FOIA Number: 2009-1305-F

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Crime Bill - S90107 - Presidential Declaration of Violent Crime and Drug Emergency Areas [1]

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January 31, 1995

MEMORANDUM FOR ABNER MIKVA
COUNSEL TO THE PRESIDENT

FROM: **CLARISSA CERDA**
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: **Implementation of Crime Bill §90107, "Presidential Declaration of Violent Crime and Drug Emergency Areas"**

BACKGROUND

Pursuant to the Crime Bill, the President may declare a jurisdiction a violent crime or drug emergency area and direct federal agency assistance to state and local authorities for crime-fighting. Pub. L. No. 103-322 §90107, 108 Stat. 1988 (1994). This crime emergency declaration power raises various legal and political considerations and, as drafted and implemented by the DOJ proposed rule, it also leaves several problems unresolved.

This section established the declaration process as follows: (1) A state or local CEO requests a presidential declaration through the Attorney General; (2) the Attorney General reviews the request, and (3) forwards the request along with a recommendation to the President, who must reject the request or make the declaration within 30 days of the request's submission. Id. §90107(b).

The statute and DOJ's proposed rule further detail the submission and review process for and requirements of a declaration request. 28 C.F.R. Part 92 (DOJ draft proposal).

To implement the statute and avoid practical problems and political embarrassment, a structure should be devised that facilitates prompt and effective Presidential action so the White House is prepared if and when a crime emergency declaration request is made. This office should pursue a number of implementing strategies, including: comments to DOJ regarding the rulemaking; presidential action via executive order, presidential directive, or internal memorandum; and, if necessary and appropriate, a legislative initiative to amend the crime emergency provision.

SUMMARY OF RECOMMENDATIONS

Recommendations for Comments to DOJ

- The regulations should include a policy statement affirming that a Presidential declaration of a crime emergency area in no way effects civil liberties or criminal procedural safeguards.

- Authority to request declarations should be required to go through or be restricted to states' governors.

- The first line of response to a crime emergency declaration should be the President's establishment of an intergovernmental, interagency command group to coordinate efforts. This would highlight presidential involvement, centralize crime-fighting efforts, and avoid unnecessary financial commitments.

Recommendations for Establishing Internal White House Framework

- The cabinet affairs staffer in charge of DOJ should serve as crime emergency liaison, coordinating communications between the White House and DOJ, and should facilitate administration responses to declaration requests. As necessary, a DOJ agency representative should serve in the White House Office to further facilitate the declaration process.

- Upon receipt of requests for a declaration, DOJ should notify the President through the staff liaison immediately. Thereafter, DOJ should brief the staff liaison on the status of their review of the request on a daily or other appropriate basis. DOJ should also prepare a draft document package (see §4, below) and forward it to the White House to facilitate prompt presidential action.

DISCUSSION

1. Protection of civil liberties during crime emergencies

The DOJ regulations should begin with a general policy statement affirming that, absent explicit and extraordinary governmental action, a crime emergency declaration in no way limits civil and criminal rights, and that all judicial and other remedies remain available to citizens whose rights are abused. Alternatively, a section might reaffirm that in crime emergency areas government officers are liable for any abuses under 42 U.S.C. §1983.

Two examples demonstrate how such a policy statement might be folded into the regulations: The DOJ draft regulations already include a short disclaimer indicating that the declaration-power does not otherwise effect presidential powers. 28 C.F.R. §92.6(g)(DOJ draft proposal). An example of a longer policy statement included in agency regulations is found in the DoD regulations governing the domestic use of federal troops, which begins with several paragraphs reaffirming the constitutional and statutory limitations on emergency mobilizations. 32 C.F.R. §215.4.

2. Request authority should be restricted to governors or legislatures

As drafted, the statute explicitly authorizes most any state or subdivision CEO, even local and rural government CEOs, to request a declaration, exposing the executive branch to declaration requests from literally tens of thousands of jurisdictions. Pub. L. No. 103-322 §90107(c)(1). Under FEMA regulations, by contrast, request authority is restricted to governors, 44 C.F.R. §205.33(b). Similarly, domestic mobilization of federal troops in a state can be requested only by a state legislature or governor, not subdivisions. 10 U.S.C. §331.

To create a workable crime emergency chain of command, similar restrictions should apply here. If this would be inconsistent with the statutory text, the draft rule should at minimum be strengthened to require that local officials make their request <u>through</u> the state legislature or the governor, in addition to the current requirement that they demonstrate they have already exhausted all state resources. Alternatively, the Administration should lobby Congress to include an amendment restricting request authority in pending crime legislation.

3. Prevention of crime emergency declaration demands exceeding federal capabilities

Along the same lines, to avoid the political embarrassment of requests overwhelming the DOJ-White House response capabilities and federal resources, DOJ should rigorously screen requests, or even be authorized to reject patently frivolous requests. Under draft 28 C.F.R. §92.6(DOJ proposed draft), the Attorney General may return incomplete requests, or require additional information of those making a request. The Attorney General might further be given a joinder or consolidation power in the case of multiple requests. By analogy, 28 C.F.R. §92.4(a)(DOJ draft proposal) would allow multiple jurisdictions to make single, consolidated declaration requests.

Political embarrassment might result, moreover, if federal responses to crime emergency requests are deemed inadequate-- a real danger, as the Crime Bill provides for no additional funds for crime emergencies. Therefore, to provide effective responses without expense, interagency and intergovernmental coordination of existing efforts should be emphasized as the first line of federal assistance.

4. Internal White House procedure

The draft rules' provision for DOJ-White House communication and the timing of such communication is sparse: 28 C.F.R. §92.6(a)(DOJ draft proposal) provides that "the Attorney General shall review a request... within time for the President to decide [whether to make a declaration] within 30 days".

DOJ-White House communications require more structure. A White House Office staff member-- logically, the cabinet affairs staffer for DOJ-- should serve as the official liaison between DOJ and the White House in order to centralize crime emergency communications in a single person and to ensure rapid response to requests.

The staff liaison's responsibilities should include: facilitating communications between the President, the Attorney General, other federal officers, and other White House offices; the preparation of a package of draft documents-- a draft declaration, rejection, press release, etc.; and briefing and coordinating action with the COS, the Counsel to the President, domestic policy advisors, agency heads, and/or other White House staff as appropriate.

In addition, a DOJ agency representative might be assigned to work within the White House office to assist the White House liaison.

5. DOJ preliminary communications

Regarding the timing of DOJ-White House communications, the Attorney General's office should give the President notification <u>immediately</u> upon receipt of a request. Thereafter, DOJ should continue to update the staff liaison on the review's status on a daily or regular basis.

<u>CONCLUSION</u>

Action is required to implement the Crime Bill's §90107, to address practical problems of implementation, and to avoid political embarrassment. Establishing an internal White House structure <u>now</u> is essential to ensuring the White House will be prepared to respond rapidly and appropriately to crime emergency requests in the future.

final" and inserting "a prior conviction for a felony drug offense has become final".

(b) Section 1012(b) of the Controlled Substances Import and Export Act (21 U.S.C. 962(b)) is amended by striking "one or more prior convictions of him for a felony under any provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final" and inserting "one or more prior convictions of such person for a felony drug offense have become final".

(c) Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking the sentence beginning "For purposes of this subparagraph, the term 'felony drug offense' means".

