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REORGANIZATION PLANS

REORGANIZATION PLAN NO. 3 OF 1978

RE: FEDERAL EMERGENCY MANAGEMENT AGENCY

On June 19, President Carter submitted to Congress Reorganization Plan No. 3 of 1978 which would establish the Federal Emergency Management Agency. The text of the President's message and the text of the plan follow. 124 Congressional Record H 5817 (H.Doc. No. 95-356).

To the Congress of the United States:

Today I am transmitting Reorganization Plan No. 3 of 1978. The plan improves Federal emergency management and assistance. By consolidating emergency preparedness, mitigation and response activities, it cuts duplicative administrative costs and strengthens our ability to deal effectively with emergencies.

The plan, together with changes I will make through Executive action, would merge five agencies from the Departments of Defense, Commerce, HUD, and GSA into one new agency.

For the first time, key emergency management and assistance functions would be unified and made directly accountable to the President and Congress. This will reduce pressures for increased costs to serve similar goals.

The present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity. This reorganization has been developed in close cooperation with State and local governments.

If approved by the Congress, the plan will establish the Federal Emergency Management Agency, whose Director shall report directly to the President. The National Fire Prevention and Control Administration (in the Department of Commerce), the Federal Insurance Administration (in the Department of Housing and Urban Development), and oversight responsibility for the Federal Emergency Broadcast System (now assigned in the Executive Office of the President) would be transferred to the Agency. The Agency's Director, its Deputy Director, and its five principal program managers would be appointed by the President with the advice and consent of the Senate.

If the plan takes effect, I will assign to the Federal Emergency Management Agency all authorities and functions vested by law in the President and presently delegated to the Defense Civil Preparedness Agency (in the Department of Defense). This will include certain engineering and communications support functions for civil defense now assigned to the U.S. Army.

I will also transfer to the new Agency all authorities and functions under the Disaster Relief Acts of 1970 and 1974 now delegated to the Federal Disaster Assistance Administration in the Department of Housing and Urban Development.

I will also transfer all Presidential authorities and functions now delegated to the Federal Preparedness Agency in the General Services Administration, including the establishment of policy for the national stockpile. The stockpile disposal function, which is statutorily assigned to the General Services Administration, would remain there. Once these steps have been taken by Executive Order, these three agencies would be abolished.

Several additional transfers of emergency preparedness and mitigation functions would complete the consolidation. These include:

Oversight of the Earthquake Hazards Reduction Program, under Public Law 95-124, now carried out by the Office of Science and Technology Policy in the Executive Office of the President.

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Coordination of Federal activities to promote dam safety, carried by the same Office.

Responsibility for assistance to communities in the development of readiness plans for severe weather-related emergencies, including floods, hurricanes, and tornadoes.

Coordination of natural and nuclear disaster warning systems.

Coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This would not alter the present responsibility of the executive branch for reacting to the incidents themselves.

This reorganization rests on several fundamental principles:

First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels.

The new Agency would be in this position. To increase White House oversight and involvement still further, I shall establish by Executive Order an Emergency Management Committee, to be chaired by the Federal Emergency Management Agency Director. Its membership shall be comprised of the Assistants to the President for National Security, Domestic Affairs and Policy and Intergovernmental Relations, and the Director, Office of Management and Budget. It will advise the President on ways to meet national civil emergencies. It will also oversee and provide guidance on the management of all Federal emergency authorities, advising the President on alternative approaches to improve performance and avoid excessive costs.

Second, an effective civil defense system requires the most efficient use of all available emergency resources. At the same time, civil defense systems, organization, and resources must be prepared to cope with any disasters which threaten our people. The Congress has clearly recognized this principle in recent changes in the civil defense legislation.

The communications, warning, evacuation, and public education processes involved in preparedness for a possible nuclear attack should be developed, tested, and used for major natural and accidental disasters as well. Consolidation of civil defense functions in the new Agency will assure that attack readiness programs are effectively integrated into the preparedness organizations and programs of State and local government, private industry, and volunteer organizations.

While serving an important "all hazards" readiness and response role, civil defense must continue to be fully compatible with and be ready to play an important role in our Nation's overall strategic policy. Accordingly, to maintain a link between our strategic nuclear planning and our nuclear attack preparedness planning, I will make the Secretary of Defense and the National Security Council responsible for oversight of civil defense related programs and policies of the new Agency. This will also include appropriate Department of Defense support in areas like program development, technical support, research, communications, intelligence and emergency operations.

Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies. 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.

Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions. This reorganization would permit more rational decisions on the relative costs and benefits of alternative approaches to disasters by making the Federal Emergency Management Agency the focal point of all Federal hazard mitigation

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activities and by combining these with the key Federal preparedness and response functions.

The affected hazard mitigation activities include the Federal Insurance Administration which seeks to reduce flood losses by assisting states and local governments in developing appropriate land uses and building standards and several agencies that presently seek to reduce fire and earthquake losses through research and education.

Most State and local governments have consolidated emergency planning, preparedness and response functions on an "all hazard" basis to take advantage of the similarities in preparing for and responding to the full range of potential emergencies. The Federal Government can and should follow this lead.

Each of the changes set forth in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. The plan does not call for abolishing any functions now authorized by law. The provisions in the plan for the appointment and pay of any head or officer of the new agency have been found by me to be necessary.

I do not expect these actions to result in any significant changes in program expenditures for those authorities to be transferred. However, cost savings of between \$10 to \$15 million annually can be achieved by consolidating headquarters and regional facilities and staffs. The elimination (through attrition) of about 300 jobs is also anticipated.

The emergency planning and response authorities involved in this plan are vitally important to the security and well-being of our Nation. I urge the Congress to approve it.

JIMMY CARTER

THE WHITE HOUSE,
June 19, 1978.

REORGANIZATION PLAN NO. 3 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 19, 1978, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

PART I. FEDERAL EMERGENCY MANAGEMENT AGENCY

Section 101. Establishment of the Federal Emergency Management Agency.

There is hereby established as an independent establishment in the Executive Branch, the Federal Emergency Management Agency (the "Agency").

Section 102. The Director.

The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule.

Section 103. The Deputy Director.

There shall be within the Agency a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

Section 104. Associate Directors.

There shall be within the Agency not more than four Associate Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, two of whom shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive

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Schedule, one of whom shall be compensated at the rate now or hereafter prescribed by law for level V of the Executive Schedule and one of whom shall be compensated at the rate now or hereafter prescribed by law for GS-18 of the General Schedule. The Associate Directors shall perform such functions as the Director may from time to time prescribe.

Section 105. Regional Directors.

There shall be within the Agency 10 regional directors who shall be appointed by the Director in the excepted service and shall be compensated at the rate now or hereafter prescribed by law for GS-16 of the General Schedule.

Section 106. Performance of functions.

The Director may establish bureaus, offices, divisions, and other units within the Agency. The Director may from time to time make provision for the performance of any function of the Director by any officer, employee, or unit of the Agency.

PART II. TRANSFER OF FUNCTIONS

Section 201. Fire prevention.

There are hereby transferred to the Director all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 through 2219); exclusive of the functions set forth at sections 18 and 23 of the Federal Fire Prevention and Control Act (15 U.S.C. 278(f) and 1511).

Section 202. Flood and other matters.

There are hereby transferred to the Director all functions vested in the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 2414 and 42 U.S.C. 4001 through 4128), and section 1 of the National Insurance Development Act of 1975, as amended (89 Stat. 68).

Section 203. Emergency Broadcast System.

There are hereby transferred to the Director all functions concerning the Emergency Broadcast System, which were transferred to the President and all such functions transferred to the Secretary of Commerce, by Reorganization Plan No. 1.

PART III. GENERAL PROVISIONS

Section 301. Transfer and abolishment of agencies and officers.

The National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control and the positions of Administrator of said Administration and Superintendent of said Academy are hereby transferred to the Agency. The position of Deputy Administrator of said Administration (established by 15 U.S.C. 2204(c)) is hereby abolished.

Section 302. Incidental transfers.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such

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Director deems necessary to effectuate the purposes of this reorganization plan.

Section 303. Interim officers.

The President may authorize any persons who, immediately prior to the effective date of this plan, held positions in the executive branch to which they were appointed by and with the advice and consent of the Senate, to act as Director, Deputy Director, and Associate Directors of the Agency, until those offices are for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be. The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 304. Effective date.

The provisions of this reorganization plan shall become effective at such time or times, on or before April 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5, United States Code.

riculture, the General Services Administration, and the National Aeronautics and Space Administration, in this Part referred to as guaranteeing agencies, each officer having functions delegated to him pursuant to section 201(a) of this order, and each other agency of the Government having mobilization functions, shall, within areas of production designated by the Director of the Federal Emergency Management Agency, develop and promote measures for the expansion of productive capacity and of production and supply of materials and facilities necessary for the national defense.

Sec. 304. The Director of the Federal Emergency Management Agency is hereby authorized and directed to encourage the exploration, development, and mining of critical and strategic minerals and metals, and to make provision for the development of substitutes for strategic and critical materials, as authorized by and subject to the provisions of section 303 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix].

Sec. 307. The functions conferred upon the President by section 303(f) of the Defense Production Act of 1950, as amended [section 2093(f) of this Appendix], with respect to transfers to the stockpile referred to in the said section, are hereby delegated to the Director of the Federal Emergency Management Agency.

Sec. 308. The authority conferred upon the President by section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this Appendix], to approve borrowing from the Treasury of the United States is hereby delegated to the Director of the Federal Emergency Management Agency.

Sec. 310. (a) The Secretary of the Treasury, hereafter in this section referred to as the Secretary, is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, exclusive of such expansion, development and production in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2092 of this Appendix]. The functions assigned to the Secretary by this section include the administration and servicing of all loans (including participations in, or guarantees of, loans) made by the Reconstruction Finance Corporation prior to September 29, 1953, pursuant to the said section 302 [section 2092 of this Appendix].

(b) Loans under section 310(a) hereof (1) shall be made upon such terms and conditions as the Secretary shall determine, (2) shall be made only after the Secretary has determined in each instance that financial assistance is not available on reasonable terms from private sources or from other governmental sources, and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Federal Emergency Management Agency.

Sec. 311. (a) The Export-Import Bank of Washington is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises, for the expansion of capacity, the development of

technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2092 of this Appendix].

(b) Loans under section 311(a) hereof (1) shall be made upon such terms and conditions as the said Bank shall determine, (2) shall be made only after the Bank has determined in each instance that financial assistance is not available on reasonable terms from private sources and that the loan involved cannot be made under the provisions of and from funds available to the Bank under the Export-Import Bank Act of 1945, as amended [section 635 et seq. of Title 12], and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Federal Emergency Management Agency.

Sec. 312. The functions conferred by sections 303, 305 and 306 of this order shall be carried out in accordance with programs certified by the Director of the Federal Emergency Management Agency. Each officer and agency of the Government having mobilization functions shall make recommendations to the Director of the Federal Emergency Management Agency for the issuance of certificates or other action under sections 302 and 303 of the Defense Production Act of 1950, as amended [sections 2092 and 2093 of this Appendix], and for the issuance of certificates under subsections (e) and (g) of section 163 of the Internal Revenue Code of 1954 [Title 26], with respect to the materials and facilities which are pursuant to the designation of areas of production by the Director of the Federal Emergency Management Agency under section 301 of this order, as amended, within the jurisdiction of such officer or agency.

Sec. 313. The Director of the Federal Emergency Management Agency is hereby authorized and directed to submit to the Congress the reports required by the second proviso of section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this title].

Part IV. Labor Supply

Sec. 401. The Secretary of Labor shall utilize the functions vested in him so as to meet most effectively the labor needs of defense industry and essential civilian employment, and to this end he shall:

(a) Assemble and analyze information, and make a continuing appraisal of, the nation's labor requirements for defense and other activities and the supply of workers. All agencies of the Government shall cooperate with the Secretary in furnishing information necessary for this purpose.

(b) Consult with and advise each delegate of the Director of the Federal Emergency Management Agency referred to in section 201(a) of this order and each official of the Government exercising guarantee or loan functions under Part III of this order concerning (1) the effect of contemplated actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor.

(c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements.

(d) Utilize the public employment service system, and enlist the cooperation and assistance of management and labor to carry out these plans and programs and accomplish their objectives.

(e) Determine the occupations critical to meeting the labor requirements of defense and essential civilian activities and with the Secretary of Defense, the Director of Selective Service, and such other persons as the Director of the Federal Emergency Management Agency may designate and develop policies applicable to the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves.

Part VI. General Provisions

Sec. 605. The Economic Stabilization Agency, established by Executive Order No. 10161 of September 9, 1950 [set out as a note under section 2071 of this Appendix], is con-

pendix], is con- under the direc- Federal Emerg who shall serv- nomic Stabiliza purpose of wi- the affairs of s-

Sec. 610. Wh- Federal Emerg- believes that t- tive agency hav- to law in such- amendment of a- relates to the- preparedness fu- tion of mobiliz- promptly subm- amendment of- the Director of- and Budget in- visions of Exec- amended [set o- 1505 of Title- Documents].

