursue this route. It would give strong visibility, it would give a good coordinating link to the operational agencies and it would provide direct accountability to the President.⁴²

The challenge of coordinating the administration of federal emergency management policies, regardless of the agency structure, has always been part of the debate. 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.⁴³

Reflecting another perspective, the Brookings Institution study on the Administration's homeland security proposal appears to move away from the concept that federal disaster policies should be extensions of the normal agency functions. In its contention that FEMA, and the emergency preparedness and response function, should not be included in the DHS, the Brookings authors concluded, "The case is

⁴²*Reorganization Plan No. 3 of 1978 (Federal Emergency Management Agency)*, pp. 19-20.

⁴³*Message of the President, Reorganization Plan No. 3 of 1978*, 5 U.S.C. Appendix.

strong for the first step, consolidating the federal government's emergency preparedness and response effort within FEMA.”⁴⁴

The intent of President Carter to maintain authority for emergency responsibilities as an extension of the “regular” missions of the agencies is reflected, in part, by those who note that even if a Department of Homeland Security is established in 2002, other agencies will continue to have related responsibilities. As summarized by the Comptroller General:

Based on our prior work, GAO believes that the consolidation of some homeland security functions makes sense and will, if properly organized and implemented, over time lead to more efficient, effective and coordinated programs, better intelligence sharing, and a more robust protection of our people, borders and critical infrastructure. At the same time, the proposed cabinet department, even with its multiple missions, will still be just one of many players with important roles and responsibilities for ensuring homeland security.⁴⁵

In the debate over the establishment of the DHS, questions have been raised about whether FEMA should be integrated, in whole or in part, into the department. Authors of one study on the establishment of the DHS contend that consolidation should be limited “to circumstances where the function would not be performed as well in its current agency or would provide a useful synergy with other entities that are to be included. Furthermore, mergers should enhance, not detract, from the ability to fulfill stated agency missions. The merger of a consolidated FEMA into a larger Department of Homeland Security does not meet any of these criteria.”⁴⁶ Synergy, clear statements of mission, and improvements in efficiency and effectiveness were among the criteria identified by the General Accounting Office to be considered by Congress in establishing a DHS.⁴⁷

After 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 coordinates emergency management responses of other agencies and administers its own assistance programs. In debating the establishment of the DHS, an assessment of the first director of FEMA may have relevance. In response to the question from a Member of Congress, “Do you anticipate that any serious management problems may arise in FEMA when an attempt is made to coordinate [the functions],” the first director of FEMA stated: “There will be serious management problems in merging the three agencies currently responsible for emergency preparedness, civil defense, and disaster relief within the structure of

⁴⁴Ivo H. Daalder and others, *Assessing the Department of Homeland Security* (Washington: The Brookings Institution, July 2002), p. 22.

⁴⁵U.S. General Accounting Office, *Homeland Security: Proposal for Cabinet Agency has Merit, But Implementation Will be Pivotal to Success*, Testimony of Comptroller General David Walker, GAO-02-886T (Washington: June 25, 2002), p. 4.

⁴⁶*Assessing the Department of Homeland Security*, p. 23.

⁴⁷U.S. General Accounting Office, *Homeland Security: Critical Design and Implementation Issues*, Comptroller General testimony before the House Select Committee on Homeland Security, GAO-02-957T (Washington: July 17, 2002).

FEMA.”⁴⁸ The question that Members may consider in 2002 is: “Do you anticipate that any serious management problems may arise in DHS if an attempt is made to separate the functions of this agency?”

FEMA Reorganization, 1993-1995. Analysts and policymakers, regardless of party affiliation, generally agree that many management problems evident in FEMA were resolved during the administration of Director Witt. The reorganization of FEMA coincided with the work of the National Performance Review (NPR), headed by Vice President Gore and reports of inadequate response in south Florida to Hurricane Andrew in 1992. In response to concerns about the agency’s administrative malfunctions, Director Witt undertook a reorganization of the agency that resulted in a “renewal” of FEMA “to improve significantly the protection of our citizens from all natural and manmade hazards.”⁴⁹

Just as President Carter, the 95th Congress, and previous Administration officials had maintained the need for a comprehensive emergency management system to manage all catastrophes regardless of cause, the renewal of FEMA in 1993 was intended to create “a national emergency management system that is comprehensive, risk-based, and all-hazards in approach.”⁵⁰ While such an orientation had seemingly always been the goal for the agency, a panel convened by the National Academy of Public Administration (NAPA) charged with examining the agency’s structure and mission following Hurricane Andrew concluded that the objective had not yet been achieved by the early 1990s.