(d) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end the following new paragraph:

"(43) The term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.".

SEC. 90106. ADVERTISING.

Section 403 of the Controlled Substances Act (21 U.S.C. 843) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. As used in this section the term 'advertisement' includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. The term 'advertisement' does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule I controlled substance.".

42 USC 14053.

SEC. 90107. VIOLENT CRIME AND DRUG EMERGENCY AREAS.

(a) DEFINITIONS.—In this section—

"major violent crime or drug-related emergency" means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) DECLARATION OF VIOLENT CRIME AND DRUG EMERGENCY AREAS.—If a major violent crime or drug-related emergency exists throughout a State or a part of a State, the President may declare the State or part of a State to be a violent crime or drug emergency area and may take appropriate actions authorized by this section.

(c) PROCEDURE.—

(1) IN GENERAL.—A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under this subsection.

AG reg pwr

(2) FINDING.—A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

necessary not, less than imperative

(d) IRRELEVANCY OF POPULATION DENSITY.—The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

rural area

(e) REQUIREMENTS.—As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) REVIEW PERIOD.—The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request.

President.

(g) FEDERAL ASSISTANCE.—The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(h) DURATION OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Federal assistance under this section shall not be provided to a violent crime or drug emergency area for more than 1 year.

(2) EXTENSION.—The chief executive officer of a jurisdiction may apply to the President for an extension of assistance beyond 1 year. The President may extend the provision of Federal assistance for not more than an additional 180 days.

(i) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall issue regulations to implement this section.

(j) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

Subtitle B—National Narcotics Leadership Act Amendments

SEC. 90201. IMPLEMENTATION OF NATIONAL DRUG CONTROL STRATEGY.

(a) PROGRAM BUDGET.—Section 1003(c) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(c)) is amended—

(1) by redesignating paragraphs (5), (6), and (7), as paragraphs (6), (7), and (8), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) The Director shall request the head of a department or agency to include in the department's or agency's budget submission to the Office of Management and Budget funding requests for specific initiatives that are consistent with the President's priorities for the National Drug Control Strategy and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request.".

(b) BUDGET RECOMMENDATION.—Section 1003(b) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program, which recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy.".

(c) CONTROL OF DRUG-RELATED RESOURCES.—Section 1003 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended—

(1) in subsection (d)—

(A) by amending paragraph (2) to read as follows:

"(2) request the head of a department or agency or program to place department, agency, or program personnel who are engaged in drug control activities on temporary detail to another department or agency in order to i plen t the National Drug Control Strategy, and the h d of the department or agency shall comply with such a requ ;

(B) by striking "and" at the end of paragraph (6);

(C) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(D) by adding after paragraph (7) the following new paragraphs:

"(8) except to the extent that the Director's authority under this paragraph is limited in an annual appropriations Act, transfer funds appropriated to a National Drug Control Program agency account to a different National Drug Control Program agency account in an amount that does not exceed 2 percent of the amount appropriated to either account, upon advance approval of the Committees on Appropriations of each House of Congress; and

"(9) in order to ensure compliance with the National Drug Control Program, issue to the head of a National Drug Control Program agency a funds control notice described in subsection (f)."; and

(2) by adding at the end the following new subsections:

"(f) FUNDS CONTROL NOTICES.—(1) A funds control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by—

"(A) months, fiscal year quarters, or other time periods; and

"(B) activities, functions, projects, or object classes.

"(2) An officer or employee of a National Drug Control Program agency shall not make or authorize an expenditure or obligation contrary to a funds control notice issued by the Director.

"(3) In the case of a violation of paragraph (2) by an officer or employee of a National Drug Control Program agency, the head of the agency, upon the request of and in consultation with the Director, may subject the officer or employee to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office.".

(d) CERTIFICATION OF ADEQUACY OF BUDGET REQUEST.—Section 1003(c)(3)(B) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(c)(3)(B)) is amended—

(1) by inserting "in whole or in part" after "adequacy of such request"; and

(2) by striking the semicolon at the end and inserting "and, with respect to a request that is not certified as adequate to implement the objectives of the National Drug Control Strategy, include in the certification an initiative or funding level that would make the request adequate;".

SEC. 90202. OFFICE PERSONNEL RESTRICTION.

Section 1003 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended by adding at the end the following new subsection:

"(f) PROHIBITION ON POLITICAL CAMPAIGNING.—A Federal officer in the Office of National Drug Control Policy who is appointed by the President, by and with the advice and consent of the Senate, may not participate in Federal election campaign activities, except that such an official is not prohibited by this subsection from making contributions to individual candidates.".

SEC. . NATIONAL DRUG CONTROL STRATEGY OUTCOME MEASURES.

Section 1005(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1504(a)) is amended—

Vol. 139 WASHINGTON, MONDAY, NOVEMBER 8, 1993 No. 155

Congressional Record

United States
of America

PROCEEDINGS AND DEBATES OF THE 103ᵈ CONGRESS, FIRST SESSION

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The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I ask unanimous consent to get the yeas and nays on the Dole amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Thank you, Mr. President.

I yield the floor.

AMENDMENT NO. 1142

(Purpose: To provide for programs for the prosecution of driving while intoxicated charges to be included in the Edward Byrne Memorial State and Local Law Enforcement Assistance Program)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. DOMENICI, proposes an amendment numbered 1142.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SECTION 1. DRIVING WHILE INTOXICATED PROSECUTION PROGRAM.

Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751), as amended by section 621, is amended—

(1) by striking "and" at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(24) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles.".

Mr. DOMENICI. Mr. President I offer an amendment that will help our country address the continuing problem of suffering and financial losses due to accidents caused by drivers operating motor vehicles while under the influence of alcohol.

All of us are painfully aware of the psychological and physical costs and the fiscal implications which result from the carnage which we as a nation inflict upon ourselves every year on America's highways. Approximately 5 million of our constituents yearly are motor vehicle crash victims, costing employers 15 million days of lost time and $48.5 billion annually, according to some estimates. Drunk drivers are a major part of the problem. As a result, I am now introducing an amendment which will make a significant contribution to the attack on drunk driving throughout the country.

My amendment amends the 1968 Omnibus Crime Control and Safe Streets Act by adding a 22d category to the initiatives that States are allowed to spend money under the Edward Bryne Memorial State and Local Law Enforcement Program. My amendment would create a new category which will allow States to fund programs for the prosecution of driving under the influence charges and for the enforcement of laws relating to alcohol use and the operation of motor vehicles.

I want to stress to Senators that although I believe that my amendment is the right thing for states to do, it does not mandate they spend any of the funding they receive from the Edward Byrne Memorial grants for the purpose outlined in the amendment. My amendment simply provides them with the authority to do so if they so desire.

Mr. President, I believe my amendment is a step in the right direction. I ask my colleagues to support it.

Mr. HATCH. It is my understanding that this amendment is agreed to by both sides.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1142) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I am about to propound a unanimous-consent request. My distinguished friend from Connecticut has another amendment on drug emergency areas. I ask unanimous consent that we be able to proceed to the amendment with 30 minutes equally divided in the usual form.

Mr. HATCH. Will the Senator yield? Let us not agree to a time limit but proceed to the amendment, debate it tonight and get unanimous consent with regard to other amendments.