EXECUTIVE ORDER NO. 11119

Sept. 22, 1964, 29 F.R. 13239, as amended by Ex. O. July 20, 1979, 44 F.R. 43239.

NATIONAL DEFENSE EXECUTIVE RESERVE

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 703(a) and 710(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2153 (a); 2160(e)) [subsec. (a) of this section and section 2160(e) of this Appendix], and as President of the United States, it is hereby ordered as follows:

Section 1. There shall be in the Executive Branch of the Government a National Defense Executive Reserve composed of persons selected from various segments of the civilian economy and from government for training for employment in executive positions in the Federal Government in the event of the occurrence of an emergency that requires such employment.

Sec. 2. The Director of the Federal Emergency Management Agency (hereinafter referred to as the Director) shall administer the Executive Reserve program; coordinate the activities of other agencies in establishing units of the Reserve; provide for appropriate standards of recruitment and training; approve prospective members of the Executive Reserve; and issue necessary rules and regulations in connection with the program.

Sec. 3. The Director, in carrying out his responsibilities under this order, may utilize the services of other departments and agencies in the maintenance of agency and centralized rosters and in the development of training programs and materials.

Sec. 4. (a) The head of any department or agency of the Government (hereinafter referred to as a Secretary), designated by the Director after appropriate consultation, may establish a unit of the Executive Reserve (hereinafter referred to as Executive Reserve Units) in his respective department or agency.

(b) Executive Reserve Units existing under Executive Order No. 10660 of February 15, 1956, as amended, on the date of this order shall henceforth be deemed to be Executive Reserve Units under this order.

Sec. 5. Membership in Executive Reserve Units shall be subject to the following:

(1) Subject to order, particularly section, an individ- this order was a- tive Reserve Unit No. 10660 may ce- without further d-

(2) A Secretary individual to ser- Executive Reserve or agency shall s- prospective design- approval. Upon a- tive designee by t- tary concerned m- individual as a memb- serve Unit of his-

(3) An individua- an Executive Res- time expired, or i- expire, under the- may be redesignat- the procedure set- of this section.

(4) Without limi- the respective Secr- membership of any- cutive Reserve U- directed that contin- ber under paragra- and the designatio- a member under p- this section, respec- designation of an i- the expiration of- under paragraph (1- riod not to exceed-

Sec. 6. Activities- son of his contin- redesignation as a- under this order sh- or advising on any- any department or- limited to receiving- tion assignments un- gram.

Sec. 7. The Direc- President annually, times as may be- status and operatio- serve program.

Sec. 8. Executive- February 15, 1956, er- the Establishment of- Executive Reserve," by superseded.

(d) Utilize the public employment service system, and enlist the cooperation and assistance of management and labor to carry out these plans and programs and accomplish their objectives.

(e) Determine the occupations critical to meeting the labor requirements of defense and essential civilian activities and with the Secretary of Defense, the Director of Selective Service, and such other persons as the Director of the Federal Emergency Management Agency may designate and develop policies applicable to the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves.

Part VI. General Provisions

Sec. 605. The Economic Stabilization Agency, established by Executive Order No. 10161 of September 9, 1950 [set out as a note under section 2071 of this Ap-

pendix], is continued to October 31, 1953, under the direction of the Director of the Federal Emergency Management Agency who shall serve ex officio as the Economic Stabilization Administrator for the purpose of winding up and liquidating the affairs of said agency.

Sec. 610. Whenever the Director of the Federal Emergency Management Agency believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under section 1505 of Title 44, Public Printing and Documents].

EXECUTIVE ORDER NO. 11179

Sept. 22, 1964, 29 F.R. 13239, as amended by Ex.Ord.No.12148,
July 20, 1979, 44 F.R. 43239.

NATIONAL DEFENSE EXECUTIVE RESERVE

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 703(a) and 710(e) of the Defense Production Act of 1950, as amended (50 U.S.C.App. 2153 (a); 2160(e)) [subsec. (a) of this section and section 2160(e) of this Appendix], and as President of the United States, it is hereby ordered as follows:

Section 1. There shall be in the Executive Branch of the Government a National Defense Executive Reserve composed of persons selected from various segments of the civilian economy and from government for training for employment in executive positions in the Federal Government in the event of the occurrence of an emergency that requires such employment.

Sec. 2. The Director of the Federal Emergency Management Agency (hereinafter referred to as the Director) shall administer the Executive Reserve program; coordinate the activities of other agencies in establishing units of the Reserve; provide for appropriate standards of recruitment and training; approve prospective members of the Executive Reserve; and issue necessary rules and regulations in connection with the program.

Sec. 3. The Director, in carrying out his responsibilities under this order, may utilize the services of other departments and agencies in the maintenance of agency and centralized rosters and in the development of training programs and materials.

Sec. 4. (a) The head of any department or agency of the Government (hereinafter referred to as a Secretary), designated by the Director after appropriate consultation, may establish a unit of the Executive Reserve (hereinafter referred to as Executive Reserve Units) in his respective department or agency.

(b) Executive Reserve Units existing under Executive Order No. 10660 of February 15, 1956, as amended, on the date of this order shall henceforth be deemed to be Executive Reserve Units under this order.

Sec. 5. Membership in Executive Reserve Units shall be subject to the following:

(1) Subject to the provisions of this order, particularly paragraph (4) of this section, an individual who on the date of this order was a member of an Executive Reserve Unit under Executive Order No. 10660 may continue to serve therein without further designation.

(2) A Secretary desiring to designate an individual to serve as a member of an Executive Reserve Unit of his department or agency shall submit the name of the prospective designee to the Director for approval. Upon approval of the prospective designee by the Director, the Secretary concerned may designate the individual as a member of the Executive Reserve Unit of his department or agency.

(3) An individual whose membership in an Executive Reserve Unit has at any time expired, or is at any time about to expire, under the terms of this order may be redesignated as a member under the procedure set forth in paragraph (2) of this section.

(4) Without limiting the authority of the respective Secretaries to terminate the membership of any individual in an Executive Reserve Unit at any time, it is directed that continued service of a member under paragraph (1) of this section, and the designation or redesignation of a member under paragraph (2) or (3) of this section, respectively (including any designation of an individual occurring at the expiration of his continued service under paragraph (1)), shall be for a period not to exceed three years.

Sec. 6. Activities of any person by reason of his continuance, designation, or redesignation as an Executive Reservist under this order shall not include acting or advising on any matter pending before any department or agency but shall be limited to receiving training for mobilization assignments under the Reserve program.

Sec. 7. The Director shall report to the President annually, and at such other times as may be appropriate, on the status and operation of the Executive Reserve program.

Sec. 8. Executive Order No. 10660 of February 15, 1956, entitled "Providing for the Establishment of a National Defense Executive Reserve," as amended, is hereby superseded.

LYNDON B. JOHNSON

Office of Emergency Preparedness, Functions of the Director of the Office of Emergency Preparedness under Ex.Ord. No.11179, Sept. 22, 1964, 29 F.R. 13239 [set out as a note under this section], transferred to the Administrator of General Services, see section 3 of Ex.Ord.No.11725, June 27, 1973, 38 F.R. 11175, set out as a note under section 2271 of this Appendix.

EXECUTIVE ORDER NO. 10660

Ex.Ord.No.10660, Feb. 16, 1956, 21 F.R. 1117, as amended by Ex.Ord.No.10773, July 1, 1953, 23 F.R. 5061; Ex.Ord.No.10782, Sept. 8, 1953, 23 F.R. 6971; Ex.Ord.No. 11051, Sept. 28, 1962, 27 F.R. 9693, formerly set out as a note under this section, which established a National Defense Executive Reserve, was superseded by Ex.Ord.No.11179, Sept. 22, 1964, 29 F.R. 13239, set out as a note under this section.

EXECUTIVE ORDER NO. 10480

Aug. 14, 1953, 18 F.R. 4939, as amended by Ex.Ord.No.10489, Sept. 28, 1953, 18 F.R. 6201; Ex.Ord.No.10537, June 22, 1954, 19 F.R. 3807; Ex.Ord.No.10574, Nov. 8, 1954, 19 F.R. 7249; Ex.Ord.No.10662, Mar. 14, 1956, 21 F.R. 1673; Ex.Ord.No.10773, July 1, 1953, 23 F.R. 5061; Ex.Ord.No.10782, Sept. 8, 1953, 23 F.R. 6971; Ex.Ord.No. 10819, May 11, 1959, 24 F.R. 3779; Ex.Ord.No.11051, Sept. 28, 1962, 27 F.R. 9693; Ex.Ord.No.11062, Nov. 20, 1962, 27 F.R. 11447; Ex.Ord.No.11956, Jan. 13, 1977, 42 F.R. 2947; Ex.Ord.No.12039, Feb. 3, 1978, 43 F.R. 4957.

ADMINISTRATION OF CIVIL AND DEFENSE MOBILIZATION PROGRAM

PART I. GENERAL DIRECTION OF PROGRAM

Section 101. (a) The Director of the Office of Emergency Planning shall, on behalf of the President, coordinate all mobilization activities of the executive branch of the Government, including all such activities relating to production, procurement, manpower, stabilization and transport. Every officer and agency of the Government having functions under the Defense Production Act of 1950, as amended [sections 2061-2166 of this Appendix], delegated, redelegated, or otherwise assigned thereto by or under the authority of the President after the date of this order, (whether heretofore or hereafter acquired, or acquired by this order) shall perform the said functions subject to the direction and control of the Director of the Office of Emergency Planning.

(b) In carrying out the functions conferred upon him by this order, the Director of the Office of Emergency Planning shall, among other things

(1) Perform the central programming functions incident to the determination of the production programs required to meet defense needs.

(2) Make determinations as to the provision of adequate facilities for defense production and as to the procedure and methods followed by agencies of the Government with respect to the accomplishments of defense production programs.

(3) Be the certifying authority for the purposes of and within the meaning of subsections (e) and (g) of Section 124A of the Internal Revenue Code, as added by section 216 of the Revenue Act of 1950, approved September 23, 1950 [section 124A of Title 26].

(4) Issue such directives, consonant with law, on policy and program to officers and agencies of the Government for execution by them as may be necessary to carry out the functions assigned to him by this order, and resolve inter-agency issues which otherwise would require the attention of the President.

(5) Report to the President from time to time concerning his operations under this order.

Sec. 102. [Revoked, Ex.Ord. No. 10773, July 1, 1953, 23 F.R. 5061].

PART II. PRIORITIES AND ALLOCATIONS

Sec. 201. (a) The functions conferred upon the President by Title I of the Defense Production Act of 1950, as amended [sections 2071-2074 of this Appendix], are hereby delegated to the

Director of the Office of Emergency Planning, who shall, in carrying out the said functions, provide by redelegation or otherwise for their performance, subject to the provisions of section 101 of this order, by

(1) The Secretary of the Interior with respect to petroleum, gas, solid fuels and electric power.

(2) The Secretary of Agriculture with respect to food and with respect to the domestic distribution of farm equipment and commercial fertilizer.

(3) The Commissioner of the Interstate Commerce Commission who is responsible for the supervision of the bureau which administers the car-service functions of the Commission as set forth in paragraphs 10 to 17, inclusive, of section 1 of the Interstate Commerce Act, as amended [section 1 of Title 49], with respect to domestic transportation, storage, and port facilities, or the use thereof, but excluding air transport, coastwise, inter-coastal, and overseas shipping.

(4) The Secretary of Commerce with respect to all other materials and facilities.

(b) Findings made under or pursuant to and for the purposes of section 101(b) of the Act [section 2071(b) of this Appendix] shall not be effective until approved by the Director of the Office of Emergency Planning.

PART III. EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. The Department of Defense, the Atomic Energy Commission, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the General Services Administration, and the National Aeronautics and Space Administration, in this Part referred to as guaranteeing agencies, each officer having functions delegated to him pursuant to section 201(a) of this order, and each other agency of the Government having mobilization functions, shall, within areas of production designated by the Director of the Office of Emergency Planning, develop and promote measures for the expansion of productive capacity and of production and supply of materials and facilities necessary for the national defense.

Sec. 302. (a) Each guaranteeing agency is hereby authorized, in accordance with section 301 of the Defense Production Act of 1950, as amended [section 2091 of this Appendix], subject to the provisions of this section, in order to expedite production and deliveries of services under Government contracts, and

without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount or advance or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small business concern (as defined in section 714(a) (1) of the said Act [section 2164(a) (1) of this Appendix]) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

(b) Each Federal Reserve Bank is hereby designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of section 301 of the said Act, as amended [section 2091 of this Appendix], in respect to private financing institutions.

