

List of Authorities and References

The legal authorities that guide the structure, development, and implementation of the *National Response Framework (NRF)*, and, *State, local and tribal emergency operations plans*, are statutes, regulations, Executive orders, and Presidential directives, and they are listed and summarized below. This list and the associated summaries are not exhaustive and should not be used as a substitute for the authorities themselves. The statutes and regulations are organized by subject matter, except for some principal emergency authorities that are listed first. The Executive orders of the President and the Homeland Security Presidential Directives (HSPDs) are listed separately for your information, although all may not apply to this emergency operations plan. The statutes, regulations, HSPDs, most likely to apply are highlighted in blue.

I. STATUTES AND REGULATIONS

A. PRINCIPAL EMERGENCY AUTHORITIES

The Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002) (codified predominantly at 6 U.S.C. §§ 101-557),¹ as amended with respect to the organization and mission of the Federal Emergency Management Agency in the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295, 120 Stat. 1355 (2006), established a Department of Homeland Security (DHS) as an executive department of the United States. The Homeland Security Act consolidated component agencies, including the Federal Emergency Management Agency (FEMA), into the Department. The Secretary of Homeland Security is the head of the Department and has direction, authority, and control over it. All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

The primary missions of the Department are to:

1. Prevent terrorist attacks within the United States;
2. Reduce the vulnerability of the United States to terrorism;
3. Minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
4. Carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;
5. Ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by specific explicit act of Congress;
6. Ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;

¹ References to the United States Code (U.S.C.) are to the United States Code Annotated.

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7. Ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and
8. Monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to the efforts to interdict illegal drug trafficking.

The primary mission of FEMA is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other manmade disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. The FEMA Administrator therefore is assigned responsibility to:

1. Lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other manmade disasters, including catastrophic incidents;
2. Partner with State, local, and tribal governments and emergency response providers, other Federal agencies, the private sector, and nongovernmental organizations to build a national system of emergency management that can effectively and efficiently utilize the full measure of the Nation's resources to respond to natural disasters, acts of terrorism, and other manmade disasters, including catastrophic incidents;
3. Develop a Federal response capability that, when necessary and appropriate, can act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other manmade disaster;
4. Integrate the Agency's emergency preparedness, protection, response, recovery, and mitigation responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other manmade disaster;
5. Develop and maintain robust regional offices that will work with State, local, and tribal governments, emergency response providers, and other appropriate entities to identify and address regional priorities;
6. Under the leadership of the Secretary, coordinate with the Commandant of the Coast Guard, the Commissioner of Customs and Border Protection, the Assistant Secretary of Immigration and Customs Enforcement, the National Operations Center, and other agencies and offices in the Department to take full advantage of the substantial range of resources in the Department;
7. Provide funding, training, exercises, technical assistance, planning, and other assistance to build local, tribal, State, regional, and national capabilities (including communications capabilities) necessary to respond to a natural disaster, act of terrorism, or other manmade disaster; and,
8. Develop and coordinate the implementation of a risk-based, all-hazards strategy for preparedness that builds those common capabilities necessary to respond to natural disasters, acts of terrorism, and other manmade disasters while also building the unique

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capabilities necessary to respond to specific types of incidents that pose the greatest risk to our Nation.

Among other duties, the Homeland Security Act also assigns certain responsibilities to the Administrator specific to the *National Response Plan (NRP)*, now the *NRF*, and the *National Incident Management System (NIMS)*, including: building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities to respond to attacks and disasters; consolidating existing Federal emergency response plans into a single, coordinated national response plan; and administering and ensuring the implementation of the *NRP*, including coordinating and ensuring the readiness of each Emergency Support Function under the *NRP*.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, 88 Stat. 143 (1974), codified in 42 U.S.C. §§ 5121-5206 (2007), was also amended in the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295, 120 Stat. 1355 (2006), particularly Title VI, the Post-Katrina Emergency Management Reform Act of 2006 (discussed below). The Stafford Act describes the programs and processes by which the Federal Government provides disaster and emergency assistance to State and local governments, tribal nations, eligible private nonprofit organizations, and individuals affected by a declared major disaster or emergency. The Stafford Act covers all hazards, including natural disasters and terrorist events.

B. DECLARATION PROCESS

1. The Stafford Act and its implementing regulations at 44 CFR § 206 set forth a process for a Governor to request the President to declare a major disaster or emergency:
 - a. If an event is beyond the combined response capabilities of the State and affected local governments; and,
 - b. If, based on the findings of a joint Federal-State-local Preliminary Damage Assessment (PDA), the damages are of sufficient severity and magnitude to warrant assistance under the Stafford Act. In a particularly fast-moving or clearly devastating disaster, there may be an expedited declaration, and the PDA may be deferred until after the declaration. The President may direct emergency assistance without a Governor's request if an incident occurs that involves a subject area that is exclusively or preeminently the responsibility of the United States. The President will consult the Governor of any affected State, if practicable.

2. FEMA may provide accelerated Federal assistance and support where necessary to save lives, prevent human suffering, or mitigate severe damage, even in the absence of a specific request. (The Governor of the affected State will be consulted if practicable, but this consultation shall not delay or impede the provision of such rapid assistance.)

C. RESPONSE PROCESS

1. Before a major disaster or emergency declaration, the Stafford Act authorizes FEMA to pre-deploy personnel, who may be from various Federal agencies, and equipment to reduce immediate threats to life, property, and public health and safety, and to improve the timeliness of its response.
2. The Stafford Act requires the President to appoint a Federal Coordinating Officer immediately upon the declaration of a major disaster or emergency to coordinate the delivery of Federal assistance to the affected State and local governments, tribal nations, eligible private nonprofit organizations, and individuals affected by a declared major disaster or emergency.
3. The Stafford Act was amended by section 607 of the Security and Accountability for Every (SAFE) Port Act of 2006, Pub. L. 109-347, to provide that Federal agencies will not deny access or impede access to an “essential service provider” to the disaster site whose access is necessary to restore and repair an essential service; or impede the restoration or repair of the services of an “essential service provider.” Under the amendment an “essential service provider” means an entity that provides: telecommunications service; electrical power; natural gas; water and sewer services; or any other essential service, as determined by the President; and is a municipal entity; a nonprofit entity; or a private, for-profit entity; and is contributing to efforts to respond to an emergency or major disaster.

D. RECOVERY

1. The Stafford Act provides temporary housing and other assistance to eligible individuals and households who have basic and essential needs as a result of a major disaster or emergency.
2. The Stafford Act provides assistance to public and certain nonprofit entities that have disaster-related damage.
3. The Stafford Act prohibits the duplication of benefits from other sources, such as insurance.

The Post-Katrina Emergency Management Reform Act (PKEMRA), which is Title VI of the Department of Homeland Security Appropriations Act, 2007, Pub. L. 109-295, 120 Stat. 1355 (2006), clarified and modified the Homeland Security Act with respect to the organizational structure, authorities, and responsibilities of FEMA and the FEMA Administrator. In addition to these modifications, PKEMRA made changes – some appearing in the Homeland Security Act and some in the Stafford Act – directing FEMA, among other things, to:

1. Establish a Disability Coordinator and develop guidelines to accommodate individuals with disabilities;
2. Add disability and English proficiency to the list of provisions requiring nondiscrimination in relief and assistance activities;

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3. Establish the National Emergency Family Registry and Locator System to reunify separated family members and assist in establishing the National Emergency Child Locator Center to locate missing children after a major disaster or emergency;
4. Coordinate and support precautionary evacuations and recovery efforts;
5. Provide transportation assistance for relocating and returning individuals displaced from their residences in a major disaster;
6. Provide rescue, care, shelter, and essential needs assistance to individuals with household pets and service animals as well as to such pets and animals;
7. Provide case management assistance to identify and address unmet needs of victims of major disasters; and,
8. Receive input from a National Advisory Council, including State and private-sector members, about the development and revision of the *NRF* and other related plans or strategies.