Mr. BIDEN. I amend my unanimous-consent request that we proceed to the LIEBERMAN amendment on drug emergency areas and that no second-degree amendments relating to guns be in order to the amendment, and that upon completion of the debate on the amendment tonight it be laid aside until there is unanimous consent to bring it back up.

That is my request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. I thank the Chair and thank the Senator from Delaware.

AMENDMENT NO. 1143

Mr. LIEBERMAN. Mr. President, I send an amendment to the ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment bered 1143.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. , VIOLENT CRIME AND DRUG EMERGENCY AREAS.

(a) DEFINITION.—In this section, "major violent crime or drug-related emergency" means an occasion or instance in v violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, in consultation with the Attorney General, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public th and safety.

(b) DECLARATION OF VIOLENT CRIME AND DRUG EMERGENCY AREAS.—If a major violent crime or drug related emergency exists throughout a State or a part of a State, the President, in consultation with the Attorney General and other appropriate officials, may declare the State or part of a State to be a violent crime or drug emergency may take any and all necessary authorized by this section and other law. For the purposes of this section, the "State" shall be deemed to include the District of Columbia and any United States territory or possession.

(c) PROCEDURE.—

(1) IN GENERAL.—A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive o of a State and local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the A General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint re for designation as a major violent crime or drug emergency area under this subsection.

(2) FINDING.—A request made under paragraph (1) shall be based on a written g that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives to protect property and public health safety.

(d) IRRELEVANCY OF POPULATION DENSITY.—The President shall not limit declara made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the migmitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) REQUIREMENTS.—As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief tive officer of a State or govern

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) REVIEW PERIOD.—The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request.

(g) FEDERAL ASSISTANCE.—The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information; and

(h) DURATION OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Federal assistance under this section shall not be provided to a Violent Crime or Drug Emergency Area for more than 1 year.

(2) EXTENSION.—The chief executive officer of a jurisdiction may apply to the Attorney General for an extension of assistance beyond 1 year. The President, in consultation with the Attorney General, may extend the provision of Federal assistance for not more than an additional 180 days.

(i) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall issue regulations to implement this section.

(j) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Section shall diminish or detract from existing authority possessed by the President or Attorney General.

Mr. LIEBERMAN. Mr. President, this amendment would give the mayors and Governors of our country, chief elected officials of States and localities, the opportunity to petition the President of the United States to declare a violent crime or drug emergency in their States or locality, making them eligible for special Federal assistance to fight back against local crime problems that have simply gone beyond their ability in the short term to control.

Crime is reaching unprecedented levels across our Nation. Over the past three decades, the number of crimes reported has increased from one crime per police officer in 1961 to five crimes per officer in 1991. The rise in the number of violent crimes has been particularly shocking. Violent crimes rose 14 percent between 1980 and 1988, and then 23 percent between 1988 and 1991. In addition, during the last 4 years, rapes have jumped 17 percent, robberies 33 [illegible], and aggrava[illegible] [illegible]ults [illegible] percent.

Even more startling and disturbing is the callous disregard for human life which is evidenced in existing data on crime. Last year, 24,000 Americans were murdered, many in drug and gang-related activities.

We clearly must do everything in our power to reverse these disturbing trends. Crime is literally ripping apart the social fabric of our communities. As noted, in the Public Policy Institute's "Mandate for Change, crime * * * turns strangers into enemies, unfamiliar ground into dangerous turf, and random social contact into risky business. When crime afflicts a neighborhood, those who can avoid it, stay away; those who cannot, suffer alone. The former become isolated, the latter abandoned."

So many of our neighbors, particularly our elderly citizens, are prisoners in their homes, especially at night, when the world outside becomes a forbidden zone. Just glance at the news on any given night reveals this growing madness in our society.

During the last several months, I travelled throughout my home State of Connecticut and met with police, prosecutors, prison officials, community officials, and countless citizen to discuss the problem of crime and Government's response to it. The underlying message conveyed to me in these meetings was the public's fear and yearning for Government to secure and protect their personal safety.

We in Congress have a special responsibility to take crime seriously and return to the public the sense of security that has been snatched from them in recent years. Indeed, we have a constitutional responsibility to ensure domestic tranquility. We must restore their faith in Government's ability and capacity to deal effectively with the crime problem. I believe my amendment takes an important step in that direction by increasing Federal support for the war on crime.

Mr. President, there are times and places when criminals get the upper hand in a neighborhood or a city, and local and State authorities do not have the resources to adequately safeguard people's lives. That is when the Federal Government must be able to rush in with the personnel, equipment and other resources needed by law enforcement agencies to strike back against gangs, drug traffickers, and other violent criminals.

In these instances, this amendment will give the President, upon consultation with the Attorney General, the power to declare that a violent crime or drug emergency exists in a State, community, or neighborhood. In doing so, the President would direct the agencies of the Federal Government to provide emergency Federal assistance to the designated area so as to supplement State and local efforts to save lives and protect property, public health, and safety.

That assistance [illegible] come in the form of personnel, equipment, supplies, facilities, financial assistance, and [man]agerial, technical and, advisory services, including communications support and law enforcement-related intelligence information. Requests for [dec]laration of an emergency must be made in writing by the Governor and chief executive officer of any affected State and local government. The President must act on these requests within [illegible] days.

I believe the case for this is reinforced by recent events in Hartford, CT. Facing a particularly violent [illegible] of gang activity in Hartford, city government and law enforcement officials launched Operation Liberty—an aggressive State and local effort to reduce violence in a number of targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in [deal]ing with this emergency, the State has provided additional police officers and other forms of tactical support sorely needed in certain areas of the city.

While there is still much work to be done, preliminary reports are [illegible]r[illegible]aging. The Hartford Courant r[illegible]ly reported that there is little dispute that violence and gang activity [has] been reduced dramatically. As a result of these coordinated efforts, citizens in affected areas are regaining a sense of security that was stripped from them by these gangs. There has also [illegible] a drop in the number of assaults aga[inst] police officers.

I believe that the priorities outlined in this amendment must be enacted into law if we are serious about fighting crime on a national basis. [illegible]r[illegible]ing a neighborhood, a city, or a [illegible] a violent crime or drug emergency area will have two immediate, positive effects:

First, it would be a powerful signal to lawbreakers that all of society takes their crimes seriously—not just their victims, not just the local cops. But everyone up to and including the President of the United States and the Attorney General knows that they are up to, and are willing to fight back. I [illegible] every confidence that it would [illegible] a chill down the spines of wrongdoers, just as it would give a sigh of relief to the beleaguered citizens living under the yoke of crime.

The second benefit of this strategy would be an immediate infusion of added resources, including manpower, equipment, financial assistance, other logistical assistance, into a crime-plagued region, quickly bolstering the limited scope of local police, and giving the law enforcement [illegible] whelming force to use aga[inst] lawbreakers. Too often, our [illegible] police are in unfair fights.

While there will be critics of the medicine I prescribe to help remedy this national ailment, I fully [illegible] the biggest supporters of this idea will be the people who live in those neighborhoods where cr[illegible] taken [illegible]. It [illegible] they who would welcome the ar-

No. 156—Part II

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 103d CONGRESS, FIRST SESSION

Vol. 139 WASHINGTON, TUESDAY, NOVEMBER 9, 1993 No. 156—Part II

Senate

(Legislative day of Tuesday, November 2, 1993)

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

(Continued)

AMENDMENT NO. 1143

Mr. LIEBERMAN. Madam President, the Senate debated this amendment at length last night, and I wish to just speak very briefly on it.