(c) All actions and operations of Federal Reserve Banks, under authority of or pursuant to section 301 of the said Act, as amended [section 2091 of this Appendix], shall be subject to the supervision of the Board of Governors of the Federal Reserve System. Said Board is hereby authorized, after consultation with the heads of the guaranteeing agencies,

(1) to prescribe such regulations governing the actions and operations of fiscal agents hereunder as it may deem necessary, (2) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (3) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

Sec. 303. The Administrator of General Services is hereby authorized and directed to purchase and make commitments to purchase metals, minerals, and other materials, for Government use or resale, as authorized by and subject to the provisions of section 303 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix]: Provided, That the Secretary of Agriculture may also exercise the said functions under section 303 of the said Act, as amended [section 2093 of this Appendix], with respect to food, and with respect to plant fibers (except abaca) not included in the definition of food to the extent that the procurement of such fibers involves the encouragement and development of sources of supply within the United States and its Territories and possessions.

Sec. 304. The Director of the Office of Emergency Planning is hereby authorized and directed to encourage the

exploration, critical and development of and critical and subject to 303 of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 305. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 306. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 307. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 308. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 309. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 310. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 311. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 312. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 313. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 314. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Sec. 315. The Administrator of General Services is hereby authorized and directed to determine the conditions and conditions findings, as to the provisions of the Defense Production Act, as amended [section 2093 of this Appendix].

Administrator of General Services, section 3 of Ex.Ord.No.11725, 28 F.R. 17175, set out as a section 2271 of this Appendix.

Ord. by Ex.Ord.No.10773, July 1, 1951, F.R. 6971; Ex.Ord.No. 11051, July 1, 1951, F.R. 7111, amended by Ex.Ord.No.11179, July 1, 1951, F.R. 7111, as section.

10489, Sept. 28, 1953, 18 F.R. 10489; Ex.Ord.No.10574, Nov. 8, 1954, F.R. 1673; Ex.Ord.No.10773, July 1, 1951, F.R. 6971; Ex.Ord.No. 11051, Sept. 28, 1953, 18 F.R. 10489; Ex.Ord.No.11956, Jan. 13, 1977, 42 F.R. 10489.

MOBILIZATION PROGRAM

The Office of Emergency Planning shall, in carrying out the said program, provide by redelegation or otherwise for their performance, subject to the provisions of section 101 of this Appendix.

Secretary of the Interior with respect to petroleum, gas, solid fuels and coal.

Secretary of Agriculture with respect to food and with respect to the distribution of farm equipment and commercial fertilizer.

Commissioner of the Interstate Commerce Commission who is responsible for the supervision of the railroads which administers the car-service of the Commission as set forth in paragraphs 10 to 17, inclusive, of section 1 of Title 49, with respect to domestic transportation, storage, facilities, or the use thereof, but not air transport, coastwise, and inter-oceanic shipping.

Secretary of Commerce with respect to all other materials and facilities.

Findings made under or pursuant to the purposes of section 101(b) of this Appendix shall not be effective until approved by the Director of the Office of Emergency Planning.

EXPANSION OF PRODUCTION CAPACITY AND SUPPLY

1. The Department of Defense, Atomic Energy Commission, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the General Services Administration, and the National Aeronautics and Space Administration, in this Part referred to as guaranteeing agencies, each having functions delegated to him under section 201(a) of this Appendix, or other agency of the Government having mobilization functions, shall, with respect to production designated by the Office of Emergency Planning, develop and promote measures for the expansion of productive capacity and production and supply of materials and facilities necessary for the national

2. (a) Each guaranteeing agency shall be authorized, in accordance with section 201 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix], subject to the provisions of this section, in order to expand production and deliveries of materials under Government contracts, and

without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small business concern (as defined in section 714(a) (1) of the said Act [section 2184(a) (1) of this Appendix]) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

(b) Each Federal Reserve Bank is hereby designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of section 301 of the said Act, as amended [section 2091 of this Appendix], in respect to private financing institutions.

(c) All actions and operations of Federal Reserve Banks, under authority of or pursuant to section 301 of the said Act, as amended [section 2091 of this Appendix], shall be subject to the supervision of the Board of Governors of the Federal Reserve System. Said Board is hereby authorized, after consultation with the heads of the guaranteeing agencies, (1) to prescribe such regulations governing the actions and operations of fiscal agents hereunder as it may deem necessary, (2) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (3) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guaranteees.

Sec. 303. The Administrator of General Services is hereby authorized and directed to purchase and make commitments to purchase metals, minerals, and other materials, for Government use or resale, as authorized by and subject to the provisions of section 303 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix]: Provided, That the Secretary of Agriculture may also exercise the said functions under section 303 of the said Act, as amended [section 2093 of this Appendix], with respect to food, and with respect to plant fibers (except abaca) not included in the definition of food to the extent that the procurement of such fibers involves the encouragement and development of sources of supply within the United States and its Territories and possessions.

Sec. 304. The Director of the Office of Emergency Planning is hereby authorized and directed to encourage the

exploration, development, and mining of critical and strategic minerals and metals, and to make provision for the development of substitutes for strategic and critical materials, as authorized by and subject to the provisions of section 303 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix].

Sec. 305. The Administrator of General Services is hereby authorized and directed to make subsidy payments, to determine the amounts, manner, terms, and conditions thereof, and to make findings, as authorized by and subject to the provisions of section 303(c) of the Defense Production Act of 1950, as amended [section 2093(c) of this Appendix].

Sec. 306. The functions conferred upon the President by section 303(e) of the Defense Production Act of 1950, as amended [section 2093(e) of this Appendix], with respect to the installation of additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the United States Government, and with respect to the installation of Government-owned equipment in plants, factories, and other industrial facilities owned by private persons, are hereby delegated to the Administrator of General Services.

Sec. 307. The functions conferred upon the President by section 303(f) of the Defense Production Act of 1950, as amended [section 2093(f) of this Appendix], with respect to transfers to the stockpile referred to in the said section, are hereby delegated to the Director of the Office of Emergency Planning.

Sec. 308. The authority conferred upon the President by section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this Appendix], to approve borrowing from the Treasury of the United States is hereby delegated to the Director of the Office of Emergency Planning.

Sec. 309. All functions provided for in sections 303 to 307, inclusive, and in sections 310 and 311 of this order, shall be carried out within such amounts of funds as may be made available pursuant to the Defense Production Act of 1950, as amended [sections 2061-2100 of this Appendix].

Sec. 310. (a) The Secretary of the Treasury, hereafter in this section referred to as the Secretary, is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, exclusive of such expansion, development and production in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2092 of this Appendix]. The functions assigned to the Secretary by this section include the administration and servicing of all loans (including participations in, or guarantees of, loans) made by the Reconstruction Finance Corporation prior to September 23, 1953, pursuant to the said section 302 [section 2092 of this Appendix].

(b) Loans under section 310(a) hereof (1) shall be made upon such terms and conditions as the Secretary shall determine, (2) shall be made only after the Secretary has determined in each instance that financial assistance is not available on reasonable terms from pri-

vate sources or from other governmental sources, and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Office of Emergency Planning.

(c) Applications for loans under section 310(a) hereof shall be received from applicants by the Secretary or by such agencies of the Government as the Secretary shall designate for this purpose.

Sec. 311. (a) The Export-Import Bank of Washington is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises, for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2062 of this Appendix].

(b) Loans under section 311(a) hereof (1) shall be made upon such terms and conditions as the said Bank shall determine, (2) shall be made only after the Bank has determined in each instance that financial assistance is not available on reasonable terms from private sources and that the loan involved cannot be made under the provisions of and from funds available to the Bank under the Export-Import Bank Act of 1945, as amended [section 635 et seq. of Title 12], and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Office of Emergency Planning.

(c) Applications for loans under section 311(a) hereof shall be received from applicants by the said Bank or by such agencies of the Government as the Bank shall designate for this purpose.

Sec. 312. The functions conferred by sections 303, 305 and 308 of this order shall be carried out in accordance with programs certified by the Director of the Office of Emergency Planning. Each officer and agency of the Government having mobilization functions shall make recommendations to the Director of the Office of Emergency Planning for the issuance of certificates or other action under sections 302 and 303 of the Defense Production Act of 1950, as amended [sections 2092 and 2093 of this Appendix], and for the issuance of certificates under subsections (e) and (g) of section 168 of the Internal Revenue Code of 1954 [Title 26], with respect to the materials and facilities which are, pursuant to the designation of areas of production by the Director of the Office of Emergency Planning under section 301 of this order, as amended, within the jurisdiction of such officer or agency.

Sec. 313. The Director of the Office of Emergency Planning is hereby authorized and directed to submit to the Congress the reports required by the second proviso of section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this title].

PART IV. LABOR SUPPLY

Sec. 401. The Secretary of Labor shall utilize the functions vested in him so as to meet most effectively the labor needs of defense industry and essential civilian employment, and to this end he shall:

(a) Assemble and analyze information on, and make a continuing appraisal of, the nation's labor requirements for de-

fense and other activities and the supply of workers. All agencies of the Government shall cooperate with the Secretary in furnishing information necessary for this purpose.

(b) Consult with and advise each delegate of the Director of the Office of Emergency Planning referred to in section 201(a) of this order and each officer of the Government exercising guarantee or loan functions under Part III of this order concerning (1) the effect of contemplated actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor.

(c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements.

(d) Utilize the public employment service system, and enlist the cooperation and assistance of management and labor to carry out these plans and programs and accomplish their objectives.

(e) Determine the occupations critical to meeting the labor requirements of defense and essential civilian activities and with the Secretary of Defense, the Director of Selective Service, and such other persons as the Director of the Office of Emergency Planning may designate and develop policies applicable to the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves.

PART V. VOLUNTARY AGREEMENTS

Sec. 501(a). The functions conferred upon the President by section 708(c)(1) and (d) of the Defense Production Act, as amended [section 2153(c)(1) and (d) of this Appendix], are hereby delegated to the Administrator of General Services and, subject to the provisions of section 101 of this order, to the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Transportation, except that for the purposes of carrying out the objectives of Title I of the Act [section 2061 et seq. of this Appendix], the authority granted in section 708(c)(1) of the Act [section 2153(c)(1) of this Appendix] shall be exercised only by the Administrator of General Services.

(b) The functions conferred upon the President by section 708(d) of the Defense Production Act [section 2153(d) of this Appendix] and delegated under section 501(a) of this order, relating to the establishment of advisory committees, shall be exercised only after consultation with, and in accordance with guidelines and procedures established by, the Director of the Office of Management and Budget.

PART VI. GENERAL PROVISIONS

Sec. 601. As used in this order:

(a) The term "functions" includes powers, duties, authority, responsibilities, and discretion.

(b) The term "materials" includes raw materials, articles, commodities, products, supplies, components, technical information, and processes, but excludes fissionable materials as defined in the Atomic Energy Act of 1946 [sections 1801-1819 of Title 42].

(c) The term "petroleum" shall mean crude oil and synthetic liquid fuel, their products, and associated hydrocarbons, including pipelines for the movement thereof.

(d) The term "gas" shall mean natural gas and manufactured gas, including pipelines for the movement thereof.

(e) The term "solid fuels" shall mean all forms of anthracite, bituminous, sub-bituminous, and lignitic coals; cokes; and coal chemicals.

(f) The term "electric power" shall mean all forms of electric power and energy, including the generation, transmission, distribution, and utilization thereof.

(g) The term "metals and minerals" shall mean all raw materials of mineral origin, including their refining and processing, but excluding their fabrication.

(h) The term "food" shall mean all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being eaten or drunk by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. For the purposes of this order the term "food" shall also include all starches, sugars, vegetable and animal fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but shall not include any such material after it loses its identity as an agricultural commodity or agricultural product.

(i) The term "farm equipment" shall mean equipment manufactured for use on farms in connection with the production or processing of food.

(j) The term "fertilizer" shall mean fertilizer in form for distribution to the users thereof.

(k) The term "domestic transportation, storage, and port facilities" shall include locomotives, cars, motor vehicles, watercraft used on inland waterways, in harbors, and on the Great Lakes, and other vehicles, vessels, and all instrumentalities of shipment or carriage, irrespective of ownership, and all services in or in connection with the carriage of persons or property in intrastate, interstate, or foreign commerce within the United States, its Territories and possessions, and the District of Columbia, except movement of petroleum and gas by pipeline; and warehouses, piers, docks, wharves, loading and unloading equipment, and all other structures and facilities used in connection with the transshipment of persons and property between domestic carriers and carriers engaged in coastwise, intercoastal, and overseas transportation.

Sec. 602. (a) Except as otherwise provided in section 602(c) of this order, each officer or agency of the Government having functions under the Defense Production Act of 1950, as amended [sections 2061-2166 of this Appendix], delegated or assigned thereto by or pursuant to this Executive order may exercise and perform, with respect to such functions, the functions vested in the President by Title VII of the said Act [sections 2061-2166 of this Appendix].