Flood Control and Coastal Emergencies Act, 33 U.S.C. § 701n (2007) (commonly referred to as Pub. L. 84-99), authorizes an emergency fund for preparation for emergency response to, among other things, natural disasters, flood fighting and rescue operations, repair or restoration of flood control and hurricane protection structures, temporary restoration of essential public facilities and services, and provision of emergency supplies of water.

The Defense Production Act of 1950 (DPA), 64 Stat. 798 (1950) (codified at 50 U.S.C. App. §§ 2061, *et seq.* (2007)), is the primary authority to ensure the timely availability of resources for national defense and civil emergency preparedness and response.

The Economy Act, 31 U.S.C. §§ 1535-1536 (2007), authorizes Federal agencies to provide goods or services, on a reimbursable basis, to other Federal agencies when more specific statutory authority does not exist.

The National Emergencies Act, 50 U.S.C. §§ 1601-1651 (2007), establishes procedures for Presidential declaration of a national emergency and the termination of national emergencies by the President or Congress.

The Restoration Act (formerly Insurrection Act), 10 U.S.C. §§ 331-335 (2007), authorizes the President to use the Armed Forces to suppress an insurrection, domestic violence, unlawful combination, or conspiracy in any State; enforce the laws of the United States; suppress rebellions against the authorities of the United States; and restore public order.

The Communications Act of 1934, 47 U.S.C. §§ 151-615b (2007), authorizes the Federal Communications Commission to grant special temporary authority on an expedited basis to operate radio frequency devices, allowing a Federal agency to broadcast public service announcements in the immediate aftermath of an emergency or major disaster.

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The Small Business Act, 15 U.S.C. §§ 631-651e (2007), authorizes the Small Business Administration to maintain and strengthen the Nation's economy by aiding, counseling, assisting, and protecting the interests of small businesses, and by providing disaster loans to help families and businesses recover from incidents, such as major disasters and emergencies.

The Immigration and Nationality Act in section 404(b)(1), 8 U.S.C. § 1101 note (2007), establishes an Immigration Emergency Fund that can be drawn upon to increase immigration enforcement activities, and to reimburse States and localities in providing assistance as requested by the Secretary of Homeland Security in meeting an immigration emergency declared by the President.

Section .085 of Title 28, Code of Federal Regulations, designates the Federal Bureau of Investigation as the agency with primary responsibility for investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. This authority includes the collection, coordination, analysis, management, and dissemination of intelligence and criminal information as appropriate.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (1996), as amended by the REAL ID Act, Pub. L. 109-13 (2005) and the Secure Fence Act, Pub. L. 109-367 (2006), allows the Secretary of Homeland Security to waive all legal requirements to ensure expeditious construction of physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the U.S. border to deter illegal crossings in areas of high illegal entry into the United States.

The Office of Federal Procurement Policy Act, 41 U.S.C. § 428a (2007), authorizes emergency procurement authorities (1) in support of a contingency operation; or (2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States. See also Federal Acquisition Regulation Part 18.2.

The Emergency Federal Law Enforcement Assistance Act, 42 U.S.C. § 10501 (2007), authorizes the Attorney General, in a law enforcement emergency and upon written request by a Governor, to coordinate and deploy emergency Federal law enforcement assistance to State and local law enforcement authorities.

II. AGRICULTURAL AUTHORITIES

Section 8306 of Title 7, United States Code (2007), authorizes the Secretary of Agriculture to declare an extraordinary emergency and take action due to the presence of a pest or disease of livestock that threatens livestock in the United States. Under 7 U.S.C. § 7715 (2007), the Secretary of Agriculture has the authority to declare an extraordinary emergency and take action due to the

presence of a plant pest or noxious weed whose presence threatens plants or plant products of the United States.

The Cooperative Forestry Assistance Act of 1978, 16 U.S.C. §§ 2101-2114 (2007), authorizes the Secretary of Agriculture to assist in the prevention and control of rural fires, and to provide prompt assistance whenever a rural fire emergency overwhelms, or threatens to overwhelm, the firefighting capabilities of the affected State or rural area.

The Animal Health Protection Act of 2002 (AHPA), 7 U.S.C. 8310 (2007), consolidates all of the animal quarantine and related laws and replaces them with one flexible statutory framework. The AHPA authorizes Animal and Plant Health Inspection Service (APHIS) Veterinary Services to act swiftly and decisively to protect U.S. animal health from a foreign pest or disease.

III. CHEMICAL, BIOLOGICAL, AND NUCLEAR AUTHORITIES

The Atomic Energy Act of 1954, 42 U.S.C. §§ 2011-2297 (2007), and the Energy Reorganization Act of 1974, 5 U.S.C. §§ 5313-5316, 42 U.S.C. §§ 5801-5891 (2007), provide the statutory foundations for both the Department of Energy and the Nuclear Regulatory Commission (NRC), and the NRC's regulation of the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment.

The Price-Anderson Amendments Act of 1988, 42 U.S.C. § 2011 note (2007), amended the Atomic Energy Act of 1954 in order to provide for indemnification of governments and individuals affected by nuclear incidents.

The Defense Against Weapons of Mass Destruction Act, 50 U.S.C. §§ 2301-2368 (2007), enhances the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction (WMDs), and provides for Federal aid to State and local emergency response agencies to prevent and respond to such incidents at the national and local level.

IV. CIVIL RIGHTS LAWS

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 42 U.S.C. 2000d (2007), prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 794 (2007), prohibits discrimination of qualified individuals with a disability from participating in any program or activity

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that either receives Federal financial assistance or is conducted by any executive agency or the U.S. Postal Service.

Section 508 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 794d (2007), requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

Title IX of the Education Amendments of 1972, Pub. L. 92-318, 20 U.S.C. 1681-1688 (2007), prohibits discrimination on the basis of sex in programs or activities receiving Federal financial assistance.

The Americans with Disabilities Act of 1990, as amended, Pub. L. 101-336, 42 U.S.C. 12101, *et seq.* (2007), prohibits discrimination on the basis of disability.

The Age Discrimination Act of 1975, Pub. L. 94-135, 42 U.S.C. 6101-6107 (2007), prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, *et seq.* (2007), requires that physical access be available to facilities designed, built, altered, or leased with Federal funds. Under this law the Access Board, created by section 502 of the Rehabilitation Act of 1973, develops and maintains accessibility guidelines called the Uniform Federal Accessibility Standards (UFAS).

V. ENERGY AUTHORITIES

The Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 (1978) (codified in various sections Titles 15, 16, 30, 42, and 43 of the U.S.C. (2007)), and the Power plant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (1978) (codified as amended at 42 U.S.C. §§ 8301-8484 (2007)) authorize the President to prohibit any power plant or major fuel-burning installation from using natural gas or petroleum as a primary fuel during an emergency.