I thank the chairman of the committee, the Senator from Delaware, and the ranking member, the Senator from Utah, for their thoughtful encouragement and support.

This amendment will enable the chief elected official of a State or local government to apply to the President of the United States to declare an area within their jurisdiction a violent crime or drug emergency area.

If a President so declares, the President will be authorized to send whatever help he can, personnel, resources, equipment, financial assistance, within the law. That is within existing appropriations available to the President; indeed, within appropriations that will be made possible by this very strong anticrime package that we are in the process of adopting here in the Senate this week.

Madam President, stated simply, we have seen it in my State in Hartford, New Haven, Bridgeport, at different times. Unfortunately there are moments when the local law enforcement officials are outgunned and outmanned by the criminals. Just as in cases of natural disaster, when local officials—whether it is a flood, a hurricane, or the fires that have spread in California in these recent days—when local officials are overwhelmed, the problem is larger than they can handle, they turn to the President and ask for a declaration of natural disaster.

Here in a sense what we are saying is the President can declare an unnatural disaster, an unnatural disaster caused by violent crime and drugs, an emergency, and can use whatever resources are at his control on a short-term basis to help local officials restore order, and to protect law-abiding citizens.

Madam President, I again thank my colleagues for their support. I urge adoption of the amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, we believe this to be a great amendment, and both sides are willing to accept it.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Connecticut. The amendment (No. 1143) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, we are now at the point on this bill where we have a bill that can really make a difference in this country. We have taken a lot of these amendments—many of them are very thoughtful and will make a difference in our efforts against crime in this country.

This is a bill that is going to spend over $20 billion in helping the States and the Federal Government to complete their missions against criminal activity in this country. Never in the history of this country have we come so far on an anticrime bill as we have on this one. There has never been anything like it. I have never seen anything come close.

We have had bipartisan help on this bill. Both Democrats, and Republicans have worked together. We have provisions in here that would solve many, many problems in our society and help us toward a solution to make it happen.

We have had the help of the distinguished chairman of the Appropriations Committee, who has provided a means whereby we have the funding to do this, which has always been a problem in authorizing a crime bill. I cannot imagine the President not being proud of what we have done up until now. In fact, I cannot imagine anyone not being proud of what we have done up to now.

If I had my way, and I think the way of most in this body, we would go to third reading right now. We would pass this bill in its current form, and I think it would be almost impossible for anybody to reject it. I personally believe it would pass so overwhelmingly that there would not be any question about it.

If we do not do that and we start now into the problems that could arise, we may never get a crime bill.

We need to do one other thing, and that is, we need to delete the habeas corpus provision of this bill. I think both sides would like to do that because we know that that is highly controversial. We know that that could stop the passage of this bill if it is not handled exactly right.

At the appropriate time we will move to strike the habeas corpus provisions, as much as I feel deeply about it. By the way, nobody in this body feels more deeply. It was the Hatch amendment in 1991 that passed the Senate 58 to 40. It would have reformed habeas corpus and solved that problem for every State in the Union from that time on.

I feel very deeply about the habeas corpus problem, and I would like to resolve and reform it. But we cannot do that and pass a bill like this.

So, as deeply as I feel, as much as I think that needs to be done, as important as that may be, I am willing to

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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rival of the Federal help with hope and open arms.

As the Senator from Delaware said earlier, in this bill we are taking the Federal Government into a new cooperative relationship with the States and localities in trying to fulfill our constitutional responsibility to provide for domestic tranquility, which certainly does not exist in too many neighborhoods of our country now.

Clearly, as the Senator from Delaware said, there is a limit to how far we can go in federalizing the criminal law. But we have taken the right step in recognizing that we have this authority, and we have done so in a way that is meaningful. Again, not just with rhetoric but with serious proposals and on a bipartisan basis, we have put forward the money to make those proposals real. Thus, this extraordinary response to the fact that too many criminals are going through the revolving doors because there is not enough jail space to put them into, and we have provided billions of dollars to help the States and localities build jails. Thus the fact, acknowledging our Fereral responsibility, we have provided these billions of dollars to put 100,000 more police out onto the streets. And we have also added to the Federal criminal law, providing the extra deterrent that the Federal system enables us to provide.

I have spent a fair amount of time in recent months around my State talking to police, prosecutors, citizens, judges. There is an interesting fact that I can report to the Chamber. While there are some—including some editorial writers—some Federal judges in fact, who decry the so-called federalization of the criminal law, when I talk to the local police and the local prosecutors they say to me one of the best things that has happened in the fight against crime in recent years is that we have added a Federal punch to the criminal law, that we have created task forces throughout this country bringing together Federal, State and local investigators, enforcers, prosecutors. As more than one police officer and prosecutor in my State has said to me, the one part of the criminal justice system that is working today is the Federal part, because the criminals know that, and local prosecutors are using Federal law to target the worst of the local criminals, involved in the most serious of local crimes.

They know if arrested under the Federal law they almost always will be taken to trial, because the Federal courts have that capacity. And, if convicted, they will almost always go to jail, and they will go to jail for a good long period of time as they should under the mandatory minimum sentencing provisions of Federal law.

So we have taken some serious steps forward in bringing the Federal Government to a reasonable partnership with the States in protecting law-abiding citizens from crime. This is the next step I am proposing.

It says that when a community and its police officers are simply outgunned and outmanned—as has happened in too many areas of our country—by the criminals, that the chief elected officials of the local areas and of the States can turn to the President and say, as they do in the case of a natural disaster—a flood, a hurricane, a fire—"Mr. President, we need the help of the Federal Government for short term to come in and help us to restore basic order."

The President, under this proposal, will have the ability to bring together existing Federal resources and send them in to help people in the local area. We have a special responsibility, I think, Mr. President, to help to make that happen.

This amendment will give the President, upon consultation with the Attorney General, the power to declare that a violent crime or drug emergency exists in a State, community or neighborhood. In doing so, the President would direct the agencies of the Federal Government to provide emergency Federal assistance to the designated area so as to supplement State and local efforts to save lives and protect property, public health, and safety.

The Federal Government, the President, and the Attorney General will be able to rush in with the personnel, equipment, financial assistance and other resources needed by local law enforcement agencies to strike back against gangs, drug traffickers or other violent criminals.

Requests for declaration of an emergency under this amendment must be made in writing by the Governor and Chief Executive officer of any affected State and local Government, and the President, under the amendment, would be required to act on those requests within 30 days. Of course, we hope that the President would act much more rapidly.

I do want to stress, in terms of the concerns about who controls law enforcement, that any Federal personnel, any Federal equipment sent by the President to help local police would be under the administrative authority of the local police chief or the highest law enforcement official in that jurisdiction, pursuant to terms negotiated prior to deployment among the parties.

Mr. President, I believe the case for this amendment was reinforced by recent events in the capital city of my State of Connecticut. Facing a particularly violent rash of gang activity in Hartford, literally a war between two gangs that effectively took over control of one of the great historic neighborhoods of Hartford, CT, city government and law enforcement officials turned to the State of Connecticut and said: "We need help."