(b) The functions which may be exercised and performed pursuant to the authority of section 602(a) of this order shall include, but not by way of limitation, (1) except as otherwise provided in section 708(c) of the Defense Production Act of 1950, as amended [section 2153 of this Appendix], the power to redelegate functions, and to authorize the successive redelegation of functions, to agencies, officers, and employees of the Government, (2) the power to create an agency or agencies, under the jurisdiction of the officer concerned, to administer functions delegated or assigned

by or pursuant to the authority of section 602(a) of this order, (3) the power to issue subpoenas after the investigation, which the defined either referred to or by such he shall de

(c) There are hereby delegated to the President under section 602 of this Act the functions of the said section.]

(d) [Deleted.]

Sec. 603. (a) The Department of the Interior is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises, for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2062 of this Appendix].

Sec. 605. (a) The Administrator of General Services is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises, for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2062 of this Appendix].

Sec. 606. (a) The Administrator of General Services is hereby authorized and directed to make loans (including participations in, or guarantees of, loans) to private business enterprises, for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries, as authorized by and subject to section 302 of the Defense Production Act of 1950, as amended [section 2062 of this Appendix].

Sec. 607. (1) Executive Order 9, 1950 (2) Executive Order 11, 1950 (3) Executive Order 18, 1950 (4) Executive Order 3, 1951 (5) Executive Order 10, 1951 (18 1

- (6) Executive Order No. 10281 of August 28, 1951 (18 F.R. 8789).
- (7) Executive Order No. 10324 of February 6, 1952 (17 F.R. 1171).
- (8) Executive Order No. 10359 of June 9, 1952 (17 F.R. 5269).
- (9) Executive Order No. 10373 of July 14, 1952 (17 F.R. 6425).
- (10) Executive Order No. 10377 of July 25, 1952 (17 F.R. 6891).
- (11) Executive Order No. 10390 of August 30, 1952 (17 F.R. 7995).
- (12) Executive Order No. 10433 of February 4, 1953 (18 F.R. 781).
- (13) Executive Order No. 10467 of June 30, 1953 (18 F.R. 3777).

Sec. 608. To the extent that any provision of any prior Executive Order (including Executive Order No. 10461 of June 17, 1953 (18 F.R. 3513) [set out as a note under this section]) is inconsistent with the provisions of this order, the latter shall control and such prior provision is amended accordingly. The following designated orders, modified as required to conform them to the provisions of this order, shall remain in effect.

Executive Order No. 10182 of November 21, 1950 (15 F.R. 8013), as amended by Executive Order No. 10205 of January 18, 1951 (16 F.R. 419) [set out as a note under section 2160 of this Appendix].

Executive Order No. 10219 of February 23, 1951 (16 F.R. 1953) [set out as a note under section 2093 of this Appendix].

Executive Order No. 10224 of March 15, 1951 (16 F.R. 2543) [set out as a note under this section].

Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under section 1505 of Title 44, Public Printing and Documents].

DWIGHT D. EISENHOWER

§ 2154. Rules, regulations, and orders

Termination Date. Termination of this section, on Sept. 30, 1979, see section 2166(a) of this Appendix.

Index to Notes

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- Injunction 2
- Publication 3

L. Administrative Interpretation

The interpretation of ceiling price regulation by director of price stabilization is not controlling, but it is entitled to great weight so long as it does not distort the plain intentment of section 2061 et seq. of this Appendix. U. S. v. Ericson, D.C.Minn.1951, 102 F.Supp. 376, appeal dismissed 205 F.2d 420.

Suspension of Executive Order No. 10480. Provisions of Ex.Ord.No.10480, as amended, set out as a note under this section, which are inconsistent with the delegation of the President's Authority under the Defense Production Act of 1950, as amended [section 2061 et seq. of this Appendix], to the Administrator of the Federal Energy Office, relating to energy matters, are suspended, see section 3 of Ex.Ord.No.11748, Dec. 4, 1973, 38 F.R. 33575, set out as a note under section 153 of Title 15, Commerce and Trade.

Office of Emergency Preparedness. Functions of the Director of the Office of Emergency Preparedness under Ex.Ord. No.10480, Aug. 18, 1953, 18 F.R. 4939, as amended [set out as a note under this section], transferred to the Administrator of General Services, see section 3 of Ex.Ord.No.11725, June 27, 1973, 38 F.R. 17173, set out as a note under section 2271 of this Appendix.

Executive Order No. 10461. Ex.Ord.No.10461, June 18, 1953, 18 F.R. 3513, formerly set out as a note under this section, which related to transfer of functions effected by Reorganization Plan No. 3 of 1953, was superseded by Ex.Ord.No.11051, Sept. 28, 1962, 27 F.R. 9083, set out as a note under section 2271 of this Appendix.

Executive Order No. 10433. Ex.Ord. No.10433, Feb. 4, 1953, 18 F.R. 781, formerly set out as a note under this section, was revoked by Ex.Ord.No.10480, Aug. 18, 1953, 18 F.R. 4939, set out as a note under this section.

Executive Order No. 10281. Ex.Ord. No.10281, Aug. 28, 1951, 16 F.R. 8789, set out as a note under this section, was revoked by Ex.Ord.No.10480, Aug. 18, 1953, 18 F.R. 4939, also set out as a note under this section.

Executive Order No. 10224. Ex.Ord. No.10224, Mar. 19, 1951, 16 F.R. 2543, set out as a note under this section, was revoked by section 4(1) of Ex.Ord. No. 10773, set out as a note under section 2271 of this Appendix.

Executive Order No. 10200. Ex.Ord. No.10200, Jan. 3, 1951, 16 F.R. 61, as amended by Ex.Ord.No.10281, Aug. 28, 1951, 16 F.R. 8789; Ex.Ord.No.10433, Feb. 6, 1953, 18 F.R. 781, set out as a note under this section, was revoked by Ex.Ord.No.10480, Aug. 18, 1953, 18 F.R. 4939, also set out as a note under this section.

Executive Order No. 10193. Ex.Ord. 10193, Dec. 16, 1950, 15 F.R. 9031, set out as a note under this section was revoked by Ex.Ord.No.10480, Aug. 18, 1953, 18 F.R. 4939, set out as a note under this section.

2. Injunction

Purpose of injunctive suits authorized by section 2061 et seq. of this Appendix is not to punish offenses committed in past but to insure compliance in future, but court has broad power to restrain acts which are of same type as unlawful acts committed or whose commission in the future, unless enjoined, may fairly be anticipated from defendant's conduct in past, and thus, where price regulation is modified, amended, or superseded by regulation of similar import, test is whether violations proposed to be enjoined are so inseparably associated with past unlawful acts or so similar to them in character that inevitably this follows an inference that one who commits one series of acts will be likely to commit another of like character. U. S. v. St. Regis Paper Co., D.C.N.Y.1962, 196 F.Supp. 286.

3. Publication

Where, under terms of excusable delay clause in contract for sale of commercial jet airplanes to airline, delay was excusable if caused by "act of government," such phrase encompassed informal demands by government that manufacturer accorded priority to military contracts,

and it was not meant obtain proceeds by means of formal orders under this Appendix. E. McDonnell Douglas 532 F.2d 957.

§ 2155. Investigations; records; reports; subpoena

[See main volume for text of (a)]

(b) Repealed. Pub.L. 91-452, Title II, § 251, Oct. 13, 1970, 84 Stat. 931.

[See main volume for text of (c) and (d)]

(e) Information obtained under this section which is deemed confidential or with reference to which a special treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the disclosure thereof is contrary to the interest of the national defense. Any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

All information obtained by the Office of Price Stabilization, section 705, as amended, and not made public prior to January 2, 1951, shall be deemed confidential and shall not be published to the public or to another Federal agency except as authorized by a committee thereof, and except the information so authorized for such use as it may deem necessary in the performance of its duties, unless the President determines that the disclosure thereof is contrary to the interests of the national defense. Any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(f) Any person subpoenaed under this section shall make a record of his testimony and to be represented by counsel. This section, as amended June 30, 1952, 9:36 a. m., E.D.T., c. 306; June 30, 1953, c. 171, § 9, 67 Stat. 1344, Pub.L. 91-452, Title II, § 251, 84 Stat. 931.

References in Text. The Office of Price Stabilization, referred to in the second paragraph of subsec. (e), was created by General Order 2 of the Economic Stabilization Administration on January 2, 1951. The Director of Price Stabilization, provided for in Ex.Ord.No.10151, Sept. 9, 1950, 15 F.R. 6105, as amended, set out in note under section 2071 of this Appendix, was designated to head the office. For suspension of wage and price controls, see Ex.Ord.No.10434, Feb. 6, 1953, 18 F.R. 809, set out in note under former section 2101 of this Appendix.

1970 Amendment. Subsec. (b). Pub.L. 91-452 struck out subsec. (b) which related to the immunity from prosecution of any natural person compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination, and that any such immunity granted would not be construed to vest in any individual any right to priorities assistance, to the allocation of materials, or to any other benefit within the power of the President to grant under sections 2061 to 2166 of this Appendix.

1953 Amendment. Subsec. (e) amended by Act June 30, 1953, which added second paragraph.

1962 Amendment. Subsec. (f) added by Act June 30, 1962.

Effective Date. This section, as amended by the sixtieth day of enactment of approved Oct. 13, 1970, Pub.L. 91-452, section 6001 of Title 1, shall be effective on the date of enactment of this section.

Savings Provision. This section shall not apply to any act or omission which was in effect before Oct. 13, 1970, and which was not in violation of section 6001 of Title 1, U.S.C., as amended.

Termination. This section shall terminate on the date of the enactment of the Cross Referencing Act, et seq. of Title 1, U.S.C., as amended.

Legislative History. See 1952 U.S. Code, § 1753. See 1953 U.S. Code, § 1747; Pub.L. 91-452, and Adm. News.

business, including organiza-
 tions, shall be developed as
 part of the continuing activi-
 ties of the department or agency on the
 part of the department or agency
 responsibility for carrying
 out such programs during an
 emergency shall be prepared to
 implement plans developed
 for. Modifications and ter-
 minational changes, based on
 changing conditions, shall be in accord-
 with determinations by the
 head of each department or agency.
 Mutual support of emergency pro-
 grams shall be fostered, and
 the Defense Executive Reserve
 shall be maintained in accordance
 with appropriate non-govern-
 mental liaison. The head of each
 department or agency shall develop
 and coordinate programs which incor-
 porate preparedness and civil
 information programs to
 insure the optimum opera-
 tion of assigned resources and
 facilities.

Emergency Public Information
 Plans and procedures for
 disseminating such emergency
 information shall be developed
 by the Director, FEMA, and
 the Department of Defense, and
 procedures for disseminating
 such information shall be
 developed by the Director of the
 Federal Emergency Management
 Agency in coordination with the
 Department of Defense and the
 Department of Energy.

Transfer of Functions. Any
 function vested in the Presi-
 dent that has been delegated or
 assigned to the Federal Emergency
 Management Agency shall es-

2015, nothing in this order shall be
 deemed to derogate from any now exist-
 ing assignment of functions to any de-
 partment or agency or officer thereof
 made by statute, Executive order, or
 Presidential directives, including Memo-
 randa.

Sec. 3015 Revoked Orders. The follow-
 ing are hereby revoked:

- (1) Defense Mobilization Order VI-2 of December 11, 1953.
- (2) Defense Mobilization Order I-12 of October 5, 1954.
- (3) Executive Order No. 10312 of December 10, 1951.
- (4) Executive Order No. 10346 of April 17, 1952.
- (5) Executive Order No. 10997 of February 16, 1962.
- (6) Executive Order No. 10998 of February 16, 1962.
- (7) Executive Order No. 10999 of February 16, 1962.
- (8) Executive Order No. 11000 of February 16, 1962.
- (9) Executive Order No. 11001 of February 16, 1962.
- (10) Executive Order No. 11002 of February 16, 1962.
- (11) Executive Order No. 11003 of February 16, 1962.
- (12) Executive Order No. 11004 of February 16, 1962.

- (13) Executive Order No. 11005 of February 16, 1962.
- (14) Executive Order No. 11087 of February 28, 1963.
- (15) Executive Order No. 11088 of February 28, 1963.
- (16) Executive Order No. 11089 of February 28, 1963.
- (17) Executive Order No. 11090 of February 28, 1963.
- (18) Executive Order No. 11091 of February 28, 1963.
- (19) Executive Order No. 11092 of February 28, 1963.
- (20) Executive Order No. 11093 of February 28, 1963.
- (21) Executive Order No. 11094 of February 28, 1963.
- (22) Executive Order No. 11095 of February 28, 1963.
- (23) Executive Order No. 11310 of October 11, 1966.

Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.

RICHARD NIXON

EXECUTIVE ORDER NO. 12148

July 20, 1979, 44 F.R. 43239, as amended by Ex.Ord.No.12155, Sept. 10, 1979, 44 F.R. 53071; Ex.Ord.No.12156, Sept. 10, 1979, 44 F.R. 53073.