The Federal Power Act, 16 U.S.C. §§ 791a-828c (2007), 10 CFR § 205.370 (2006), authorizes the Secretary of Energy to order temporary interconnections of facilities and/or the generation and delivery of electric power to alleviate an emergency.

The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 567 (1977) (codified predominantly at 42 U.S.C. §§ 7101-7385o (2007)), and the Federal Power Act, 16 U.S.C. §§ 791a-828c (2007), 10 CFR §§ 205.350, 205.353 (2007), authorize the Department of Energy (DOE) to obtain current information on the electric supply systems in the United States during emergency situations so that appropriate Federal emergency response measures can be implemented in a timely and effective manner.

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The Energy Policy and Conservation Act, 42 U.S.C. §§ 6201-6422 (2007), as amended by the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) (as amended and codified in various sections of the U.S.C.), authorizes the President to order Federal buildings to close and/or conserve energy during an emergency. The President is also authorized to create and maintain a Strategic Petroleum Reserve and a Northeast Home Heating Oil Reserve, and to order a drawdown of either reserve in emergency circumstances.

The Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432 (2007), authorizes the President to order any interstate pipeline, local distribution company served by an interstate pipeline, or person to allocate natural gas in order to assist in meeting the needs of high-priority uses during a natural gas emergency.

The Power Plant and Industrial Fuel Use Act of 1978, 42 U.S.C. §§ 8301-8484 (2007), authorizes the President to allocate coal (and require the transportation of coal) for the use of any power plant or major fuel-burning installation during an energy emergency.

The Low Income Home Energy Assistance Act of 1981, 42 U.S.C. §§ 8621-8629 (2007), provides the Department of Health and Human Services with discretionary funds for distribution under the Low Income Home Energy Assistance Program, according to the criteria that relate to the type of emergency that precipitates their need.

VI. ENVIRONMENTAL AUTHORITIES

The Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (2007), and the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251-1387 (2007), establish broad Federal authority to respond to releases or threats of releases of hazardous substances and pollutants or contaminants that may present an imminent and substantial danger to public health or welfare and to discharges of oil.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR § 300 (2006), provides for the coordinated and integrated response by the Federal Government, as well as State and local governments, to prevent, minimize, or mitigate a threat to public health or welfare posed by discharges of oil and releases of hazardous substances, pollutants, and contaminants.

The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6901-6986 (2007), which was passed as an amendment of the Solid Waste Disposal Act of 1965, Pub. L. 89-272, 79 Stat. 997 (1965), authorizes the Environmental Protection Agency (EPA) to control hazardous waste, including the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also sets forth a framework for the management of nonhazardous wastes.

The Oil Pollution Act of 1990, Pub. L. 101-380, 104 Stat. 484 (1990) (codified as amended 33 U.S.C. §§ 1203, 1223, 1321, 2701-2761 (2007)), establishes mechanisms for the Federal Government to prevent and respond to oil spills.

The Occupational Safety and Health Act, 29 U.S.C. §§ 651-678 (2007), establishes and enforces standards to assure safe and healthful working conditions for working men and women, and provides mechanisms to assist the States in their efforts to assure safe and healthful working conditions.

The Clean Air Act, 42 U.S.C. §§ 7401-7671q (2007) and 40 CFR § 80.73 (2006), authorizes EPA to temporarily permit a refiner, importer, or blender to distribute nonconforming gasoline in appropriate extreme or unusual circumstances that could not have been avoided.

A. MILITARY AUTHORITIES

The Posse Comitatus Act, 18 U.S.C. § 1385 (2007), prohibits the use of the Army or the Air Force for law enforcement purposes, except as otherwise authorized by the Constitution or statute. This prohibition applies to Navy and Marine Corps personnel by Department of Defense (DOD) internal regulations. The primary concept in the Posse Comitatus Act is to prevent direct involvement by active duty military personnel in traditional law enforcement activities.

Section 382 of Title 10, United States Code (2007), authorizes the Attorney General to request assistance from the Secretary of Defense when both the Attorney General and the Secretary of Defense agree that an “emergency situation” involving biological or chemical weapons of mass destruction exists and the Secretary of Defense determines that the requested assistance will not impede military readiness.

Section 831 of Title 18, United States Code (2007), authorizes the Attorney General to request assistance from the Secretary of Defense when both the Attorney General and Secretary of Defense agree that an “emergency situation” involving nuclear materials exists and the Secretary of Defense determines that the requested assistance will not impede military readiness.

Military Support for Civilian Law Enforcement Agencies, 10 U.S.C. §§ 371-382 (2007), authorizes the United States military to assist State and local law enforcement agencies without engaging in the execution of the law by sharing information and expertise; furnishing equipment, supplies, and services; and helping to operate equipment.

Section 2567 of Title 10, United States Code (2007), authorizes the Secretary of Defense (following a determination by the President to invoke 10 U.S.C. § 333(a) (1) (A) of the Restoration Act) to provide supplies, services, and equipment to persons affected by a public emergency.

National Guard Authority. Under Title 10, U.S.C., the Federal Government calls up and funds the National Guard for active duty for national service. Under Title 32, U.S.C., State Governors can activate and command Guard units for missions. Additionally, under 32 U.S.C. § 502(f), the National Guard may be called up for Federal service while remaining under the control of the Governor. National Guard forces operating in a State Active Duty or Title 32 status are not subject to the Posse Comitatus Act.

Furnishing of Health-Care Services to Members of the Armed Forces during a War or National Emergency, 38 U.S.C. § 8111A (2007). During and immediately following a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces, the Secretary of Veterans Affairs may furnish hospital care, nursing home care, and medical services, and give higher priority, to members of the Armed Forces on active duty responding to or involved in that disaster or emergency.

The Veterans Affairs Emergency Preparedness Act of 2002, 38 U.S.C. § 1785 (2007), authorizes the Secretary of Veterans Affairs to furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by a disaster or emergency declared by the President under the Stafford Act, or a disaster emergency in which the National Disaster Medical System is activated.

B. PUBLIC HEALTH AUTHORITIES

The Public Health Service Act, 42 U.S.C. § 201, *et seq.* (2007), as amended, provides authority for the Secretary of the Department of Health and Human Services to take actions to protect the public health and welfare, including, among other things: declaring a public health emergency, imposing quarantine and isolation; awarding grants, contracts and cooperative agreements; deploying the Commissioned corps the National Disaster Medical System and the Medical Reserve Corps; and maintaining the Strategic National Stockpile.

The Food, Drug, and Cosmetic Act, 21 U.S.C. § 301, *et seq.* (2007), as amended, provides authority to the Secretary of Health and Human Services to take actions to ensure public safety related to certain foods, drugs, biological products, medical devices, and cosmetics.

The Social Security Act, 42 U.S.C. § 301, *et seq.* (2007), as amended, provides authority to the Secretary of Health and Human Services to provide health and medical services to the aged and poor, including, for example, Medicare, Medicaid, the State Children's Health Insurance Program, and Temporary Assistance to Needy Families.