In summary, the panel has found that FEMA has never succeeded in integrating the several functions of emergency management into a meaningful mission from which agency goals would derive. Further, it has no strategic planning process for developing a mission and goals for the agency as a whole; FEMA is not certain of its role; it has no central, strategic planning process; it lacks the basic management systems to function effectively; and it has not had the leadership to bring the agency together. In addition, it lacks a continuing link to the White House and also an internal executive development program. The organizational structure and operating practices need major revision to create the high-performance, high-reliability agency the public and Congress want and deserve.⁵¹

⁴⁸U.S. Congress, Senate Committee on Governmental Affairs, *Nomination of John W. Macy, Jr.*, hearing, 96th Cong., 1st sess., July 25, 1979 (Washington: GPO, 1979), p. 9.

⁴⁹U.S. Federal Emergency Management Agency, *FEMA Renewal, Federal Emergency Management Agency National Performance Review Report* (Washington: 1993), p. 1.

⁵⁰*Ibid.*, pp. 2-3. During the Reagan Administration FEMA officials espoused the adoption of a “broader, functional, and multi-hazard way of accomplishing emergency management objectives” through the Integrated Emergency Management System, or IEMS. See: David McLoughlin, “A Framework for Integrated Emergency Management,” *Public Administration Review*, vol. 45, Jan. 1985, pp. 165-172.

⁵¹National 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.

Among other conclusions, the NAPA panel found that “stovepipes” or internal subcultures existed throughout the agency. The stovepipes were most evident between the personnel dedicated to the national security mission of the agency and those tasked with natural disaster preparedness and response. As a result, barriers to sharing resources and information among program officers inhibited efforts to develop a single mission and vision for the agency.

In response to this and other examinations,⁵² Director Witt reorganized the agency to eliminate the National Preparedness Directorate, the entity concerned with national security emergencies. Instead, three functional directorates were established to correspond to major phases of emergency management—the Mitigation Directorate, the Preparedness, Training & Exercises Directorate, and the Response & Recovery Directorate.⁵³ Responsibility for national security related functions was assigned to the Office of National Security Coordination, which reported to the Director. This structure responded to that recommended by the NPR which concluded as follows:

The national security component of FEMA’s mission has dominated the agency for a very long time. The dual nature of the agency’s mission, the confusion about its identity, the division of resources, and the communications barriers that exist in the agency are the most important factors in its shortcomings.

With the reduced threat to this country of nuclear attack by the former Soviet Union and its successor nations, enduring constitutional government programs (the former continuity of government programs) are being scaled back. The director should ensure the maintenance of a single point of contact to manage these programs. It is vital, however, that the agency’s classified activities do not threaten or interfere with its main focus on the unclassified mission of preparing for all hazards.⁵⁴

Office of National Preparedness. The Bush Administration adopted a perspective different from that advocated by Vice President Gore’s NPR unit and Director Witt. 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.”⁵⁵ 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

⁵²For a summary see: Richard Sylves, “Ferment at FEMA: Reforming Emergency Management,” *Public Administration Review*, vol. 54, May/June 1994, pp. 303-307.

⁵³James L. Witt, Memorandum for All FEMA Employees, “Organizational Structure and Management,” Nov. 5, 1993.

⁵⁴Vice President Al Gore, *Creating a Government that Works Better & Costs Less: Federal Emergency Management Agency* (Washington: 1993), p. 6.

⁵⁵“President Bush on Domestic Preparedness Against Weapons of Mass Destruction,” available on the FEMA website at [http://www.fema.gov/nwz01/nwz01_33.htm], visited Jan. 24, 2001.

established to prepare for and manage the consequences of terrorist incidents.⁵⁶ 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.⁵⁷ 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.

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.⁵⁸

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.⁵⁹

While the establishment of the ONP might have been intended to develop a “coordinated ... federal effort” to manage the consequences of terrorist attacks, it may be argued that the establishment of a separate directorate for that purpose returned the agency to the “stovepipe” problem identified a decade ago.

Options Concerning Agency Missions. The debate over the proposal to transfer FEMA into DHS has, for the first time in years, renewed the debate over “all hazards.” In a white paper distributed to Members of Congress and others, the former FEMA director, James Lee Witt, states: “In the atmosphere of the past year (including the period prior to September 11th) the devotion to terrorism planning has

⁵⁶See: U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Related Recommendations*, GAO report 01-822 (Washington: Sept. 20, 2001).