The State responded under a new law that Connecticut has that enables the Governor and the public safety commissioner to dispatch State troopers to help local law enforcement officials in much the same way this amendr[illegible] would authorize the President of the United States and the Attorney [illegible]eral to send Federal help to local enforcement officials.

In Hartford, State and local officials formed something called Operation Liberty, an aggressive joint effort [illegible] reduce violence in a number of targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in dealing with this emergency, the State provided additional police officers and other forms of tactical support.

While there was much work to be done, I am pleased to say that the reports of what happened were encouraging. The Hartford Current reported in an editorial that there was little dispute that violence in gang activity as a result of the additional personnel and equipment in that neighborhood was reduced. In fact, the crime rate [illegible]erally dropped by more than 15 percent. As a result of these coordinated efforts, citizens in affected areas regained a sense of security for that period of time, a sense of security that was taken away from them by those gangs.

I must say that I spoke to a woman in one of those neighborhoods during one of my walks through one of [illegible] neighborhoods and she said to me:

> Senator, I know that when the State [illegible]ers arrived and when the extra police into our neighborhood, some people might say that this place looks like a police [illegible] But you know what, Senator, I felt [illegible]fortable. I felt secure for the first time in long a time. I felt that I could go out of house, walk in my neighborhood without fear of being the victim of crime, without fear of being an unintended bystander caught in a crossfire.

I believe that the priorities outlined in this amendment should be enacted into law to continue the expression that is so much a part of this bill, that we are really serious about fighting crime on a national basis.

Declaring a neighborhood or a city or a State a violent crime or drug [illegible]rgency area will have at least two effects that go beyond the direct help that will be provided by Federal personnel and perhaps even Federal f[illegible]cial assistance.

First, I believe it would be a powerful signal to the lawbreakers that all of society takes their crime seriously, not just their local victims, not just the local cops, but everyone up to and including the President of the United States and the Attorney General of the United States know what those criminals are up to and that we are willing to fight back. I am hopeful that it will send a chill down the spines of t[illegible] criminals, just as it wo[illegible] give a sigh of relief to the beleaguered citizens living under the yoke of crime.

Mr. President, the second benefit of this strategy, I think, would be an immediate infusion of added resources, including, again, personnel, equipment, financial assistance and other logistical assistance into a crime-plagued region, giving the President the power, as he d[illegible] in a natural disaster, to effectively say that t[illegible] violent crime and drug emergency areas have become unnatural disasters, manmade disasters, and to take the resources provided to the President, to the Justice Department under existing law and focus them for a limited period of time into this area where the local police simply are unable themselves to return control and security because they have been put in an unfair fight.

I know that there may be some who will question this remedy, but I believe that the biggest supporters of this proposal will be the people who live in those neighborhoods where the gangs have taken over. It is they who will welcome the arrival of Federal help with hope and with open arms.

I hope that the Senate will agree with me, support this amendment, and provide this other means of help to our local and State law enforcement officials.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, once again, let me compliment my friend from Connecticut. Back years ago when I first drafted the drug czar legislation—and it passed—and we had the first Presidential finding on what our national drug strategy should be, we had the first so-called drug bill. And in that bill, I introduced the concept called drug emergency areas whereby we would treat drug emergency areas and identify them the same way we do natural disasters.

No one bats an eye in this town or this Nation—nor should they—I might add, when the poor people of Iowa and Missouri, and Kansas and Nebraska are flooded by the Platte, Missouri and Mississippi Rivers and are wiped out. No one bats an eye when the people in the Los Angeles area suffer the ravages of the consequences of an arsonist, apparently, and the Santa Ana winds combining to rob them of their homes and their livelihoods and their lives. No one thinks twice when Hurricane Andrew comes ripping through the State of Florida and all the way through Louisiana, wreaking havoc on anything in its path. They are true national natural disasters and emergencies.

As the Senator from Connecticut knows, as well as anyone, having been a former attorney general of the State, there are neighborhoods, towns, entire sectors of cities that are natural disaster areas because they are drug emergency areas.

I can take you to Philadelphia, Armingo Avenue; I can take you, I suspect, to parts of New Haven; I can take you to parts of Wilmington, DE; towns in my State, as small as the State is, where the drug trade has literally—not figuratively, literally—taken over a section of the town—armed persons on the street, plying and selling their wares, occasionally shooting each other for c trol of a corner, people afraid to walk out of their homes, overwhelming local police, because, as the Senator knows, when the major drug cartels, whether they are Colombian, Jamaican, Mafia, whatever the nature of the cartel, decide to move into an area, they do not move in in a small way. They move in with firepower, financial power, organizational power, and they overpower a community.

This is an example of what I was talking about before. This is where the Federal Government over the past 40 years has developed a genuine expertise, where we have a capability that far exceeds any State capability. No matter how incredibly competent major State law enforcement agencies are, they pale in comparison to the capabilities that exist at the Federal level.

When I introduced the last Biden bill that was filibustered for 2 years by my Republican colleagues, I went even further. I had $300 million in the bill for drug emergency areas, allowing the President to designate drug emergency areas.

I think we have to think in terms of natural disasters. If you ask me whether or not I would rather a hurricane come through my neighborhood where I live on a one-time occasion or you gave me the awful alternative of having a Jamaican organized crime ring move in peddling drugs or the Mafia or the Colombian cartel or the Cali cartel move in to take over my neighborhood, at least I know what the hurricane is. If I make it past that hour, I will live and I can reconstruct my life; my children, if they make it through that hurricane, will live. We will have financial deprivation; we may have serious injuries, but we can rebuild.

People who have these cancerous organizations move into their neighborhoods in towns and cities, it is not a one-time event. It is a lifetime event.

I strongly support the Senator. He does not even ask for additional money. He asks only for the authority of the President to declare an area a drug emergency area and use existing Federal resources to come to the aid of that locality. This is a place where a true Federal-State partnership should exist. This is a place where we can bring to bear the significant resources of the Federal Government.

I might add that my friend from Utah, in his addition to my rural crime initiative in this bill, provided the ability to do something like this. We added a number of drug enforcement agents who are able to go into rural communities and do the kind of thing the Senator from Connecticut is asking to do on a larger scale in areas where the cancer has spread. But make no mistake about it, there is no exaggeration on the part of the Senator from Connecticut when he says this is a real need. This is literally like a cancer in the body politic when these major drug trafficking organizations literally take over cities, parts of cities.

Let me conclude by saying I tio earlier that occasionally, s I do not have an apartment or in Washington, I stay overnight at a hotel. It is more practical frugal to do it that way. I will get to the hotel at night and turn the television. They have these movie channels on. There are more ries now—my wife and I are moviegoers at the local movie theaters—and you the previews for coming attractions. I want the Senator to know upcoming movies and grade movies are now on the air which have as their premise that it is the year 1999 or 2005, and entire sectors of cities have overtaken by drug gangs. The s of the movie is having it go out get some Robocop or some supercop or some madman or some Sylvester Stallone-type character to go in to no man's land. That is a Holly l exaggeration of what exists now. S s of these areas are literally a man's land, but real, live, decent le live in that no man's land. This is an area where the Federal Government can should, and I believe must loca law enforcement with the considerable expertise and experience we have to bear.

I hope, when the time comes for us to vote on this tomorrow, the majority of my colleagues will agree with the ator from Connecticut, as I do, and vote to support his legislation.