C. TRANSPORTATION AUTHORITIES

The Maritime Transportation Security Act, Pub. L. 107-295, 116 Stat. 2064 (2002) (codified at 46 U.S.C. §§ 70102-70117 (2007) and various sections of the U.S.C.), requires sectors of the maritime industry to implement measures designed to protect America's ports and waterways from a terrorist attack, and requires the Secretary of Homeland Security to submit a National Maritime Transportation Security Plan providing for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident.

The Magnuson Act, 50 U.S.C. § 191 (2007), authorizes the President to regulate the movement of vessels in U.S. waters during times of national emergency.

The Ports and Waterways Safety Act of 1978, Pub. L. 95-474, 92 Stat. 1471 (1978) (amending Pub. L. 92-340 (1972) and codified at 33 U.S.C. §§ 1221-1232, and 6 U.S.C. §§ 468(b), 551(d), 552(d) and 557 (2007)), authorizes the Secretary of Homeland Security to establish vessel traffic systems for ports, harbors, and other navigable waterways, and to control vessel traffic in areas determined to be hazardous.

The Aviation and Transportation Security Act (ATSA), 49 U.S.C. § 40101 note, 115 Stat. 597 (2007), as amended, established the Transportation Security Administration, responsible for security in all modes of transportation. Pursuant to ATSA, during a national emergency, DHS has the responsibility to: 1) coordinate all forms of domestic transportation; 2) coordinate and oversee the transportation-related responsibilities of Federal departments and agencies (other than DOD and military departments); 3) coordinate and provide notice regarding threats to transportation to Federal departments and agencies, and State and local governments; and 4) carry out other duties relating to transportation during a national emergency as prescribed by the Secretary of Homeland Security.

Section 46105(c) of Title 49, United States Code (2007), requires the Administrator of the Federal Aviation Administration to prescribe regulations and issue orders immediately when the Administrator determines that an emergency exists relating to safety in air commerce that requires immediate action.

Section 20104(a)(1) of Title 49, United States Code (2007), authorizes the Secretary of Transportation to immediately order restrictions and prohibitions if the Secretary decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, involving a railroad causes an emergency situation involving a hazard of death or personal injury.

The Safe, Accountable, Flexible, Efficient, Transportation Equity Act, Pub. L. 109-59, 199 Stat. 1144 (2005), 23 U.S.C. § 101 *et seq.* (2007) provides that the Secretary of Transportation may regulate the

operation, routes, schedules, rates, fares, tolls, rentals, and other charges of a public transportation system for the purposes of national defense or in a national or regional emergency.

Sections 5101 to 5127 of Title 49, United States Code (2007), authorize the Secretary of Transportation to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce.

D. VOLUNTEER SERVICES

Section 1342 of Title 31, United States Code (2007), provides that the Federal government may accept volunteer services in “emergencies involving the safety of human life or the protection of property.”

Sections 5152(a) and 5170a (2) of Title 42, United States Code (2007) authorize the President to utilize the personnel and facilities of private disaster relief organizations and to coordinate their activities.

The Congressional Charter of 1905, 36 U.S.C. §§ 300101-300111 (2007), establishes the American Red Cross and its chapters as a corporation responsible for maintaining a system of domestic and international relief.

VII. EXECUTIVE ORDERS

Executive Order 12148, 44 Fed. Reg. 43239 (1979), as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003), designates DHS as the primary agency for coordination of Federal disaster relief, emergency assistance, and emergency preparedness. The order also delegates the President’s relief and assistance functions under the Stafford Act to the Secretary of Homeland Security, with the exception of the declaration of a major disaster or emergency.

Executive Order 12196, 45 Fed. Reg. 12769 (1980), Occupational Safety and Health Programs for Federal Employees, establishes program guidelines for Federal Executive Branch agencies to comply with the requirements of the Occupational Safety and Health Act.

Executive Order 12382, 47 Fed. Reg. 40531 (1982), as amended by numerous Executive orders, establishes the President’s National Security Telecommunications Advisory Committee to provide the President with technical information, assessments, and advice concerning national security telecommunications policy and capabilities.

Executive Order 12344, 47 Fed. Reg. 4979 (1982), as set forth in 50 U.S.C. §§ 2406, 2511, Naval Nuclear Propulsion, established the Naval Nuclear Propulsion Program (NNPP) under DOE and Department of the Navy in DOD to provide for the safety of, the control of radiation and radioactivity associated with, and the response to radiological emergencies involving naval nuclear

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reactors and associated propulsion plants. The NNPP is the coordinating agency for emergencies involving U.S. nuclear-powered warships and associated radioactivity and, as such, coordinates Federal response to these emergencies with the assistance of other cooperating agencies. During an emergency, the NNPP keeps DHS fully informed and requests assistance, if needed.

Executive Order 12472, 49 Fed. Reg. 13471 (1984), Assignment of National Security and Emergency Preparedness Telecommunications Functions, as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003), establishes the National Communications System, responsible for ensuring that the Federal Government has telecommunications services that will function under all conditions, including emergency situations, and the national telecommunications infrastructure is responsive to the national security and emergency preparedness needs.

Executive Order 12580, 52 Fed. Reg. 2923 (1987), Superfund Implementation, as amended by numerous Executive orders, delegates to a number of Federal departments and agencies the authority and responsibility to implement certain provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9615 *et seq.* Executive Order 12580 mandates a National Contingency Plan that provides for a National Response Team (NRT) composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and regional response teams as the regional counterpart to the NRT for planning and coordination of regional preparedness and response actions.

Executive Order 12656, 53 Fed. Reg. 47491 (1988), Assignment of Emergency Preparedness Responsibilities, as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003) assigns lead and support responsibilities for national security preparedness to Federal agencies.

Executive Order 12742, 56 Fed. Reg. 1079 (1991), National Security Industrial Responsiveness, as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003), authorizes certain Federal agencies to place orders for articles, products, and materials to meet national security requirements, and to require priority performance of these orders.

Executive Order 12777, 56 Fed. Reg. 54757 (1991), Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990, as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003), outline the responsibilities of certain Federal agencies in preventing and containing discharges of oil and hazardous substances.

Executive Order 12919, 59 Fed. Reg. 29625 (1994), National Defense Industrial Resources Preparedness, as amended by Executive Order 13286, 68 Fed. Reg. 10619 (2003), delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950 (DPA), as amended, except for the amendments to Title III of the

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DPA in the Energy Security Act of 1980 and telecommunication authorities under Executive Order 12472, 49 Fed. Reg. 13471 (1984).

Executive Order 13166, 65 Fed. Reg. 50121 (2000), improves accessibility to federally conducted and assisted programs and activities for individuals with limited English proficiency.

Executive Order 13284, 68 Fed. Reg. 4075 (2003), Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security, amends previous Executive orders in order to make provisions for the establishment of DHS.

Executive Order 13286, 68 Fed. Reg. 10619 (2003), Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security, amends previous Executive orders to reflect the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, the transfer of certain agencies and agency components to DHS, and the delegation of appropriate responsibilities to the Secretary of Homeland Security.

Executive Order 13295, 68 Fed. Reg. 17255 (2003), Revised List of Quarantinable Communicable Diseases, specifies certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases.

Executive Order 13347, 69 Fed. Reg. 44573 (2004), strengthens emergency preparedness with respect to individuals with disabilities.

Executive Order 13354, 69 Fed. Reg. 53589 (2004), National Counterterrorism Center, establishes a policy to enhance the interchange of terrorism information among agencies and creates the National Counterterrorism Center to serve as the primary organization in the U.S. Government for analyzing and integrating all intelligence possessed or acquired by the U.S. Government pertaining to terrorism and counterterrorism.