FEDERAL EMERGENCY MANAGEMENT

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.) [section 2251 of this Appendix], the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note) [sections 4101 to 4185 note of Title 42, The Public Health and Welfare], the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.) [section 5121 et seq. of Title 42, The Public Health and Welfare], the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) [section 7701 of Title 42, The Public Health and Welfare], Section 4 of Public Law 92-385 (86 Stat. 558), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C. App. 2285) [section 2285 of this Appendix], the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) [section 2061 et seq. of this Appendix], Reorganization Plan No. 1 of 1953 [set out as a note under section 2271 of this Appendix], Reorganization Plan No. 1 of 1973 [set out as a note under section 2271 of this Appendix], the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.) [section 98 et seq. of this title], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 531c) [section 531c of Title 31, Money and Finance], and Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], and in order to transfer emergency functions to the Federal Emergency Management Agency, it is hereby ordered as follows:

Section 1. Transfers or Reassignments

1-1. Transfer or Reassignment of Existing Functions.

1-101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-102. All functions vested in the President that have been delegated or as-

signed to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Director of the Federal Emergency Management Agency, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1-103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) [section 7701 et seq. of Title 42, The Public Health and Welfare], including those functions performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Director of the Federal Emergency Management Agency.

1-2. Transfer or Reassignment of Resources.

1-201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Federal Emergency Management Agency.

1-202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

Section 2. Management of Emergency Planning and Assistance

2-1. General.

2-101. The Director of the Federal Emergency Management Agency shall es-

establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.

2-102. The Director shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Director shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2-103. The Director shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

2-104. The Director shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2-105. The Director shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Federal Emergency Management Agency. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.

2-2. Implementation.

2-201. In executing the functions under this Order, the Director shall develop policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:

(a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;

(b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and

(c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2-203. For purposes of this Order, "civil emergency" means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.

2-204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Director of the Federal Emergency Management Agency shall be subject to oversight by the Secretary of Defense and the National Security Council.

2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Director of the Federal Emergency Management Agency with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2-206. All Executive agencies shall cooperate with and assist the Director in the performance of his functions.

2-3. Transition Provisions.

2-301. The functions which have been transferred, reassigned, or redelegated by Section 1 of this Order are recodified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2-302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Director may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

Section 3. Federal Emergency Management Council

3-1. Establishment of the Council.
3-101. There is hereby established the Emergency Management Council.

3-102. The Council shall be composed of the Director of the Federal Emergency Management Agency, who shall be the Chairman, the Director of the Office of Management and Budget and such others as the President may designate.

3-2. Functions of the Council.
3-201. The Council shall advise and assist the President in the oversight and direction of Federal emergency programs and policies.

3-202. The Council shall provide guidance to the Director of the Federal Emergency Management Agency in the performance of functions vested in him.

3-3. Administrative and General Provisions.

3-301. The heads of Executive agencies shall cooperate with and assist the Council in the performance of its functions.

3-302. The Director of the Federal Emergency Management Agency shall provide the Council with such administrative services and support as may be necessary or appropriate.

Section 4. Delegations

4-1. Delegation of Functions Transferred to the President.

4-101. [Revoked by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071.]

4-102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 1223 and 1244) (50 U.S.C. 404 and 405) [sections 404 and 405 of this title], were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.) [section 2251 of this Appendix], were transferred to the President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2238(a)(4)) [section 2238(a)(4) of this Appendix], relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended

(Section 2-101(b) of Executive Order No. 12107) [set out as a note under section 1101 of Title 5, Government Organization and Employees].

4-104. The Director of the Federal Emergency Management Agency is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [section 2285 of this Appendix] were transferred to the President by Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 271 note) [set out as a note under section 2271 of this Appendix],

and they are hereby delegated to the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [section 2255 of this Appendix] [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (52 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646) [section 646 of Title 20, Education], and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1) [section 241-1 of Title 20, Education], were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)) [section 1132d-1(a) of Title 20, Education], to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], is hereby delegated to the Director of the Federal Emergency Management Agency.

4-2. Delegation of Functions Vested in the President.

4-201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note) [sections 4401 to 4485 note of Title 42, The Public Health and Welfare], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in the President by Section 4 of Public Law 92-385 (86 Stat. 556) are hereby delegated to the Director of the Federal Emergency Management Agency.

4-203. The functions vested in the President by the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.) [section 5121 et seq. of Title 42, The Public Health and Welfare], except those functions vested in the President by Sections 301 (relating to the declaration of emergencies and major disasters) [section 5741 of Title 42, The Public Health and Welfare], 401 (relating to the repair,

reconstruction of Federal property of Title 42, fare), and 402 and surplus Title 42, The are hereby the Federal Agency.

4-204. The President by Reduction Act, U.S.C. 7701 e of Title 42, I fare], are her of the F ment Agency.

4-205. Effec tions vested i 4(h) of the Co Charter Act, (h) [section merce and Tr to the Directo Management A

4-206. Effec tions vested in 204(f) of the ministrative S amended (40 U (f) of Title 40 erty, and Wor to the Directo Management A

Section 5. Other

5-1. Revocation

5-101. Execut amended, entit tions Governi eral Civil Defe tain Administr by the Federal e is revoked.

5-102. Section Order No. 10296 section 1592m e Health and We titled "Providin of Certain Defe munity Facilities are revoked.

5-103. Executi amended, relatn remaining functi

5-104. Executi amended, relatn participation in s fense programs, is

5-105. Section 10601, as amende Cominlity Set

5-106. Executi amended, relatng destroyed or dam aster, is revoked.

5-107. Section 4 der No. 10900, as note under sectio culture), which co cies made availab for the suppleme voked.

5-108. Executi amended, entitle fense Responsibility Defense and Other

5-109. Executi amended, relatng the Office of Emer voked.

5-110. Executi amended, relatng es Advisory Comm

5-111. Executi amended, entitle Relief Functions aster Relief Act of cept for Section 3

5-112. Executi amended, entitle

Executive agencies shall coordinate and assist the Director in the performance of his functions.

Provisions. Functions which have been assigned, or redelegated by this Order are recodified and set forth in this Order at Sections provided by the amendments to Section 5 to the provisions of this Order, notwithstanding the revocations, codifications, and amendments to this Order, the Director is authorized to perform the functions assigned to him by Section 1 of this Order where they may otherwise conflict with the provisions of this Order.

Federal Emergency Management Council. The Federal Emergency Management Council is hereby established as a Council of the President.

The Council shall be composed of the Director of the Federal Emergency Management Agency, who shall be the Chairman, the Director of the Office of Management and Budget and such other members as the President may designate. The Council shall advise and assist the President in the oversight and coordination of Federal emergency programs.

The Council shall provide guidance to the Director of the Federal Emergency Management Agency in the performance of the functions vested in him.

The heads of Executive agencies shall cooperate with and assist the Director in the performance of its functions.

The Director of the Federal Emergency Management Agency shall coordinate and assist the Council with such administrative services and support as may be appropriate.

Delegations. The following functions are transferred to the President.

Revoked by Ex. Ord. No. 12155, 75, 44 F.R. 53071.]

The functions vested in the Director of the Office of Defense Mobilization, Sections 103 and 303 of the National Security Act of 1947, as amended, and Sections 4 and 50 of the Act of September 1954 (Public Law 779; 68 Stat. 1244) (50 U.S.C. 404 and 405) and Sections 404 and 405 of this title, were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1953 (50 U.S.C. App. 2271) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(a) The functions vested in the Director of the Office of Civil Defense Administration or Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2271 et seq.) [section 2251 of this Appendix], were transferred to the President by Reorganization Plan No. 1 of 1953 (50 U.S.C. App. 2271) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(b) The functions vested in the Director of the Office of Civil Defense Administration or Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2271 et seq.) [section 2251 of this Appendix], were transferred to the President by Reorganization Plan No. 1 of 1953 (50 U.S.C. App. 2271) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(c) The functions vested in the Director of the Office of Civil Defense Administration or Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2271 et seq.) [section 2251 of this Appendix], were transferred to the President by Reorganization Plan No. 1 of 1953 (50 U.S.C. App. 2271) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(Section 2-101(b) of Executive Order No. 12107) [set out as a note under section 1101 of Title 5, Government Organization and Employees].

4-104. The Director of the Federal Emergency Management Agency is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1953 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [section 2285 of this Appendix] were transferred to the President by Reorganization Plan No. 1 of 1953, as amended (50 U.S.C. App. 271 note) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [section 2285 of this Appendix] [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646) [section 646 of Title 20, Education], and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1) [section 241-1 of Title 20, Education], were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [section 2271 of this Appendix], and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)) [section 1132d-1(a) of Title 20, Education], to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [set out as a note under section 2271 of this Appendix], is hereby delegated to the Director of the Federal Emergency Management Agency.

4-2. Delegation of Functions Vested in the President.

4-201. The functions vested in the President by the Disaster Relief Act of 1974, as amended (42 U.S.C. Chapter 53 note) [Sections 4401 to 4485 note of Title 42, The Public Health and Welfare], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-202. The functions (related to grants for damages resulting from hurricanes and tropical storm Agnes) vested in the President by Section 4 of Public Law 92-385 (86 Stat. 556) are hereby delegated to the Director of the Federal Emergency Management Agency.

4-203. The functions vested in the President by the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.) [section 5121 et seq. of Title 42, The Public Health and Welfare], except those functions vested in the President by Sections 301 (relating to the declaration of emergencies and major disasters) [section 3741 of Title 42, The Public Health and Welfare], 401 (relating to the repair,

reconstruction, restoration, or replacement of Federal facilities) [section 5171 of Title 42, The Public Health and Welfare], and 409 (relating to food coupons and surplus commodities) [section 5179 of Title 42, The Public Health and Welfare], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1917 (91 Stat. 1098; 42 U.S.C. 7701 et seq.) [section 7701 et seq. of Title 42, The Public Health and Welfare], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b (h)) [section 714b(h) of Title 15, Commerce and Trade], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)) [section 485 (f) of Title 40, Public Buildings, Property, and Works], are hereby delegated to the Director of the Federal Emergency Management Agency.

Section 5. Other Executive Orders

5-1. Revocations.

5-101. Executive Order No. 10242, as amended, entitled "Prescribing Regulations Governing the Exercise by the Federal Civil Defense Administrator of Certain Administrative Authority Granted by the Federal Civil Defense Act of 1950", is revoked.

5-102. Sections 1 and 2 of Executive Order No. 10296 [set out as a note under section 1592m of Title 42, The Public Health and Welfare], as amended, entitled "Providing for the Performance of Certain Defense Housing and Community Facilities and Service Functions", are revoked.

5-103. Executive Order No. 10494, as amended, relating to the disposition of remaining functions, is revoked.

5-104. Executive Order No. 10529, as amended, relating to federal employee participation in State and local civil defense programs, is revoked.

5-105. Section 3 of Executive Order No. 10601, as amended, which concerns the Commodity Set Aside, is revoked.

5-106. Executive Order No. 10634, as amended, relating to loans for facilities destroyed or damaged by a major disaster, is revoked.

5-107. Section 4(d)(2) of Executive Order No. 10900, as amended [set out as a note under section 1601 of Title 7, Agriculture], which concerns foreign currencies made available to make purchases for the supplemental stockpile, is revoked.

5-108. Executive Order No. 10952, as amended, entitled "Assigning Civil Defense Responsibilities to the Secretary of Defense and Others", is revoked.

5-109. Executive Order No. 11051, as amended, relating to responsibilities of the Office of Emergency Preparedness, is revoked.

5-110. Executive Order No. 11415, as amended, relating to the Health Resources Advisory Committee, is revoked.

5-111. Executive Order No. 11795, as amended, entitled "Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974", is revoked, except for Section 3 thereof.