Mr. BIDEN. I yield the floor.

The PRESIDING OFFICER. The ator from Connecticut.

Mr. LIEBERMAN. Mr. President, thank the Chair and I thank fr and colleague from Delaware for his very powerful statement and, of course for his support of this amendment. really wish to thank him in a general and historic sense—not so historic—for the fact that it was his original legislation which is the inspiration for this amendment.

The amendment grew out of e ences that we have had in Connecticut some of the extraordinarily experiences with the local -Federal task forces. As we began fashio the amendment, we looked work the Senator from Delaware has done. This seemed like the perfect response to it.

I wish to share with my friend and colleague an experience which validates so much of what he says about what has happened in too borhoods in our country and leads the kinds of films that the Senator referred to.

A while ago, the chief st attorn of Connecticut, John M. ley, J convened what he called a summit crime, with police officials, p tors, State and local, Federal legislators, and we saw there a tape I h heard about in the last 2 or 3 from various local law enforcement ficials in Connecticut that start as bad as we know things are.

It was a tape taken by the resident a neighborhood in Bridgeport, CT, o his window evening and night. you saw the tape, you would be emb rassed to believe that this was America. You would think it was another country that we too often have looked down on, or we say, OK, that happened somewhere else. Frankly, it looked like a war zone.

The situation I will describe briefly to the Senator is this: The day before, a gang that controlled this particular neighborhood for the purpose of drug sales and distribution had its quarters raided by the local police. I believe—I am not sure—that the BATF may have been involved. The target of the raid was the weapons possessed by this gang. A tremendous arsenal was seized. Word got out that this had occurred. These gang members apparently were fearful that other gangs, hearing that they had been disarmed, would come in to try to take over their territory in this neighborhood. I do not know the means, but they either went out and acquired another arsenal immediately that day or they had something else hidden that the police did not find.

And there you see on the streets of Bridgeport, CT—and this tape was taken by a citizen, a videotape—individuals walking with semiautomatics, long guns, on the streets in clear view essentially, and on the sidewalks, walking in the streets as if to say this is our territory, stay out of it.

Mr. BIDEN. Looked like Somalia.

Mr. LIEBERMAN. Looked like Somalia, looked like Beirut at an earlier time, at one point they were shooting up at the streetlights, lights that the local police had just replaced because they had earlier been shot out as a way to maintain darkness which would provide the cover for drug sales.

Incidentally, one of the terrifying—we laughed but it was a rueful laugh. It took one of these guys probably 10 shots to knock out the streetlight, not a very good shot, and yet possessing a very powerful weapon. Obviously, you worry about the impact if he were shooting at another individual on the street.

You see in this film a mother walking by with a child, apparently coming from shopping. These guys are walking around with automatic weapons strung over their shoulders.

Mr. President, that is an extreme case, but too often in too many neighborhoods of our country that case is replicated or comes close to it. That is what this is all about.

I would add just a few points again just to stress this. The Federal, State, and local task forces that have been set up in part by the former director of the FBI, Judge Sessions, who came under some criticism on different matters. Nonetheless, it showed some real leadership in setting up these task forces, playing a key role in establishing, along with the previous Attorney General—which have worked magnificently with State and local police, bringing to bear FBI agents, DEA agents, when appropriate Immigration or Customs agents, using the U.S. attorneys, working State and local police. And, basically, in Connecticut State and local police saying this gang is controlling this neighborhood, Federal Government, we need your help, come in with your extra surveillance capacity, your sophisticated investigative help.

In New Haven, for instance, a gang known as the Jungle Boys occupied a housing project, literally occupied it, chose it because they assumed the residents would not object, and also because it was right adjacent to the interstate highway—laughable when you think about it, providing kind of an easy-on, easy-off access for drug purchasers, mostly from the suburbs, coming in to New Haven from the suburbs—took it over, and victimized the people in the project. Ultimately, the local police acknowledged they could not deal with it, and brought the Federal agents in.

It is a long and complicated story. But basically they made several arrests, and sent the two leaders of this gang away to Federal prison for 21 and 28 years, respectively.

That is the kind of cooperation this amendment is intended to build on.

Mr. President, as the Senator from Delaware said, I have not included in this amendment any specific funding. I have given authority here, this amendment gives authority to the President and the Attorney General to utilize resources available under law.

My hope is that some of the resources that are, in fact, made available under this law would be used by the President to respond to a local violent crime or drug emergency.

I have some hope in believing that there may be additional amendments, agreed to on a bipartisan basis, that will provide more funds for more U.S. attorneys to prosecute, more FBI agents to be involved in the war against crime, perhaps more DEA agents to help with drug emergencies.

And those extra resources provided under law, hopefully, will be at the call of the President to organize and target these areas that have just gone out of control and, quite literally, have become violent crime and drug emergency areas. The words that the chairman of the Judiciary Committee spoke are just right.

We have natural disaster areas. No one objects. Everyone supports the President when he goes in and helps areas, as he has now recently with the fires in California.

These are unnatural disasters caused by crime in too many of our cities and towns. I think it is time to give the President that same authority to come to the aid of local law enforcement and the people, the law-abiding people, who live in those cities and towns.

Mr. President, I again thank the Chair. I thank my friend from Delaware.

I ask that when the vote be taken on this amendment it be taken by the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BIDEN. Mr. President, I ask the Senator to withhold the request for the yeas and nays, not that we will not give him the yeas and nays. But since we have no time agreement at this point, not because he does not, but we cannot get one on the other side, well as one amendment may be in order.

So if he will withhold that until tomorrow, I assure him if he wants a vote, he will get a vote on this.

Mr. LIEBERMAN. I thank the Senator. I withhold until tomorrow.

Mr. BIDEN. Let me say to my friend from Connecticut, Mr. President, that in the last crime bill that I wrote had provisions to provide for a significant increase in the number of FBI agents and prosecutors. It is my intention, and we are working out the details now at the urging of my friend from Connecticut and others, that in this bill we provide for over 5 years and up to $1 billion for additional Federal assistance relative to prosecutors and FBI agents in order to accommodate the kind of things he is talking about.

I really do think this is, as characterized by the Senator from Utah, what we have done so far if we pass it, the most significant, sweeping, and bold effort that the Federal Government has ever undertaken relative to dealing with crime in America.

I might add it is also probably the most often-called-for help that we have had as Senators from our people.

I understand that my friend from Connecticut had another amendment that both sides are prepared to accept. I do not know whether it is appropriate at the moment. But if the Senator is prepared to move on that amendment, we would be delighted to accept that amendment.

Mr. LIEBERMAN. Mr. President, I am prepared to move, and with the approval of the Senator from Delaware, I will send the amendment to the desk at this time.

The PRESIDING OFFICER. Is there objection to temporarily laying aside the pending amendment? Without objection, it is so ordered.

AMENDMENT NO. 1144

Mr. LIEBERMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself and Senator D'AMATO, proposes an amendment numbered 1144.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

DRAFT

Office of the Attorney General

28 CFR Part 92 [New]

[AG ORDER]

RIN 1105-AA29

Designation of Violent Crime and Drug Emergency Areas

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a provision of the Violent Crime Control and Law Enforcement Act of 1994 that authorizes the President to designate a State or part of a State to be a violent crime or drug emergency area, and to direct Federal assistance to that area, when violent crime or drug-related activity in the area reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety. The provision also prescribes that the chief executive officer of a State or local government shall send requests for designation to the Attorney General, in such form as the Attorney General may require, for review, and that the Attorney General shall issue

regulations to implement the section. This proposed rule describes the information that must be set forth in a request for designation of a violent crime or drug emergency area, and the basic process for the Attorney General's review of such requests.