⁵⁷U.S. Federal Emergency Management Agency, *Functional Realignment*, memorandum from Director Allbaugh to FEMA employees, June 5, 2001.

⁵⁸“Office of National Preparedness,” available on the FEMA website at [http://www.fema.gov/nwz02/nwz02_03a.htm], visited Jan. 25, 2002.

⁵⁹“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.

already affected the FEMA mission. All the momentum for pre-disaster mitigation work with communities has been lost. Folding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards."⁶⁰ As an alternative, Mr. Witt proposes the transfer of FEMA's ONP "and all national security related programs" into DHS, "but the rest of FEMA should be left in place as an independent agency."⁶¹ Elements of this proposal have been supported by some Members of Congress.⁶²

Concern over the administration of federal policies when natural disasters occur has led to other alternative proposals. In a report on the proposed reorganization, the authors of a Brookings Institution report urge that, at least temporarily, the transfer be reconsidered.

After years of determined effort, FEMA has emerged as an effective federal agency. Moving it into a new department, at a time when its new management is busily trying to mold many different entities, cultures, and capabilities in a new, coherent whole, is unlikely to be the best way to improve FEMA's ability to manage the emergency response function, much less sustain its ability to carry out its important, non-homeland security related activities. It would be much better for FEMA to remain independent and absorb the other agencies and programs responsible for aspects of the emergency response efforts.⁶³

The Brookings study concluded that "while a merged FEMA might become highly adept at preparing for and responding to terrorism, it would likely become less effective in performing its current mission in case of natural disasters as time, effort, and attention are inevitably diverted to other tasks within the larger organization."⁶⁴ Instead, the authors urge that FEMA retain its status as an independent agency and that federal preparedness and response functions be consolidated within that agency, rather than within the DHS.

Another alternative has been proposed by the chair of the Senate Environment and Public Works Committee. Recalling FEMA's recent history of inadequate response, Senator Jeffords supports the transfer of FEMA into DHS "as a distinct entity within the Department."

Throughout the 1980s, FEMA focused mainly on Cold War civil defense preparedness. This focus left the Agency ill-prepared to respond to several large natural disasters during the late 1980s and early 1990s. I still remember some of my Senate colleagues calling for the abolishment of the Agency during that time.

⁶⁰James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

⁶¹Ibid.

⁶²Refer to the Manager's Amendment, approved by voice vote, of the House Transportation and Infrastructure Committee on July 11th, 2002, at: [<http://www.house.gov/transportation/>], visited July 15, 2002.

⁶³Ivo H. Daalder, and others, *Assessing the Department of Homeland Security* (Washington: The Brookings Institution, 2002), p. vii.

⁶⁴Ibid., p. 24.

Over the last decade, FEMA has refocused its mission on mitigating the effects of, preparing for and responding to natural disasters. By doing so, the Agency has vastly improved its ability to coordinate Federal response and recovery efforts.⁶⁵

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 Office of Homeland Security on October 8, 2001, and the most recent proposal to establish the DHS, indicate that additional measures were deemed necessary by the Administration. In summary, the task of 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 DHS need to be reconciled, the task currently under debate in Congress.

Basic Authorities

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.⁶⁶ 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 for federal and non-federal officials.⁶⁷ As noted in the first section of this report, for decades Congress and the presidents have transferred responsibility for various authorities among federal agencies. 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, leading to the creation of FEMA.⁶⁸

⁶⁵Statement of Senator Jim Jeffords, *Hearing on the Department of Homeland Security*, July 10, 2002, at: [http://www.senate.gov/~epw/jef_071002.htm], visited July 15, 2002.

⁶⁶P.L. [81]-875, 64 Stat. 1109.

⁶⁷For 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.

⁶⁸For 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.htm>].

Centralized Authority. On June 19, 1978, President Carter submitted to Congress *Reorganization Plan Number 3* to establish FEMA.⁶⁹ After neither chamber passed a resolution of disapproval, the *Plan* took effect on April 1, 1979.⁷⁰ 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.⁷¹
- ! *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.⁷²
- ! *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.⁷³

⁶⁹Pursuant 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.

⁷⁰Both 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 29th, 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 20th and 21st, 1978 (Washington: GPO, 1978), p. 47.

⁷¹5 U.S.C. Appendix.

⁷²U.S. President (Carter), “Federal Emergency Management Agency,” Executive Order 12127, Mar. 31, 1979, 3 CFR, 1945-1989 Comp., p. 880.

⁷³U.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,

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 17 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 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).