5-112. Executive Order No. 11725, as amended, entitled "Transfer of Certain

and by deleting "Direc-
paredness Agency and to
parentheses after "The
General Services".
1-102 of Executive Order
August 16, 1978 [set out as
tion 1450 of Title 42, The
and Welfare], is amended
alphabetical order "(p)
Agency Management Agency".
1-102 of Executive Order
September 27, 1978 [set out
section 7101 of Title 42,
Health and Welfare], is
"ing in alphabetical order
of the Federal Emer-
Agency".
9.11(b) of Civil Service
Part 9) [set out as a
tion 3301 of Title 5, Gov-
ernment and Employees] is
adding "the Defense Civil
Agency and".
3(2) of each of the fol-
lowing Executive Orders is
adding "Federal Emergency
Agency" immediately after
of Transportation".
Executive Order No. 11331 [set out
section 1962b of Title 42,
Health and Welfare] estab-
lishing the Northwest River Bas-
in.
Executive Order No. 11345, as
out as a note under section
42, The Public Health and
Establishing the Great Lakes
Basin.
Executive Order No. 11371, as
out as a note under section
42, The Public Health and
Establishing the New England
Basin Commission.
Executive Order No. 11578, as
out as a note under section
42, The Public Health and
Establishing the Ohio River
Basin.
Executive Order No. 11658, as
out as a note under section
42, The Public Health and
Establishing the Missouri River
Basin.
Executive Order No. 11659, as
out as a note under section
42, The Public Health and
Establishing the Upper Missis-
sippi Basin Commission.
Executive Order No. 11490, as
out as a note under this
further amended as follows:
the last sentence of Section
substitute therefor the fol-
lowing: "The activities undertaken by
agencies and agencies pursuant to
except as provided in Section
be in accordance with guid-
ance by, and subject to, eval-
uation by the Director of the Federal
Emergency Management Agency".
Section 103 entitled "Pres-
tance" and substitute the
following: "Sec. 103. Gen-
eral. The Director of the
Emergency Management Agency
shall determine national prepar-
ation plans and policies for the per-
formance of functions under this Order
and shall determine the performance of such
functions and the total national pre-
paration programs."
the portion of the first sen-
tence of section 401 prior to the colon
shall be: "The Sec-
retary shall perform the follow-
ing preparedness functions":
"Director of the Federal
Emergency Agency (GSA)" or "the
Preparedness Agency (GSA)" and
therefor "Director, FEMA", in
401(3), 401(4), 401(5), 401(9), 401
11, 401(15), 401(16), 401(19), 401

(21), 401(22), 501(8), 601(2), 904(2), 1102
(2), 1204(2), 1401(a), 1701, 1702, 2003, 2004,
2501(5), 3001, 3002(2), 3004, 3005, 3006, 3008,
3010, and 3013.

(e) The number assigned to this Order
shall be substituted for "11051 of Septem-
ber 27, 1962" in Section 3001, and for
"11051" in Sections 1802, 2002(3), 3002 and
3008(1).

(f) The number assigned to this Order
shall be substituted for "10952" in Sec-
tions 1103, 1104, 1205, and 3002.

(g) Delete "Department of Defense" in
Sections 502, 601(1), 804, 905, 1103, 1104,
1106(4), 1205, 2002(8), the first sentence
of Section 3002, and Sections 3008(1) and
3010 and substitute therefor "Director of
the Federal Emergency Management
Agency".

Section 6. This Order is effective July
15, 1979.

JIMMY CARTER

§ 2252. Definitions

Transfer of Functions. Functions of
the Federal Civil Defense Administrator
were transferred to the President of the
United States by section 1 of 1958 Reorg.
Plan No. 1, eff. July 1, 1958, 23 F.R. 4991,
72 Stat. 1799, as amended by Pub.L. 85-
763, Aug. 26, 1958, 72 Stat. 861; Pub.L.
87-296, § 1, Sept. 22, 1961, 75 Stat. 630,
set out as a note under section 2271 of
this Appendix, and the Federal Civil De-
fense Administration was consolidated
with the Office of Defense Mobilization
to form the Office of Emergency Planning
in the Executive Office of the Pres-
ident by section 2 of 1958 Reorg. Plan No.
1.

The Office of Emergency Preparedness,
including the offices of Director, Deputy
Director, Assistant Directors, and Re-
gional Directors, was abolished and all
functions vested by law in the Office of
Emergency Preparedness or the Director
of the Office of Emergency Preparedness
were transferred to the President of the
United States by sections 1 and 3(a)(1)
of 1973 Reorg. Plan No. 1, set out under
section 2271 of this Appendix.

The name of the Office of Emergency
Planning was changed to the Office of
Emergency Preparedness by Pub.L. 90-

608, c. IV, § 402, Oct. 21, 1968, 82 Stat. 1194,
with references in any other law to the
Office of Emergency Planning to be
deemed, after Oct. 21, 1968, references to
the Office of Emergency Preparedness.

1. Fallout shelters

Although, generally, facility main-
tained for pleasure, amusement and rec-
reation of citizens is held by city in
proprietary rather than governmental ca-
pacity, rule was not applicable to park
fallout shelter, the construction and op-
eration of which was in interest of pub-
lic safety and defense. *Ard v. Okla-
homa City*, Okl. 1963, 382 P.2d 728.

Owner of real estate who voluntarily
and without compensation permits erec-
tion of fallout shelter pursuant to this
chapter is not liable civilly for negli-
gence causing injury to any person and
rule is applicable to municipalities which
furnish land in compliance with such
statute. *Id.*

Maintenance of fallout shelter, even
though built by city, is governmental
function and city is not liable in tort
for negligence in connection therewith.
Id.

§ 2253. Administrative authority

For the purpose of carrying out his powers and duties under this Act
[sections 2251 to 2297 of this Appendix], the Administrator is authorized
to—

(a) employ civilian personnel for duty in the United States, including
the District of Columbia, or elsewhere, subject to the civil-service laws,
and to fix the compensation of such personnel in accordance with the
Classification Act of 1949, as amended;

[See main volume for text of (b) to (g)]

(h) when, after reasonable notice and opportunity for hearing to the
State, or other person, he finds that there is a failure to expend funds in
accordance with the regulations, terms, and conditions established under
this Act [sections 2251-2297 of this Appendix] for approved civil defense
plans, programs, or projects, notify such State or person that further
payments will not be made to the State or person from appropriations
under this Act [sections 2251-2297 of this Appendix] (or from funds
otherwise available for the purposes of this Act [sections 2251-2297 of
this Appendix] for any approved plan, program, or project with respect
to which there is such failure to comply) until the Administrator is sat-
isfied that there will no longer be any such failure. Until he is so satis-
fied, the Administrator shall either withhold the payment of any financial
contribution to such State or person, or limit payments to those programs
or projects with respect to which there is substantial compliance with the
regulations, terms, and conditions governing plans, programs, or projects
hereunder: *provided*, That person as used in this subsection, means the
political subdivision of any State or combination or group thereof; or
any interstate civil defense authority established pursuant to subsection
221(g) [section 2281(g) of this Appendix]; or any person, corporation,

5

THE WHITE HOUSE

WASHINGTON

February 13, 1981

MEMORANDUM FOR PEN JAMES

FROM: FRED FIELDING

It has been brought to my attention that our candidate for the FEMA has a proposal whereby he would go on the payroll of this organization for one day in a regional office, then would be nominated to be the head of the Agency, with the purpose of then having the United States Government pay his moving expenses from the West Coast to Washington.

As slick as this may appear and as technically legal as it may be, this is something that should not be considered further. Forgetting the simple fact that a keen adversary from the minority side could make a debilitating shambles of a confirmation hearing, it is clearly not a procedure contemplated by the law.

I realize that the objective of this practice is attractive; however, once we start this sort of thing we will never be able to stop it with our candidates until we are stopped, in the halls of Congress or in the media, embarrassingly and ingloriously.

cc: Ed Meese
Theodore Garrish

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

Done
~~31 MAR 1981~~
per FFF 4/9

March 30, 1981

TO: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

FROM: J. MICHAEL FARRELL *JMS*

RE: Federal Emergency Management Agency

Attached hereto is a copy of a memorandum dated March 25, 1981, to me from Penn James directing that an Order be prepared whereby the President designates John W. McConnell as Acting Director of FEMA. Pursuant to that memorandum, I have prepared the Order so designating the new Acting Director.

As the background to this matter, the President, by Order dated January 20, 1981, designated Bernard T. Gallagher as Acting Director of FEMA. Mr. Gallagher was an employee of FEMA, however, he was far down the line of command at the Agency prior to his designation. His name had been presented to us at the Transition Team by Darrell Trent and great pressure had been applied to make him Acting Director. Attached hereto is a copy of OLC Opinion dated January 16, 1981, wherein Fran Ulman states that the President has the power to designate an Acting Director.

The genesis of this new Order is a request from Gen. Louis Giuffrida who is presently a consultant at FEMA. General Giuffrida is very close to Ed Meese and was named on February 24th to be the Director of FEMA. As of today, his nomination has not been forwarded to the Senate.

I have concern about this procedure of naming successive Acting Directors since they are both Republican and I really do not know the difficulties nor have been able to confirm the same between General Giuffrida and Bernard Gallagher.

It is my suggestion that you discuss this further with either Penn James or Ed Meese. I would not move very quickly on this matter for it might be just a personality conflict between the parties.

THE WHITE HOUSE
WASHINGTON

March 25, 1981

MEMORANDUM FOR: Mike Farrell
FROM: E. Pendleton James *EPJ*
SUBJECT: John W. McConnell

You are hereby directed to prepare an order designating John W. McConnell as Acting Director of FEMA effective March 25, 1981.

FEDERAL EMERGENCY MANAGEMENT AGENCY

WASHINGTON, D.C. 20543

February 4, 1981

JOHN WORLEY McCONNELL

FEMA

John W. McConnell is a native Hoosier, emerging from four previous generations of farm families in the great State of Indiana.

John, after serving as an artillery officer in Europe during World War II, returned to Indiana and served fifteen years in a full-time capacity with the Indiana National Guard. While serving as the State Adjutant General from 1957 to 1960, he acquired the additional function as State Director of Civil Defense. This led to his appointment as Regional Director of the Office of Civil and Defense Mobilization at Battle Creek, Michigan, in August of 1960.

When OCDM was dismantled in 1961, John was called into the Pentagon to assist in organizing the Office of Civil Defense. He served as Director of Operations and the Director of Plans and Operations with OCD and its successor, Defense Civil Preparedness Agency, until July 15, 1979, when the Federal Emergency Management Agency was formed. DCPA was abolished and all personnel were transferred to the new Federal Emergency Management Agency.

Mr. McConnell served as Assistant Associate Director for Population Preparedness under the Associate Director for Plans and Preparedness. Effective January 16, 1981, he was appointed as Acting Associate Director for Plans and Preparedness.



U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

1 8 JAN 1981

MEMORANDUM FOR TIMOTHY RYAN, ESQ.
Reagan Transition Group

Re: Designation of Acting Heads for Action Agency,
Federal Emergency Management Agency, and Small
Business Administration.

This responds to your telephone request for our advice concerning the manner in which provision can be made for the designation of certain employees to be acting heads of the Action Agency, the Federal Emergency Management Agency, and the Small Business Administration.

Action Agency - 42 U.S.C. §§ 5041-5046.

The statute governing the establishment and organization of the Action Agency does not contain a provision for an Acting Director in the event of a vacancy in the office of the Director. Pursuant to 42 U.S.C. § 5041, the Deputy Director is to act as Director during the absence or disability of the Director. Such clauses have been construed as covering only a temporary absence or disability but not a vacancy caused by resignation, retirement, or death. The Vacancy Act is not applicable because it extends only to Executive departments as defined in 5 U.S.C. § 101; Action is not such a department.

For the reasons set forth at pp. 3-4 of the memorandum dated June 27, 1969, to Henry C. Cashen II, Deputy Counsel to the President, from then Assistant Attorney General Rehnquist (a copy of which is attached), it is our opinion, although the matter is not entirely free of doubt, that the President has the power based on his constitutional responsibility for the continued operation of the Executive branch to designate an acting agency head. In light of the opinion of the Court of Appeals in Williams v. Phillips, 482 F.2d 669, 670-671 (D.C. Cir, 1973), it would be desirable that a nomination for the position of the

Director of Action be submitted to the Senate within 30 days after the occurrence of the vacancy.

Federal Emergency Management Agency-Reorganization Plan No. 3 of 1978, 5 U.S.C., Appendix.

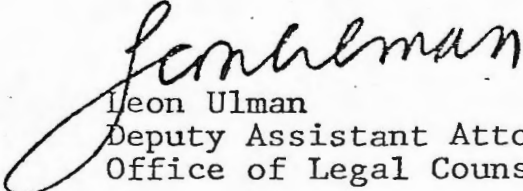
Section 102 of the Plan provides for the appointment of a Director by the President by and with the advice and consent of the Senate. Section 103 provides for the appointment of a Deputy Director in the same manner. The Deputy Director is to act as Director in the event of a vacancy in the office of the Director. The Plan, however, does not cover the situation where the offices of the Director and Deputy Director are both vacant.

Pursuant to section 106 of the Plan, the Director, however, is authorized to "make provision for the performance of any function of the Director by any officer, employee or unit of the Agency." Accordingly, the incumbent Director can provide for the performance of all his functions by an appropriate employee of the agency. Since this would be based on the Director's authority under the Reorganization Plan and not on the Vacancy Act or a related non-statutory Presidential responsibility, the thirty-day period of 5 U.S.C. § 3348 would not be applicable directly or by analogy. Nevertheless, the early nomination of a Director is desirable.

If the above process is not possible, so that the Administration is left without a Director and Deputy Director, it is our view, for the reasons set forth earlier in this memorandum, that the President has the power to designate an Acting Administrator.

Small Business Administration - 15 U.S.C. §§ 631-642.

Section 633(b) of title 15, United States Code, provides for the appointment of an Administrator by the President by and with the advice and consent of the Senate. The Administrator is authorized to appoint a Deputy Administrator who becomes Acting Administrator in the event of a vacancy in the office of the Administrator. The Administrator can appoint an employee of SBA to be Deputy Administrator. This would have the effect of removing the present Deputy Administrator and make that employee Acting Administrator upon the resignation of the Administrator.


Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

ORDER

I hereby designate Bernard T. Gallagher
as Acting Director of the Federal Emergency
Management Agency.

Ronald Reagan

THE WHITE HOUSE,

January 20, 1981.

(Original to addressee via receipted White House messenger: 1/21/81)

107E

47/3

OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE GENERAL COUNSEL

6 APR 1981

These cases should be useful
in defending the new FERPA
case.

Margery

United States Government
MEMORANDUM

**Office of
Personnel Management**

Subject: Politically Motivated Removals

Date: APR 3 1981
In Reply Refer To:

From: Margery Waxman
General Counsel MW

Your Reference:

To: Donald J. Devine
Director

Arch Ramsay
Acting Deputy Director

Three recent decisions of the Court of Claims, the United States Court of Appeals for the Seventh Circuit and the District Court for the Eastern District of Pennsylvania provide further examples of the way in which the Supreme Court's limitation on politically motivated removals is being applied. As you know, in Elrod v. Burns and Branti v. Finkel, the Supreme Court held that a public employer cannot discharge an employee solely for partisan political affiliation unless such affiliation is crucial to effective job performance. In these new decisions described below, all three courts recognized that the removal of a public employee serving in a policy-making position does not, in and of itself, constitute removal for improper partisan political reasons. Thus, these decisions confirm our view that, under Elrod and Branti, the Government retains the right to discharge policy-making employees for reasons other than political affiliation and should prove most helpful in defending our recent Branti challenge, Newton v. Gallagher (FEMA).

FRANKLIN SHAW v. UNITED STATES

A veteran employed in a non-career position with policy-determining responsibilities was removed after a change in Administration because he no longer had the necessary confidential relationship with his superiors. The plaintiff challenged his removal on the grounds that: 1) it was politically motivated; 2) it was procedurally defective because the agency failed to state, with specificity, how plaintiff was unable to perform his job and because the agency did not present evidence to support its charge; and 3) that the action constituted a breach of contract because the job held by plaintiff had been changed from a career executive assignment to a non-career executive assignment after plaintiff was selected, but before he was appointed.^{1/} The Court of Claims, however, rejected these arguments and upheld the removal action.

^{1/} Plaintiff was selected for the career executive position of Deputy Assistant Secretary of Defense, Regional Programs, in the fall of 1973. Under the executive assignment program, the Civil Service Commission was required to approve the qualifications of individuals selected for career positions at the GS-16, 17 and 18 level. See 5 CFR Part 305 (1978). In March of 1974, the Commission approved

First, the Court held that, in both Elrod and Branti, the Supreme Court recognized that a public employer retains the right to dismiss an employee in a policy-making position if the employer no longer has confidence in the employee's ability to carry out these policy-making functions. Thus, the Court stated:

... Congress, in enacting the Civil Service laws, has always been careful to avoid the practice of some foreign countries, where cabinet level officials, ostensibly heads of departments, are hamstrung by being denied other than permanent career subordinates. Our system, with our competitive career service, allows also for numerous non-career policy aides who may be brought in and moved out at will, though not of cabinet stature or even next below.

The Court found that plaintiff clearly served in a position with significant policy-making responsibilities. Further, plaintiff had not established that his political affiliation was a factor in the removal action. 2/ Consequently, the Court concluded that plaintiff's removal was not improperly motivated by political reasons.

Second, the Court held that the agency's action was procedurally sound. A veteran, whether in the excepted or the competitive service, is statutorily entitled to certain procedural protections -- a notice that sets forth the specific reasons for the action, an opportunity to respond and a written decision. 5 U.S.C. 7513(b). Further, the action must be for such cause as will promote the efficiency of the service. 5 U.S.C. 7513(a). The Court, however, found that removal based on lack of confidence in an individual's policy-making capabilities satisfies this "cause" requirement. Further, the Government need not produce documentary "evidence" to support this charge.

Finally, the Court held that federal employees do not acquire contractual rights in their employment. Accordingly, the Government did not breach any contract when it converted the plaintiff's job to non-career executive assignment.

FARKAS v. THORNBURGH

A similar approach was used by the District Court for the Eastern District of Pennsylvania. In that case, District Administrators in Pennsylvania's Department of Revenue were removed after a change in Administration. They brought suit against the Secretary of Revenue, claiming that they were dismissed solely because they were not affiliated with the Republican party. To demonstrate political motivation, plaintiff's relied on statistical evidence which indicated that the Secretary of Revenue had hired seventeen Republicans and twelve Democrats to fill thirty-two vacancies in his office.

1/ (con't)

the plaintiff's qualifications. However, shortly thereafter, the Department of Defense requested permission to redesignate the Deputy Assistant Secretary position as a non-career executive assignment. The Commission approved this request and plaintiff was appointed to the non-career position in July of 1974.

2/ In this regard, the Court noted that plaintiff was a Democrat who was hired under a Republic Administration (President Ford's) and dismissed under a Democratic Administration (President Carter).

The Court held that under Branti the Government retains the right to remove a public employee serving in a policy-making position if the decision is based on lack of confidence in that employee. The Court phrased the issue as follows:

The relevant inquiry requires determination of whether defendants discharged plaintiffs solely because of their affiliation with the Democratic party or whether defendants lack(ed) confidence in the dismissed district administrators whom they 'inherited' from the prior Administration and 'for some reasons other than political affiliation' terminated their employment ... In other words, if a legitimate apolitical motivation prompted plaintiff's dismissals, defendants were at liberty to discharge them.

The Court found that the dismissals were based on a lack of confidence. Of course, if the discharge was politically motivated it would still have been permissible if performance on the job required a specific political affiliation. Further, the statistical evidence produced by plaintiffs established that political affiliation was not a factor in these decisions.

WREN v. JONES

The Court of Appeals for the Seventh Circuit also addressed the question of the limitations on political removals. The facts of that case, although lengthy, are worth noting. In November of 1968, the Democratic Governor of the State of Illinois extended civil service protection to employees of the Illinois Department of Transportation (IDOT). In January of 1969, a Republican Governor was appointed and, one month later, he revoked the civil service protection. Between April and June of 1969, 3000 IDOT employees (all Democratic) were fired and replaced by Republicans. Twenty-five of the Democrats filed suit claiming that their removals violated their First Amendment rights of political association.

The Republican Administration extended civil service protection to the IDOT employees in November of 1972. In January of 1973, a Democratic Governor was appointed.

In April of 1973, the court issued a decision in the lawsuit that had been filed by the Democrats who were discharged in 1969. The court found that the Republican Administration had improperly revoked the civil service protection afforded to these employees and, thus, ordered the State to reinstate the Democrats.

In June of 1973, the State Government was faced with a financial crisis and the budget for IDOT was cut-back. Therefore, in order to reinstate the twenty-five Democrats, the State was forced to remove an equal number of employees, who were Republicans. The Republican employees filed this lawsuit claiming that their First Amendment rights had been violated because they were removed "in furtherance of a patronage program."

The District Court found that these plaintiffs had suffered a violation of their First Amendment rights. Further, it held that the State officials responsible for these actions were individually liable for discharging the plaintiffs. The Court of Appeals reversed this decision.

The Court held that, in light of the fiscal limitations imposed on the State, it was clear that political affiliation was not the sole basis for plaintiff's removal. Thus, there was no First Amendment violation under Elrod v. Branti. However, the Court believed that its inquiry did not end with this finding. It also analyzed whether plaintiffs' political affiliation was a "motivating factor" in their removals or whether plaintiffs' First Amendment rights outweighed the State's interest in promoting the efficiency of the service.

The Court found that plaintiffs had failed to establish that their political affiliation was a motivating factor in the State's decision to remove them. Further, even if plaintiffs had come forward with such evidence, the State had proven, by a preponderance of the evidence, that the discharges were necessitated by fiscal reasons.

Finally, the Court held that plaintiffs had established only a slight, if any, First Amendment interest. No evidence was produced to show that plaintiffs had engaged in any political speech or association, other than the mere fact that they were registered as Republicans. On the other hand, the State clearly has an interest in utilizing its financial resources in an efficient manner. Accordingly, the Court found that plaintiffs had not suffered any First Amendment violation.

We will keep you advised of any further developments in this area.

cc: Vince De Cain
George Nesterzuk

THE WHITE HOUSE
WASHINGTON

7/24/81

Dinan -

Material from FEMA -
should be put in file
for Disaster Relief for
Kansas (which we handled
last weekend) -

Thanks,

Oster



Federal Emergency Management Agency

Washington, D.C. 20472

July 23, 1981

MEMORANDUM FOR: Peter J. Rusthoven
Assistant Counsel
Office of Counsel to the President

FROM: James P. Dokken
Acting Associate Director
Disaster Response and Recovery
Federal Emergency Management Agency

Holmes
for

SUBJECT: Governor's Request Letters

Attached are the letters from Governor Carlin of Kansas which you requested on Saturday, July 18, 1981. Two letters were sent per the request for Barton County (June 19 and 25), one was sent with regard to Douglas County (June 23) and an appeal letter was sent (July 8).

If I can be of any further assistance, please feel free to contact me.

Attachment:
as stated

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612

an Carlin Governor

June 19, 1981

The President
The White House
Washington, D. C. 20500

Through:

Mr. Patrick J. Breheny
Director, Region VII
Federal Emergency Management Agency
Old Federal Office Building, Room 300
Kansas City, Missouri 64106

Dear Mr. President:

I respectfully request that you declare that a major disaster exists in Barton County of Kansas under the provisions of the Disaster Relief Act of 1974, Public Law 288, 93rd Congress.

During the late evening hours of June 14, 1981, through the day of June 15, 1981, severe storms resulting in up to 15 inches of rain caused extensive damage to private property in Barton County. Public property assistance, if applicable, will be requested as an amendment to this letter. If requested, State and local government will assume 25% of the eligible costs. In addition we have incurred State costs of \$56,045.00 for which no Federal reimbursement will be expected. //

Fortunately, there were no deaths connected with this incident and injuries were minor. Nearly 3,000 persons were evacuated from their homes and as the water continued to rise, many of them had to be re-evacuated. Five mobile homes and two houses were damaged beyond repair. Eighty homes sustained major damage, with another 1,284 receiving minor damage. However, many homes may have to be upgraded to the major damage category as floors begin to buckle and basement walls collapse. Some were temporarily affected by water but not severely damaged. Other public utilities, with the possible exception of sewers were not damaged. Damage to roads and bridges appears light but is unknown at this time. Some separation of asphalt overlays will likely occur. Railroads and other transportation were only briefly terminated. Damage to farm and crops will be extensive.

Total damage estimates at this time are:

<u>Public</u>	<u>Private</u>	<u>Agricultural</u>
\$250,000	\$4,860,000	\$4,255,000

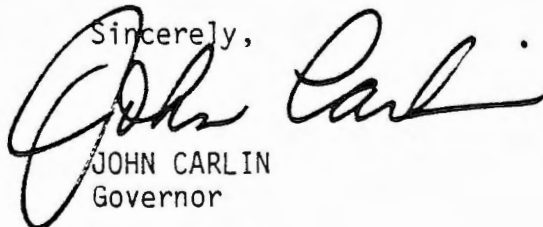
Mr. Patrick J. Breheny
June 19, 1981
Page Two

On June 15, 1981, I declared a State of Disaster Emergency and directed the execution of the State Disaster Emergency Plan in accordance with Section 301 of Public Law 93-288. State and local efforts in response to this disaster situation have been as follows: One hundred mandays of Kansas Army National Guard personnel with ground equipment, and two helicopters were expended in search and rescue operations, movement of emergency equipment, traffic control and security duties at a cost of \$25,320.00. Personnel and equipment from the State Departments of Transportation, Health and Environment, and the Kansas Highway Patrol were committed at a total cost of \$25,800.00. Also, all available Barton County and City law enforcement, fire and public works personnel were committed with equipment at a cost unknown at this time. Additionally, four other Kansas Counties were requested to respond with personnel and equipment at a total cost of \$4,925.00.

I find that the situation is beyond the capability of the State and local government to effectively alleviate the existing situation. Emergency functions, repair of damaged private facilities, and relief for agri-business losses will require expenditures beyond the capability of State and local governments.

I specifically request assistance under provisions of Section 408 of Public Law 93-288 to establish an individual and family grant program in the affected area. I have determined that assistance under the Act and from other means will not be sufficient to meet the necessary expenses or serious needs of approximately 844 disaster households based on reports provided by State, local, and volunteer agencies. The State will implement an approved administrative plan, and the grant program will be made available throughout the designated major disaster area. I will direct my representative to maintain close coordination with the Federal Coordinating Officer and to provide him with such reports as he may require. Total funding for this program is estimated to be \$1,688,000, for which \$1,266,000 will be the Federal share, and \$422,000 will be the State's share. All Federal and State funds committed to the grant program will be specifically identified in the accounts of the State.