Executive Order 13356, 69 Fed. Reg. 53599 (2004), Strengthening the Sharing of Terrorism Information to Protect Americans, sets priorities for Federal agencies when designing and using information systems and in disseminating information among agencies.

VIII. Other Presidential Directives

National Security Directive 42: National Policy for the Security of National Security

Telecommunications and Information Systems, July 5, 1990, establishes policy objectives and an organizational structure to guide activities to secure national security systems from exploitation.

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NSD-42 also establishes a mechanism for policy development and dissemination, and assigns responsibilities for implementation.

Homeland Security Presidential Directive 1: Organization and Operation of the Homeland Security Council, October 29, 2001, establishes the Homeland Security Council, which ensures the coordination of homeland security-related activities among executive departments and agencies and promotes the effective development and implementation of all homeland security policies.

Homeland Security Presidential Directive 2: Combating Terrorism Through Immigration Policies, October 29, 2001 (as amended by HSPD-5), establishes policies to deny entry into the United States of aliens associated with terrorist activity; locate any such aliens already present in the United States; end the abuse of student visas and the training of certain international students and foreign nationals in sensitive areas; assure maximum possible compatibility of immigration, customs, and visa policies with neighboring countries; and increase the sharing of immigration and customs information.

Homeland Security Presidential Directive 3: Homeland Security Advisory System, March 11, 2002 (as amended by HSPD-5), establishes the Homeland Security Advisory System, to provide a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to Federal, State, and local authorities and to the American people.

Homeland Security Presidential Directive 4: National Strategy to Combat Weapons of Mass Destruction, December 2002, sets forth the National Strategy to Combat Weapons of Mass Destruction through counter proliferation, strengthened nonproliferation, and consequence management.

Homeland Security Presidential Directive 5: Management of Domestic Incidents, February 28, 2003, requires the Secretary of Homeland Security to develop, submit, and administer a *National Incident Management System (NIMS)* that will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. HSPD-5 requires the Secretary of Homeland Security, after consultation with appropriate Federal officials, to develop, submit, and administer a *National Response Plan*. The directive orders the heads of Federal departments and agencies to adopt the *NIMS* and *NRP*, and provide assistance to the Secretary in the development and maintenance of the *NIMS* and *NRP*. HSPD-5 also provides that Federal departments and agencies shall make adoption of the *NIMS* by States and local entities a requirement, to the extent permitted by law, for providing Federal preparedness assistance through grants, contracts, and other activities. [Note: Effective March 22, 2008, the *National Response Framework* supersedes the *National Response Plan*.]

Pursuant to HSPD-5, the Secretary of Homeland Security is the principal Federal official for domestic incident management. HSPD-5 also assigns specific responsibilities to the Attorney General, Secretary of Defense, Secretary of State, and the Assistants to the President for Homeland Security

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and National Security Affairs, and directs the heads of all Federal departments and agencies to provide their full and prompt cooperation, resources, and support, as appropriate and consistent with their own responsibilities for protecting national security, to the Secretary of Homeland Security, Attorney General, Secretary of Defense, and Secretary of State in the exercise of leadership responsibilities and missions assigned.

HSPD-5 provides that the Secretary of Homeland Security will coordinate with State and local governments and private and nongovernmental sectors to ensure adequate planning, equipment, training, and exercise activities. The Secretary must provide assistance to State and local governments to develop all-hazards plans and capabilities, and will ensure that local, State, and Federal plans are compatible.

Homeland Security Presidential Directive 6: Integration and Use of Screening Information, September 16, 2003, mandates the implementation of a national policy that will: 1) develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism; and 2) use that information to support a) Federal, State, local, territorial, tribal, foreign-government, and private-sector screening processes, and b) diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes.

Homeland Security Presidential Directive 7: Critical Infrastructure Identification, Prioritization, and Protection, December 17, 2003, establishes a national policy for Federal departments and agencies to identify and prioritize U.S. critical infrastructure and key resources and to protect them from terrorist attacks.

The Secretary of Homeland Security is the principal Federal official responsible for leading, integrating, and coordinating implementation efforts among Federal departments and agencies, State and local governments, and the private sector to protect critical infrastructure and key resources. HSPD-7 mandates the creation of a comprehensive, integrated National Plan for Critical Infrastructure and Key Resources Protection to outline national goals, objectives, and milestones.

Homeland Security Presidential Directive 8: National Preparedness, December 17, 2003, establishes policies to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies. HSPD-8 requires the development of a National Preparedness Goal that establishes measurable readiness priorities, targets, and standards that appropriately balance the potential threat and magnitude of terrorist attacks, major disasters, and other emergencies with the resources required to prevent, respond to, and recover from them. HSPD-8 also establishes mechanisms for improved delivery of Federal preparedness assistance to State and local governments, and outlines actions to strengthen preparedness capabilities of Federal, State, and local entities.

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Homeland Security Presidential Directive 9: Defense of United States Agriculture and Food, January 30, 2004, establishes a national policy to defend the agriculture and food system against terrorist attacks, major disasters, and other emergencies.

Homeland Security Presidential Directive 10: Biodefense for the 21st Century, April 28, 2004, establishes strategies for preventing, protecting against, and mitigating biological weapons attacks perpetrated against homeland and global interests.

Screening Procedures Homeland Security Presidential Directive 11: Comprehensive Terrorist-Related, August 27, 2004, builds upon HSPD-6 by mandating the development of a strategy to enhance the effectiveness of terrorist-related screening activities and implement comprehensive, coordinated, and systematic terrorist-screening procedures and capabilities.

Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004, establishes a mandatory, Government wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors (including contractor employees).

Homeland Security Presidential Directive 13: Maritime Security Policy, December 21, 2004, establishes the policy, guidelines, and implementation actions to enhance national and homeland security by protecting the Maritime Domain and U.S. maritime interests.

Homeland Security Presidential Directive 14: Domestic Nuclear Detection, April 15, 2005, seeks to protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material in the United States, And to protect against attack using such devices or materials against the people, territory, or interests of the United States.

Homeland Security Presidential Directive 15: United States Policy and Strategy in the War on Terror, March 2006, is a classified directive that provides guidance on coordinating various elements of the 'War on Terrorism' including diplomatic, legal, financial and military components of the war.

Homeland Security Presidential Directive 18: Medical Countermeasures Against Weapons of Mass Destruction, January 31, 2007, establishes an approach for the development and acquisition of medical countermeasures for attacks involving chemical, biological, radiological, or nuclear agents.

Homeland Security Presidential Directive 19: Combating Terrorist Use of Explosives in the United States, February 12, 2007, establishes a national policy, and calls for the development of a national strategy and implementation plan, on the prevention and detection of, protection against, and response to terrorist use of explosives in the United States.

Homeland Security Presidential Directive 20: National Continuity Policy, May 9, 2007, establishes a comprehensive national policy on the continuity of Federal Government structures and operations and a single National Continuity Coordinator responsible for coordinating the development and implementation of Federal continuity policies.

Homeland Security Presidential Directive 21: Public Health and Medical Preparedness, October 18, 2007, establishes a national strategy that will enable a level of public health and medical preparedness sufficient to address a range of possible disasters.