⁷³(...continued)

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.

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.⁷⁴

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 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.⁷⁵

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

⁷⁴33 U.S.C. 467 et seq.

⁷⁵42 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.

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.⁷⁶

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.⁷⁷

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 preparing reports to Congress on seismic safety in federal buildings and the execution of the executive order.⁷⁸

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.⁷⁹

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

⁷⁶42 U.S.C. 7701 et seq.

⁷⁷U.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.

⁷⁸U.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.

⁷⁹42 U.S.C. 11331 et seq.

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.⁸⁰

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.⁸¹

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.⁸²

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.⁸³

E.O. 12580 — Requires FEMA to serve on the National and Regional Response Teams established under the National Contingency Plan.⁸⁴ 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.⁸⁵

⁸⁰15 U.S.C. 2201 et seq.

⁸¹42 U.S.C. 11005.

⁸²49 U.S.C. 5115, 5116.

⁸³50 U.S.C. 1521(c).

⁸⁴The National Oil and Hazardous Substances Pollution Contingency Plan sets out procedures to be followed in responding to discharges of contaminants. See 40 CFR 300.

⁸⁵U.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.

Insurance. *National Flood Insurance Act of 1968* — As amended, authorizes the Director of FEMA to establish and administer a national flood insurance program.⁸⁶

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.⁸⁷ In addition, the FIA is charged with administering crime and property insurance policies that were made available to inner city residents but are no longer available for sale.⁸⁸

Interagency Committees. *E.O. 12265* — Names the FEMA Director to the interagency committee on consumer affairs.⁸⁹

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.⁹⁰

E.O. 12788 — Names the FEMA Director to the interagency Economic Adjustments Committee related to military base closures.⁹¹

E.O. 12816 — Names the FEMA Director to the interagency committee on administrative management.⁹²

E.O. 13228 — Names the FEMA Director as a member of the Homeland Security Council.⁹³

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,

⁸⁶42 U.S.C. 4011 et seq.

⁸⁷The 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 44 CFR §2.31 for the mission of the Federal Insurance Administration.

⁸⁸12 U.S.C. 1749bbb et seq.

⁸⁹U.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.

⁹⁰U.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.

⁹¹U.S. President (Bush), “Defense Economic Adjustment Program,” E.O. 12788, Jan. 15, 1992, 57 FR 2213, 3 CFR, 1993, p. 273.

⁹²U.S. President (Bush), “Management Improvement in the Federal Government,” E.O. 12816, Oct. 14, 1992, 57 FR 47562, 3 CFR, 1992, p. 313.

⁹³U.S. President (Bush), “Establishing the Office of Homeland Security and the Homeland Security Council,” E.O. 13228, Oct. 8, 2001, 66 FR 51812.

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.⁹⁴

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.⁹⁵

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.⁹⁶

E.O. 10789 — Authorizes the Director of FEMA to issue contracts for services and property considered necessary or appropriate for purposes of national defense.⁹⁷

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.

⁹⁴50 U.S.C. 404, 405.

⁹⁵As amended by the Defense Production Act Amendments of 1992, P.L. 102-558, 106 Stat. 4201, 50 U.S.C. App. 2062.

⁹⁶50 U.S.C. 2312.

⁹⁷U.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.

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.⁹⁸

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.⁹⁹

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

⁹⁸U.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.

⁹⁹U.S. President (Bush), “Executive Order Establishing Office of Homeland Security,” Executive Order 13228, *Federal Register*, vol. 66, Oct. 8, 2001, p. 51812-51817.

civil emergency planning. He also supports federal agency heads to engage in preparedness planning, including shelter management in the event of attack.¹⁰⁰

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.¹⁰¹

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.¹⁰²

E.O. 13231 — Established the President's Critical Infrastructure Protection Board secure information systems for critical infrastructure for the telecommunications, financial services, and utility sectors, among others. The Director of FEMA services on the Board.¹⁰³

¹⁰⁰U.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.

¹⁰¹U.S. President (Bush), "National Security Industrial Responsiveness," Executive Order 12742, Jan. 8, 1991, 56 FR 1079, 3 CFR, 1992, p. 309.

¹⁰²U.S. President (Clinton), "National Defense Industrial Resources Preparedness," Executive Order 12919, June 3, 1994, 59 FR 29525, 3 CFR, 1995, p. 901.

¹⁰³U.S. President (Bush), "Critical Infrastructure Protection in the Information Age," E.O. 13231, Oct. 16, 2001, 66 FR 53063.