DATES: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Written comments should be submitted to:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: On September 13, 1994, the President signed the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?) ("the Act"). Section 90107 of the Act authorizes the President, upon finding that a major violent crime or drug-related emergency exists in a given State or part of a State, to designate that State or part of a State to be a violent crime or drug emergency area and to make Federal assistance available to the designated area. The chief executive officer of a State or part of a State shall forward a request for such designation to the Attorney General in such form as the Attorney General may by regulation require; the Attorney General then must review the request, and the President must decide whether to declare a violent crime or drug emergency area. Section 90107 imposes a 30-day deadline for decision on such requests. This proposed rule specifies what must be contained in requests for designation submitted to the Attorney General and describes the general process for the Attorney General's review of such requests.

Purpose of Section 90107

Section 90107 of the Act is designed to assist areas experiencing a major violent crime or drug-related emergency by authorizing the President to designate the area to be a violent crime or drug emergency area and to provide Federal assistance to the area. The term "major violent crime or drug-related emergency" is defined by section 90107 as "an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety." If the President finds that such an emergency exists in any State or part of a State and declares the area to be a violent crime or drug emergency area, the President may then make Federal assistance available to that area; specifically, the President may (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance local efforts, insufficient to alleviate a violent crime or drug emergency. For all of these reasons, it is anticipated that the President will declare only a very limited number of violent crime or drug emergency areas under the Act. [Examples of situations that might count as emergencies covered by the Act are when a jurisdiction has suddenly become a critical manufacturing, transhipment, or distribution center for illicit drugs, and the State and locality is fundamentally unequipped to handle this new development; or when a notorious gang or other organized crime group has moved into the jurisdiction, causing violent crime rates to dramatically escalate, and State and local law enforcement officials are not experienced in dealing with such organized violence.]

Consistent with the intent of section 91017, the rule proposed below is designed to elicit relevant information relating to requests for designation by jurisdictions experiencing extraordinary violent crime or drug problems that cannot be alleviated by State and local efforts, so that the Attorney General and the President can make an informed determination as to whether to divert Federal law enforcement resources from their existing uses to deal with an emergency situation. To that end, the proposed rule (1) requires applicants to provide detailed information, data, and certifications to assure the Attorney General and the President that the requested Federal assistance, if provided, would be to respond to a bona fide violent crime or drug emergency requiring extraordinary Federal assistance, not to respond to routine crime problems in the area or to supplant State and local efforts; and (2) outlines basic procedures for the Attorney General's review of requests for designation.

Submission and Form of Request

Section 90107 provides the basic procedure for making requests for designations of a State or part of a State as a violent crime or drug emergency area. Under that section, the chief executive officer of a State or local government must forward a request for designation, in writing, to the Attorney General. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107. A request must be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety. Section 90107 also provides that, as part of the request for designation and as a prerequisite to Federal assistance, the chief executive officer of the applying State or local government must: (1) furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency; (2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and (3) specify how Federal assistance provided under this section is intended to achieve those goals.

Pursuant to section 90107(i), which authorizes the Attorney General to issue regulations to implement section 90107, and section 90107(c)(1), which requires requests to be submitted in such form as the Attorney General may by regulation require, this proposed rule further delineates the process for submitting requests. The proposed rule encourages the chief executive officer of the applying State or local government, before submitting a request for a designation, to consult informally with appropriate Federal law enforcement officials. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and of this rule, and the appropriateness of the proposed declaration. Once the chief executive officer has decided to make a request for designation, the request should be submitted, in the form of a letter addressed to the Attorney General, directly to [the Assistant Attorney General, Criminal Division/the Deputy Attorney General], together with [] copies. This process will permit the internal evaluation of a request through the most appropriate channels and in the most expeditious manner.

The proposed rule requires a request for designation to contain the following information: Description of Emergency; State Resources; Local Resources; Plan of Action; Certifications; and Basic Information. The specific information to be provided in each of these sections is discussed below.

The chief executive officer of the applicant jurisdiction is required to provide a detailed statement of the nature of the emergency, including specification of the boundaries in which exists, its date of onset, cause, severity, and magnitude. This section of the request must contain any currently available and reliable statistics on the levels of the particular violent crime- or drug-related activity constituting the emergency within the requested violent crime or drug emergency area, since the date of onset of the emergency and in each of the five years preceding the date of onset of the emergency. It should also contain data on similar or related crimes and relevant indicators, such as drug- or violence-related hospital admissions, that would support the existence of the emergency. This information is required in order to allow the Attorney General and the President to determine whether the situation described in the request constitutes a violent crime or drug emergency within the meaning of section 90107.

Additionally, the proposed rule, like section 90107 itself, requires the applicant to provide details on the State and local resources that have been or will be committed to alleviating the emergency, along with a discussion of reasons why such combined resources are not sufficient to resolve the emergency. This information is needed in order to determine whether Federal assistance is needed to supplement State and local efforts and capabilities.

The proposed rule also requires the chief executive officer to submit a plan of action specifying: (a) the actions, separated into short-term and long-term actions, that have been or will be taken to alleviate the emergency; (b) the types and levels of Federal assistance requested, stated as specifically as possible, and the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested; (c) explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, and specific timetables for implementation of the plan; and (d) how Federal assistance provided under section 90107 is intended to achieve those goals. The submission of this information conforms to and implements the requirement of section 90107 that the chief executive officer shall submit a detailed plan outlining the applying government's short- and long-term plans to respond to the violent crime or drug emergency.

Finally, the proposed rule requires the chief executive officer of the applying State or local government to make various certifications, including (a) that there has been consultation between officials of the State government and officials of the local government(s) included within the area requested to be designated to be a violent crime or drug emergency concerning the emergency and the need for Federal assistance to respond to the emergency; (b) that the chief executive officer has determined that the emergency is of such severity and magnitude that State and local resources cannot resolve the emergency; (c) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and (d) that the chief executive officer agrees to be bound by section 90107, this rule, and any other guidelines that the Attorney General or the President may prescribe. The required certifications are designed to ensure that any assistance provided under section 90107 is used only for the intended purposes of that section.

In the event that a request comes from a local government, the request must also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

Attorney General Review of Requests

This proposed rule sets out basic procedures for the Attorney General's review of requests for designation. It provides that the Attorney General shall review a request submitted pursuant to section 90107 in time to allow the President to make a decision regarding such request within 30 days of the Attorney General's receipt of the request. The proposed rule further provides that if the request fails to provide all information required by section 90107 or by these regulations that the Attorney General may return the request to the applicant for the provision of such information; in that event, the request is not deemed to be received for purposes of the review period until all required information has been provided. The proposed rule also authorizes the Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] to request information in addition to that required by the rule. Finally, in exigent circumstances, the applicant jurisdiction may receive a waiver of any requirements of this Part, so long as the statutory requirements are met. These provisions are designed to help the Attorney General obtain all relevant information regarding the request for designation before the review period expires.