IX. Overview of Stafford Act Support to States

This overview illustrates actions Federal agencies are likely to take to assist State, tribal, and local governments that are affected by a major disaster or emergency. Key operational components that may be activated include the National Response Coordination Center (NRCC), Regional Response Coordination Center (RRCC), Joint Field Office (JFO), and Disaster Recovery Centers (DRCs).

The Department of Homeland Security (DHS) National Operations Center continually monitors potential major disasters and emergencies. When advance warning is received, DHS may deploy—and may request that other Federal agencies deploy—liaison officers and personnel to a State emergency operations center to assess the emerging situation. An RRCC may be fully or partially activated. Facilities, such as mobilization centers, may be established to accommodate Federal personnel, equipment, and supplies.

Immediately after a major incident, tribal and/or local emergency personnel respond and assess the situation. If necessary, those officials seek additional resources through mutual aid and assistance agreements and the State. State officials also review the situation, mobilize State resources, use interstate mutual aid and assistance processes such as the Emergency Management Assistance Compact to augment State resources, and provide situation assessments to the DHS/Federal Emergency Management Agency (FEMA) regional office. The Governor activates the State emergency operations plan, declares a state of emergency, and may request a State/DHS joint Preliminary Damage Assessment (PDA). The State and Federal officials conduct the PDA in coordination with tribal/local officials as required and determine whether the impact of the event warrants a request for a Presidential declaration of a major disaster or emergency. Based on the results of the PDA, the Governor may request a Presidential declaration specifying the kind of Federal assistance needed.

After a major disaster or emergency declaration, an RRCC coordinates initial regional and field activities until a JFO is established. Regional teams assess the impact of the event, gauge immediate State needs, and make preliminary arrangements to set up field facilities. (If regional resources are or may be overwhelmed or if it appears that the event may result in particularly significant consequences, DHS may deploy a national-level Incident Management Assistance Team (IMAT).)

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Depending on the scope and impact of the event, the NRCC carries out initial activations and mission assignments and supports the RRCC.

The Governor appoints a State Coordinating Officer (SCO) to oversee State response and recovery efforts. A Federal Coordinating Officer (FCO), appointed by the President in a Stafford Act declaration, coordinates Federal activities in support of the State.

A JFO may be established locally to provide a central point for Federal, State, tribal, and local executives to coordinate their support to the incident. The Unified Coordination Group leads the JFO. The Unified Coordination Group typically consists of the FCO, SCO, and senior officials from other entities with primary statutory or jurisdictional responsibility and significant operational responsibility for an aspect of an incident. This group may meet initially via conference calls to develop a common set of objectives and a coordinated initial JFO action plan.

The Unified Coordination Group coordinates field operations from a JFO. In coordination with State, tribal, and/or local agencies, Emergency Support Functions assess the situation and identify requirements. Federal agencies provide resources under DHS/FEMA mission assignments or their own authorities.

As immediate response priorities are met, recovery activities begin. Federal and State agencies assisting with recovery and mitigation activities convene to discuss needs.

The Stafford Act Public Assistance program provides disaster assistance to States, tribes, local governments, and certain private nonprofit organizations. FEMA, in conjunction with the State, conducts briefings to inform potential applicants of the assistance that is available and how to apply.

Throughout response and recovery operations, DHS/FEMA Hazard Mitigation program staff, at the JFO, looks for opportunities to maximize mitigation efforts in accordance with State hazard mitigation plans.

As the need for full-time interagency coordination at the JFO decreases, the Unified Coordination Group plans for selective release of Federal resources, demobilization, and closeout. Federal agencies work directly with disaster assistance grantees (i.e., State or tribal governments) from their regional or headquarters offices to administer and monitor individual recovery programs, support, and technical services.

The chart on the next page summarizes Stafford Act support to States.

X. Emergency Management Assistance Compact (EMAC) Overview For National Response Framework

EMAC is a national interstate mutual aid agreement that enables states to share resources during times of disaster. Since the 104th Congress ratified the compact, EMAC has grown to become the nation's system for providing mutual aid through operational procedures and protocols that have been validated through experience. EMAC is administered by NEMA, the National Emergency Management Association, headquartered in Lexington, KY.

EMAC acts as a complement to the federal disaster response system, providing timely and cost-effective relief to states requesting assistance from assisting member states who understand the needs of jurisdictions that are struggling to preserve life, the economy, and the environment. EMAC can be used either in lieu of federal assistance or in conjunction with federal assistance, thus providing a "seamless" flow of needed goods and services to an impacted state. EMAC further provides another venue for mitigating resource deficiencies by ensuring maximum use of all available resources within member states' inventories.

The thirteen (13) articles of the Compact sets the foundation for sharing resources from state to state that have been adopted by all 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, and has been ratified by Congress (PL-104-321).

The four more commonly referenced articles of the compact (Article V, IV, VIII, and IX) address the primary concerns of personnel and states offering and receiving assistance:

Article V - Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article VI - Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

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Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX - Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

EMAC Governance Structure

An outline of the EMAC Governance Structure is given below:

1. **National Emergency Management Association:** NEMA was established in 1974 when state directors of emergency management first united in order to exchange information on common emergency management issues that threatened their constituencies. NEMA has administered EMAC since 1995 and has 2.5 staff members dedicated to EMAC administration and training.
2. **EMAC Committee:** The EMAC Committee, the managing body of the compact, is a standing committee under the NEMA organizational structure that maintains oversight of EMAC and the EMAC Executive Task Force. The EMAC Committee consists of a chair, fourteen (14) state directors (or their designees) and a nonvoting private sector liaison. The emergency management director and Governor from every state and territory that has passed EMAC legislation and signed EMAC into (state) law are invited to participate.
3. **The EMAC Advisory Group:** The EMAC Advisory Group is comprised of invited representatives from the national based organizations who represent the first responder community and other mutual aid stakeholders (including DHS/FEMA, CDC, and the National Guard Bureau). The mission is to facilitate the effective integration of multi-discipline emergency response and recovery assets for nationwide mutual aid through EMAC.
4. **The EMAC Executive Task Force (ETF):** The ETF conducts the day-to-day work of the EMAC Committee. The ETF is comprised of a Chair, Chair-elect, Past Chair, and ten (10) voting Lead State Representative members (chosen by the state emergency management directors), three (3) members at large (chosen by the EMAC ETF Chair), and four (4) non-voting members (NEMA Legal Committee Liaison, NEMA EMAC Coordinator, NEMA EMAC Senior Advisor, and NEMA EMAC Training Coordinator). The Chair of the EMAC Executive Task Force serves as the Team Leader to the National Coordination Group.

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5. **National Coordination Group (NCG):** The NCG (state of the EMAC ETF Chair) works very closely with NEMA on the daily workings of EMAC and during an event works to direct EMAC policy and procedures.

How EMAC Works

Requesting and deploying resources is made at the discretion of the impacted (Requesting) state allowing them the ability to pick what they need and for what price. The responding (Assisting) state only has to offer assistance if they have the resources and can deploy it. At all times, impacted states retain the choice of seeking resource support from either state or federal, or both as may be appropriate for their circumstances. Local resources can be deployed under EMAC if the state has adopted intrastate legislation (see Model Intrastate Mutual Aid Legislation at NEMA's Web Site (www.nemaweb.org)). The EMAC process is outlined below.