Since no State funds are available at this time, the State is unable to pay its 25 per cent share and I request that \$422,000 be advanced by the Federal Government. In order to repay this advance, I will ask the State Finance Council for an appropriation of funds, to repay this advance. I anticipate that this advance will be repaid by July 31, 1981. I agree to return, immediately upon discovery, all Federal funds advanced to meet the State's 25 per cent share which exceed actual requirements.

Sincerely,

JOHN CARLIN
Governor

JC:cd

Attachment

STATE OF DISASTER EMERGENCY PROCLAMATION

By the Governor

Executive Department
State of Kansas
Topeka, Kansas

By virtue of the authority vested in me by the Kansas Emergency Preparedness Act, Chapter 48, Article 9, of the Kansas Statutes Annotated, to meet the inherent dangers of disasters to which the State and its citizens have been exposed, and upon advice of the State Adjutant General as the Director of the Division of Emergency Preparedness, I hereby proclaim a State of Disaster Emergency as follows:

NATURE OF THE DISASTER:

Severe flooding throughout the Arkansas River and Walnut Creek basins have caused the displacement of 1,000 - 1,500 citizens. Complete agricultural, private, and public property damage is unknown at this time. No one is dead or missing as a result of this disaster.

DATE THAT DISASTER AFFECTED THE AREAS:

Commencing June 15, 1981, and still continuing.

AREAS AFFECTED BY THE DISASTER:

Along the Arkansas River basin and the Walnut Creek basin in Pawnee and Barton Counties; including the cities of Dundee, Pawnee Rock, and Great Bend.

I hereby proclaim, direct and order the Adjutant General of the State of Kansas to activate the disaster response and recovery portions of the State Disaster Emergency Plan. Local and interjurisdictional disaster plans applicable to the political subdivisions or areas affected by this Proclamation shall be coordinated by the Adjutant General.

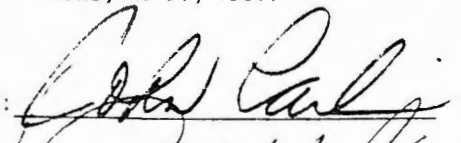
Any or all of the powers conferred upon the Governor by the Kansas Emergency Preparedness Act may be delegated to the Adjutant General as deemed appropriate during this period of proclaimed State of Disaster Emergency. This may be delegated by written orders, or oral orders subsequently reduced to writing with reference to this Proclamation.

This Proclamation shall be in full force and effect for a period not to exceed fifteen (15) days from the declared effective date set forth herein below unless extended in accordance with provisions of K.S.A. 48-924.

This Proclamation shall be filed promptly with the Division of Emergency Preparedness, the Office of the Secretary of State and each city clerk or county clerk, as appropriate, in the area to which this Proclamation applies. Further dissemination of this Proclamation shall occur by means calculated to bring its contents to the attention of the general public.

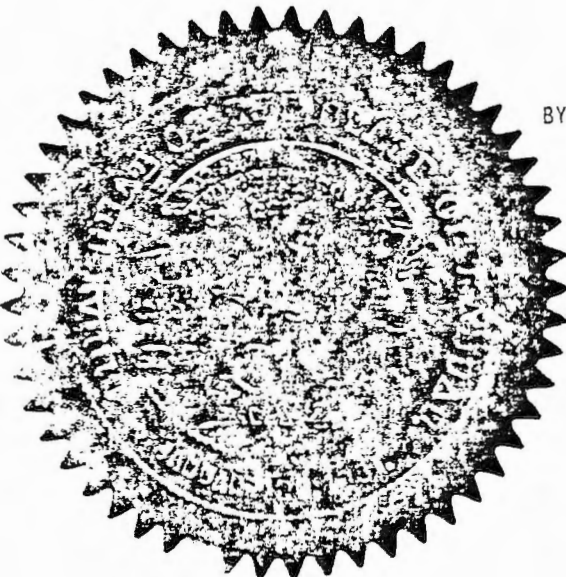
DONE At the Capitol in Topeka
Under the Great Seal of
the State this 15th day of
June, A. D., 1981.

BY THE GOVERNOR:



Secretary of State

Assistant Secretary of State



STATE OF KANSAS



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81 JUN 27 P 1: 37

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin Governor

June 25, 1981

The President
The White House
Washington, D. C. 20500

Through:

Mr. Patrick J. Breheny
Director, Region VII
Federal Emergency Management Agency
Old Federal Office Building, Room 300
Kansas City, Missouri 64106

Dear Mr. President:

On June 19, 1981, I requested you declare that a major disaster exists in Barton County Kansas due to torrential rains that caused extensive flood damage. I also indicated in my request that public property damage would be requested as an amendment since it was difficult to determine the extent of the damage at the time. Also, some additional events have taken place other than the public property damage assessment that will further amend my request for assistance.

On June 22d and 23rd a joint Federal-State survey team assessed the public property damage in Barton County and found that additional damage caused by the flood did exist to buildings, streets, highways, and sewer systems. Total city and county damage is now assessed at \$692,000. This figure should replace the original public property damage figure of \$250,000.

In my original request, I indicated that eighty homes in Great Bend, Kansas, had received major damage, but that this number may increase. It is now certain that such major damage to private property will increase. In a number of homes, basement walls have collapsed as the water receded and the ground has began drying. As this continues the rise in private property damage will be significant. The exact amount of increase can not be accurately determined.

During the late afternoon and evening of June 22, 1981, the rainstorms that have lingered in Central Kansas reformed in Barton County and deposited 10" of rain in the vicinity of Hoisington, Kansas. This caused Blood Creek to flood which damaged homes in Hoisington and just South of the city limits. As the flood swept through a part of Hoisington and the settlement South of the city, it caused major damage to approximately 30 homes, 3 businesses, and 2 mobile homes. In addition, there was

Mr. Patrick J. Breheny
June 25, 1981
Page Two

minor damage to 79 homes, 22 businesses, and 2 mobile homes.

Total damage estimates at this time in the Hoisington area are:

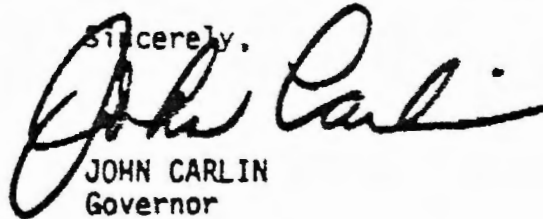
<u>Private</u>	<u>Businesses</u>
\$400,000	\$425,000

At the time of this flood a declared State of Disaster Emergency was still in effect for Barton County. Therefore, the State Disaster Emergency Plan was executed in accordance with Section 301 of Public Law 93-288. All available Barton County and City of Hoisington law enforcement and city public works personnel were committed at a cost unknown at this time.

I request that my original letter for a major declaration of disaster in Barton County be amended to include the recent flooding in and around the City of Hoisington. This would mean that under Section 408 of Public Law 93-288 which establishes an individual and family grant program certain monetary figures must be changed. Total funding for this program should now be \$1,925,000 with the Federal share being \$1,443,750 and the State share being \$481,250.

Since no State funds are immediately available at this time, my request for advancement of the State's 25% share by the Federal government should now be \$481,250.

Sincerely,



JOHN CARLIN
Governor

JC:cd

STATE OF KANSAS
OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

June 23, 1981

The President
The White House
Washington, D. C. 20500

Through:

Mr. Patrick J. Breheny
Director, Region VII
Federal Emergency Management Agency
Old Federal Office Building, Room 300
Kansas City, Missouri 64106

~~Dear Mr. President:~~

I respectfully request that you declare that a major disaster exists in Lawrence, Kansas (Douglas County) under the provisions of the Disaster Relief Act of 1974, Public Law 288, 93rd Congress.

During the evening of June 19, 1981, severe storms in the area resulted in tornadoes which touched down in the City of Lawrence along with high winds and hail causing widespread destruction to private property and businesses. State costs of approximately \$14,000 have been incurred for which no Federal reimbursement will be expected.

The devastating effect of the tornadoes caused one death and 36 injuries. Approximately 875 homes, 246 mobile homes, and 25 to 30 businesses were damaged. Upwards of 75 mobile homes were destroyed. Approximately 145 mobile homes sustained major damage along with 35 homes. The remainder received minor damage. There does not appear to be any public property damage at this time.

It is estimated by insurance companies, local authorities, and State departments that one-half of the total damage is 10% uninsured and the other half is 100% to 40% uninsured. Total damage estimates at this time are:

<u>Homes</u>	<u>Mobile Homes</u>	<u>Businesses</u>
\$8,000,000	\$5,000,000	\$5,000,000

On June 19, 1981, I declared a State of Disaster Emergency and directed the execution of the State Disaster Emergency Plan in accordance with Section 301 of Public Law 93-288. State and

local efforts in response to this disaster situation have been as follows: Seventy-five mandays of Kansas Army National Guard personnel with ground equipment were expended in security, search and rescue, and traffic control at a cost of \$9,000.00. Personnel and equipment from the Kansas Highway Patrol were committed at a cost of \$5,000.00. Also, all available city and Douglas County law enforcement, engineer, and public works personnel were committed with equipment at a cost unknown at this time.

I find that the situation is beyond the capability of the State and local government to effectively alleviate the existing situation. Emergency functions and repair of damaged private facilities will require expenditures beyond the capability of State and local governments. //

I specifically request assistance under provisions of Section 408 of Public Law 93-288 to establish an individual and family grant program in the affected area. I have determined that assistance under the Act and from other means will not be sufficient to meet the necessary expenses or serious needs of approximately 721 disaster households based on reports provided by State, local, and volunteer agencies. The State will implement an approved administrative plan, and the grant program will be made available throughout the designated major disaster area. I will direct my representative to maintain close coordination with the Federal Coordinating Officer and to provide him with such reports as he may require. Total funding for this program is estimated to be \$1,802,500, for which \$1,351,875 will be the Federal share, and \$450,625 will be the State's share. All Federal and State funds committed to the grant program will be specifically identified in the accounts of the State. //

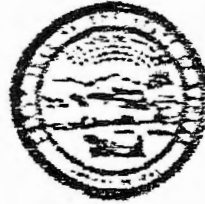
Since no State funds are available at this time, the State is unable to pay its 25 percent share and I request that \$450,625 be advanced by the Federal Government. In order to repay this advance, I will ask the State Finance Council for an appropriation of funds, to repay this advance. I anticipate that this advance will be repaid by July 31, 1981. I agree to return immediately upon discovery all Federal funds advanced to meet the State's 25 percent share which exceed actual requirements. //

Sincerely,

/signed

JOHN CARLIN
GOVERNOR

STATE OF KANSAS



787

OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612

July 8, 1981

The President
The White House
Washington, D. C. 20500

Through:

Brigadier General Louis O. Guiffrida
Director, Federal Emergency Management Agency
1725 Eye Street, N. W.
Washington, D. C. 20742

Dear Mr. President:

We are in receipt of General Guiffrida's letter dated July 6, 1981, in which he conveyed the denial of our requests for two separate declarations of assistance when devastating disasters befall portions of the State of Kansas.

The basis on which your denial of major declarations of disaster was made is not clear. We have not only several cities that were damaged, but acres of land that can not be reclaimed for some time. All told 2,598 homes of various types were damaged or destroyed along with some 60 businesses that received damage. Certainly State, local government, and volunteer agencies did respond but this only aids our devastated citizens for the moment. The longer term, as well as the immediate need for losses in the way of personal belongings, can not be remedied by our resources alone.

Therefore, in view of the magnitude of losses and suffering in our State, I must request a reconsideration of your denial of our request. The State of Kansas has not only sustained the more dramatic damages from floods and tornadoes, but has sustained severe crop and land damages from causes such as droughts, rural tornadoes, hail, high winds, and freezes that will affect our economy and the Nation's in the future.

In appealing this denial, I wish to point out that the after-effects of the disaster are still being assessed. In Great Bend and Hoisington, basements and foundations of homes are collapsing and cracking. The damage is much greater than originally assessed. This is true for public property damage, as well. In Douglas County destruction was total where the tornadoes struck. I request that Federal authorities conduct another survey of damages. State representatives will accompany them. I am sure it will reveal much greater damage.

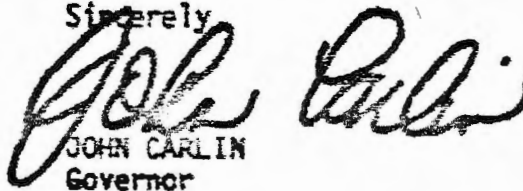
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Brigadier General Louis O. Guiffrida
July 8, 1981
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We have requested Small Business Administration assistance as well as assistance from the Secretary of Agriculture. This is not enough to aid the immediate needs of our, and your, citizens. We desire that you reconsider your decision so that effective response to the multiple damaged areas can be obtained.

Sincerely



JOHN CARLIN
Governor

JC:cd

cc: Mr. Patrick Breheny
Director, FEMA Region VII