Note: The state emergency management director is an appointed EMAC Authorized Representative and can designate both EMAC Authorized Representatives and EMAC Designated Contacts in their agency. EMAC Authorized Representatives have the authority to obligate the state financially (make requests for resources to come into their state under an emergency declaration). EMAC Designated Contacts cannot financially obligate the state but can be contacted to get more information about EMAC coordination.

1. EMAC Authorized Representative confirms declaration of emergency by Governor;
2. State assesses needs for resources;
3. State determines if they need an external EMAC A-Team to assist with acquisition of resources or if they will use their in-state EMAC A-Team and acquires external A-Team if needed;
4. State determines best source for needed resource (EMAC, Federal, private sector, etc.);
5. EMAC A-Teams request resources by one or all of the following methodologies:
 - a. Direct contact with state (knows the resource and can go directly to the state that has it, often a recurring mission).
 - b. EMAC resource request is made utilizing the EMAC Emergency Operations System (EOS) broadcast functionality. States may request broadcast by region (FEMA regions), two regions, or 3 regions, an individual state, or an individual EMAC Authorized Representative or EMAC Designated Contact within a state.
 - c. Agencies within the states may refer request and suggested resource to the state emergency management agency for their follow-up;
6. EMAC A-Teams determine cost and availability of resources;
7. The EMAC REQ-A Form is completed by the EMAC Authorized Representatives between both the Requesting State and the Assisting State;
8. Resources are mobilized from the Assisting State to the Requesting State;
9. Resources check in at state staging areas and are deployment locations and missions are confirmed.
10. Resources complete mission – relaying any issues back to their home state emergency management agency;

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11. Resources are demobilized;
12. Assisting States complete reimbursement request and after internal audit sends to the Requesting State; and,
13. Requesting State reimburses the Assisting State.

EMAC Operational Levels

The three levels of EMAC operation (Level 3, Level 2, and Level 1) are mirrored after most state and federal operation levels and have worked effectively and seamlessly within NIMS. The EMAC coordinating components are typed according to size, organizational composition, function, and mission requirements to meet operational demands. EMAC operational deployment levels are activated depending upon the scale of the event. If the event warrants, the levels of operational deployment can be ramped up from a Level 3 to a Level.

The highest level of EMAC operational level is 1, where all components and functions are in play (see image below). The decision to expand or elevate the level of operation rests with the EMAC Executive Task Force Chair acting as the NCG Team Leader. The EMAC Operation Levels are reviewed below.

1. Level 3 – The lowest level of EMAC activation involves the activation of the Assisting State, the NCG, and the NEMA EMAC Coordinator. The Assisting State is using their internal state A-Team to request resources.
2. Level 2 – A level 2 operation may involve a single-state or multiple states and deployment of an A-Team is requested by one or more affected states.
3. Level 1 - The highest level of EMAC activation is in effect whenever a single-state or multiple states within single or multiple regions have suffered a major disaster requiring resources. A-Teams have been requested by one or more affected states and DHS/FEMA Headquarters has requested that an EMAC National Coordinating Team (NCT) and/or an EMAC Regional Coordinating Team (RCT) be deployed to appropriate locations to coordinate resource needs with federal and state counterparts.

How EMAC is Coordinated with the Federal Response:

EMAC is first and foremost a state-to-state compact; however, DHS/FEMA and EMAC leadership have a long-standing agreement in which NEMA, through the NCG, facilitates requests to deploy a team to coordinate EMAC activities with federal personnel whenever requested by DHS/FEMA Headquarters. When requested, this results in EMAC moving from a Level 2 to a Level 1 operation.

Upon a request by DHS/FEMA with the concurrence of the NCG Leader and NEMA, an EMAC Coordinating Team may be deployed to the National Response Coordination Center (NRCC) at DHS/FEMA Headquarters in Washington, DC, or to a DHS/FEMA Regional Response Coordination

Center (RRCC). Member States should use Form REQ-B (Appendix V. h: EMAC Forms: 4. EMAC Form REQ- B: NCT and RCT Cost Estimate) to capture estimated mission costs tracked by NEMA. To stand up the NRCC or an RRCC, FEMA NRCC contacts the NEMA EMAC Coordinator who coordinates with the NRCC, NEMA Executive Director, and the National Coordination Group to complete a task order and determine if the deployment of state resources under EMAC is at a level that coordination is necessitated.

For more information about EMAC visit www.emacweb.org, contact NEMA (www.nemaweb.org), or your state emergency management agency.

XI. Department of Defense Support to Domestic Incidents

The primary mission of the Department of Defense (DOD) and its components is national defense. In some instances, national defense assets may be available to support civil authorities for routine and catastrophic incidents. Defense Support of Civil Authorities (DSCA) refers to support provided by U.S. military forces (Federal military, Reserve, and National Guard), DOD civilians, DOD contract personnel, DOD agency and DOD component assets.

DOD normally provides DSCA in response to requests for assistance (RFAs) from other Federal departments or agencies, or in some cases, local, tribal or State governments. Support provided in response to such RFAs may help civil authorities prepare for, prevent, protect against, respond to, and recover from domestic incidents including terrorist attacks, and major disasters. Such assistance may also be used to support domestic special events of national importance, such as the national political conventions. DOD assets are usually requested if local, tribal, State, and other Federal assets are not available. However, DOD resources are not typically required to mitigate every domestic incident. For example, of the 65 disasters with Presidential declarations as major disasters or emergencies in 2005, DOD responded to only three.

Defense resources are committed after approval by the Secretary of Defense or at the direction of the President. Many types of DOD support can be provided by individual DOD Components under separate established authorities. When deciding to commit DOD resources, consideration is given to military readiness, cost, lethality, risk, appropriateness, and whether the response is in accordance with applicable laws and regulations. Continuous coordination with Federal, State, tribal, and local authorities before, during, and after an event is essential for efficient and effective DSCA.

With the exception of immediate response authorities and support provided under mutual aid agreements, which are described below, DOD does not provide first responder support to civil authorities. When planning or conducting exercises, civilian responders must understand that DOD resources may not be immediately available due to the Department's primary mission, and, should be prepared to conduct the initial response with limited DOD assistance. DOD assets may require some time to mobilize, train, and deploy to respond to a RFA.

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DOD is a full partner in the Federal response to domestic incidents and the DOD response is fully coordinated through the mechanisms outlined in the *National Response Framework* (NRF). In providing DSCA, the Secretary of Defense will always retain command of DOD personnel, with the exception of National Guard forces under the command and control of the Governors. Nothing in the NRF impedes the Secretary of Defense's statutory authority pertaining to DOD personnel and resources.

Concepts of "command" and "unity of command" have distinct legal and cultural meanings for military forces and military operations. For deployed Federal military forces, command runs from the President through the Secretary of Defense to the combatant commander to the DOD on-scene commander. The civilian community's Incident Command System (ICS) definition of "unified command" is distinctly different from the military definition of this term. DOD resources will support the Incident Action Plan.

A. CATEGORIES OF CAPABILITIES

If requested, DOD could provide the following categories of capabilities:

1. Transportation – air, ground, and maritime;
2. Damage assessment – Rotary and fixed wing aircraft equipped with imagery and full motion video capabilities;
3. Evacuation planning and support, including transportation assets for patient movement;
4. Communications;
5. Debris removal along emergency evacuation routes;
6. Liaison and Coordination (Defense Coordinating Officer / Defense Coordinating Element and Emergency Preparedness Liaison Officers);
7. Support to temporary shelters;
8. Military installations for Mobilization Centers and Operational Staging Areas;
9. Fuel distribution points; and,
10. Temporary medical treatment facilities

B. REQUEST FOR ASSISTANCE

In most instances, DOD provides DSCA in response to RFAs from another Federal agency. DSCA normally is provided when local, tribal, State, and Federal resources are fully committed or when a capability unique to DOD is required. DOD typically provides DSCA on a reimbursable basis, as required by the appropriate statutory authorities.

C. CRITERIA

Upon receipt of an RFA, DOD uses the following criteria to evaluate the RFA for supportability:

1. Legality (compliance with laws);
2. Lethality (potential use of lethal force by or against DOD forces);
3. Risk (safety of DOD forces);
4. Cost (who is funding the request; impact on DOD budget);
5. Appropriateness (whether the requested mission is in the interest of DOD to conduct); and,
6. Readiness (effect on the DOD's ability to perform its primary national defense mission);

Once approved, DOD will provide the assets to fulfill the request. How quickly DOD support can be applied depends on several factors:

1. assessment of the requirement and the appropriate military asset to meet the requirement;
2. identification, availability, and mobilization of assets ;
3. training;
4. safety and security in the impacted area;
5. travel distance to the disaster site;
6. condition of transportation infrastructure, and,
7. capacity for reception, staging, onward movement and integration capability in the affected area.

D. REQUEST FOR ASSISTANCE SITUATIONS

Prior to a Presidential Declaration of a Major Disaster and/or Emergency: During the immediate aftermath of an incident that may ultimately qualify for assistance under the Stafford Act, the Governor of the State in which an incident occurred may request the President to direct the Secretary of Defense to utilize DOD resources to perform emergency work that is essential for the preservation of life and property. The President may direct this emergency work for a period not to exceed ten days.

After a Presidential Declaration of a Major Disaster and/or Emergency: Once the President issues a major disaster and/or emergency declaration, DOD is normally in direct support of a primary Federal agency.

E. PROCESS FOR REQUEST

Initial Request for Assistance	Initiated by Primary Federal Agency
DOD Approval Authority	Secretary of Defense or designated representative
Request Process	Requests for assistance are made from the Primary Federal Agency Executive Secretary to the DOD Executive Secretary.
Assets that may be provided	All assets are subject to the evaluation criteria for RFAs.

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Request for Assistance originating from the disaster site	Initiated by the Federal Coordinating Officer or senior civilian representative of the Primary Federal Agency at the disaster site.
DOD Approval Authority	Secretary of Defense or designated representative
Request Process	Requests are routed through the Defense Coordinating Officer: <ul style="list-style-type: none"> - Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs - Joint Director of Military Support
Assets that may be provided	All assets are subject to the evaluation criteria for RFAs.
Follow-on Request for Assistance from the Primary Federal Agency Headquarters	Initiated by Primary Federal Agency
DOD Approval Authority	Secretary of Defense or designated representative
Request Process	Requests are routed through the Defense Coordinating Officer: <ul style="list-style-type: none"> - Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs - Joint Director of Military Support
Assets that may be provided	All assets are subject to the evaluation criteria for RFAs.

Non-Federally Declared Disaster: Within DOD, local military commanders and responsible officials from DOD components and agencies, are authorized by the Secretary of Defense, to provide support to save lives, prevent human suffering, and mitigate great property damage. The following are examples of such support:

Mutual Aid Agreements for Fire Protection: In accordance with Title 42, § 1856a, each agency head charged with the duty of providing fire protection for any property of the United States may enter into agreements with local fire-fighting organizations to provide mutual aid in providing "fire protection."

Requesting Agency	Local Civilian Authorities
DOD Approval Authority	Local military commanders and responsible officials from DOD components and agencies
Request Process	RFA processes are pre-coordinated between the local installation and local emergency response officials and are detailed in the agreements

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Assets that may be provided	Personal services and equipment required for: fire prevention; the protection of life and property from fire; fire fighting; and, emergency services, including basic medical support, basic and advanced life support; hazardous material containment and confinement; and special rescue events involving vehicular and water mishap; and, trench, building, and confined space extractions.
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Immediate Response: Imminently serious conditions resulting from any civil emergency may require immediate action to save lives, prevent human suffering, or mitigate property damage. When such conditions exist and time does not permit approval from higher headquarters, local military commanders and responsible officials from DOD components and agencies are authorized to take necessary action to respond to requests from civil authorities. This response must be consistent with the Posse Comitatus Act (18 U.S.C. § 1385), which generally prohibits Federal military personnel and Federalized National Guard personnel from acting in a law enforcement capacity (e.g., search, seizures, arrests) within the United States, except where expressly authorized by the Constitution or Congress.

Requesting Agency	Local Civilian Authorities
DOD Approval Authority	Local military commanders and responsible officials from DOD components and agencies
Request Process	Requests for assistance are made directly to local military commanders and responsible officials from DOD components and agencies.
Assets that may be provided	All assets with the exception of those that have a potential for lethality under the control of local military commanders and responsible officials from DOD components and agencies. Assets with the potential for lethality must be approved by the Secretary of Defense.

A. ADDITIONAL DOD SUPPORT

Requests for direct law enforcement support, including interdicting vehicles, conducting searches and seizures, making arrests or apprehensions, surveillance, investigation, or undercover work may not be approved at the local level.

Support to Law Enforcement: Federal military support to law enforcement is provided in accordance with appropriate statutes, when directed by the President. The Attorney General and the Secretary of Defense are key advisors to the President during the decision process for certain types of assistance, e.g., assistance provided under Chapter 15 of Title 10, U.S. Code, “Enforcement of the Laws to Restore Public Order.” Provision of law enforcement support does not have to be initiated by a request for assistance.

B. KEY DSCA POSITIONS/STRUCTURES

Defense Coordinating Officer

DOD has assigned ten Defense Coordinating Officers (DCOs), one to each Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) Region. If requested and approved, the DCO serves as DOD's single point of contact at the Joint Field Office (JFO) for requesting assistance from DOD. With few exceptions, requests for DSCA originating at the JFO are coordinated with and processed through the DCO. The DCO may have a Defense Coordinating Element (DCE) consisting of a staff and military liaison officers to facilitate coordination and support to activated Emergency Support Functions (ESFs). Specific responsibilities of the DCO (subject to modification based on the situation) include processing requirements for military support, forwarding mission assignments to the appropriate military organizations through DOD-designated channels, and assigning military liaisons, as appropriate, to activated ESFs.

Joint Task Force

Based on the magnitude, type of incident and anticipated level of resource involvement, the combatant commander may utilize a Joint Task Force (JTF) to command Federal military forces (excluding U.S. Army Corps of Engineers resources) in support of the incident response. If a JTF is established, consistent with operational requirements, its command and control element will be co-located with the senior on-scene leadership at the JFO to ensure coordination and unity of effort. The co-location of the JTF command and control element does not replace the requirement for a Defense Coordinating Officer (DCO)/Defense Coordinating Element as part of the JFO Unified Coordination Staff. The DCO remains the DOD single point of contact in the JFO for requesting assistance from DOD.

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