Additionally, the proposed rule sets forth criteria that the Attorney General may consider in reviewing requests for designation. Section 90107 authorizes the President to designate a violent crime or drug emergency area if the President determines that the violent crime or drug-related activity in the area has reached such levels that Federal assistance is needed to respond effectively to the emergency. In reviewing requests for designation, the Attorney General will consider all factors that relate to the question whether the violent crime or drug-related activity has reached such emergency levels. Factors that the

Attorney General may consider include: (a) the nature, cause, and extent of the emergency within the requested area; (b) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency; (c) the efforts of State and local government(s) to free up resources to respond to the emergency; (d) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts; (e) the coherence and feasibility of the applicant jurisdiction's plan for responding to the emergency, and whether the requested Federal assistance will significantly contribute toward achieving the goals set forth in that plan; (f) whether the applicant jurisdiction has received, or could receive, Federal resources under some other provision or program to alleviate the emergency; and (g) other demands on Federal law enforcement resources. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. The specified criteria are each consistent with, and designed to implement, the basic objective of section 90107: that Federal assistance be provided only when needed to supplement State and local efforts to alleviate a violent crime or drug emergency.

otherwise lawful activities of the Attorney General, the Department of Justice, or any other Federal agency.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order No. 12612

The regulations proposed herein will have not substantial direct effect on the States, on the relationship between the national government and the States, and on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Executive Order No. 12606

The Attorney General certifies that she has assessed this proposed rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been cleared by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is [].

List of Subjects

By the authority vested in me as Attorney General by section 90107(i) of the Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 92 as follows:

Part 92 -- Designation of Violent Crime or Drug Emergency Areas

§ 92.1 Purpose

The regulations of this Part describe the required form and content of the information that must be included in requests submitted by the chief executive officer of a State or local government to the Attorney General for a Presidential designation of the State or locality as a violent crime or drug emergency area under section 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?). These regulations also describe the basic procedure for the Attorney General's review of such requests.

§ 92.2 Definitions

(a) *The Act* means § 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat.1988(?).

(b) *major violent crime or drug-related emergency* means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(c) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(d) *Local Government* means a political subdivision of a State, including, but not limited to, a city, town, village, county, township or parish.

(e) *Requested violent crime or drug emergency area* or *requested area* means the physical area including any State, city, town, village, county, township or parish, or part thereof, specified in a request for designation of a violent crime or drug emergency area.

§ 92.3 Consultation Prior to Submission of Request

The Department strongly encourages the chief executive officer of a State and local government, if possible, to consult informally with all appropriate Federal law enforcement officials prior to submitting a formal request for designation of a violent crime or drug emergency area under section 90107. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and this Part, and the appropriateness of the proposed designation.

§ 92.4 Submission of Request

(a) *Requesting Official.* A request for a declaration designating an area to be a violent crime or drug emergency area under section 90107 of the Act shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor). The chief executive officer of a State government may request a declaration designating the State or any part of the State to be a violent crime or drug emergency area; the chief executive officer of a local government may make a request for designation of that part of the State under his or her jurisdiction. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107.

(b) *Designated Official to Receive Requests.* A request under section 90107 shall be submitted in the form of a letter addressed to the Attorney General of the United States, and sent directly to the [Assistant Attorney General, Criminal

Division/Deputy Attorney General], United States Department of Justice, 10th St. & Constitution Ave. NW, Washington, D.C. 20530, Attn: Violent Crime and Drug Emergency Area Requests Coordinator. The submission shall include [] copies of the request.

§ 92.5 Contents of Request

A request for a designation under section 90107, signed by the chief executive officer of the applicant jurisdiction, shall include the information set forth in the following paragraphs. If a request is submitted by the chief executive officer of a local government, the requests shall also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

(a) *Description of Emergency*. A statement of the nature of the emergency, including specification of:

(1) the political and/or geographic subdivision(s) in which the emergency exists;

(2) the date of onset of the emergency;

(3) the cause of the emergency; and

(4) the severity and magnitude of the emergency, including the following data:

(A) currently available and reliable data on the levels of the particular violent crime (murder, rape, aggravated assault, robbery, etc.), drug smuggling, drug trafficking or drug abuse violence that produced the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area,

(B) currently available and reliable data on the levels of similar or related crimes that would support the existence of the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area, and

(C) currently available and reliable data on relevant indicators, such as drug- or violence-related hospital admissions (DAWN statistics), drug seizures, or results of drug testing of arrestees (DUF statistics), in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area.

(b) *State Resources*. A statement of the nature and amount of all State resources, including both State law enforcement resources and State non-law enforcement resources, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(c) *Local Resources*. A statement of the nature and amount of all local resources, including all local police resources within the area requested to be designated to be a violent crime or drug emergency area, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(d) *Inadequacy of Available Resources*. A discussion of reasons why the available resources listed in paragraphs (b) and (c) of this section, when combined with any Federal assistance already received, are not sufficient to resolve the emergency;

(e) *Plan of Action*. A detailed plan outlining the applicant government's short- and long-term plans to respond to the violent crime or drug emergency, including specification of:

(1) <u>Actions Taken or to be Taken Under State or Local Law</u>. Actions, separated into short-term and long-term actions, that have been taken or will be taken under State or local law to alleviate the emergency,

(2) <u>Requested Federal Assistance</u>. (A) The types and levels of Federal assistance requested under Section 91017, stated as specifically as possible (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services),

(B) the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested, consistent with the Federal agency's mission and operational capacities,

(C) the length of time for which the resources are requested or the specific event that will terminate the need and request for such resources, and

(D) all related Federal assistance, awards, and requests for Federal assistance, current or anticipated, including whether any non-law enforcement resources have been or will be requested to respond to non-law enforcement elements of the emergency, and including the agency from whom the assistance or award was or will be received or to whom the request was or will be made, and the program under which the request was or will be made; and

(3) Explicit Goals to Be Achieved and Timetables for Implementation. Explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, specific timetables for implementation of the plan, and how Federal assistance provided under section 90107 is intended to achieve those goals.

(f) *Certifications*. Certifications

(1) that there has been adequate consultation between the chief executive officer or other appropriate official of the State government and the chief executive officer(s) or other appropriate official(s) of the local government(s) included within the requested area concerning the nature of the emergency, the extent of State or local resources available to respond to the emergency, and the need for Federal assistance to respond to the emergency;

(2) that the chief executive officer has determined that the major violent crime or drug related emergency is of such severity and magnitude that Federal assistance is necessary to

ensure an effective response to save lives and to protect property and public health and safety;

(3) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and

(4) that the chief executive officer agrees to be bound by the provisions of section 90107 and of this Part, and any other guidelines that the Attorney General or the President may prescribe.

(g) *Basic Information*. The full name, title, address and telephone number of the chief executive officer of the State or local government submitting the request, and of a principal contact person.

§ 92.6 Review of Request

(a) *Review Period*. The Attorney General shall review a request submitted pursuant to section 90107 and in accordance with the regulations set forth in this Part within time for the President to decide within 30 days of the Attorney General's receipt of such request whether to designate the requested violent crime or drug emergency area.

Preclude? no comments

(b) *Incomplete Requests*. If the request does not include all information required by section 90107 or by this Part, and if there has not been an appropriate waiver under paragraph (d) of this section, the Attorney General may return the application to the applicant chief executive officer or request provision of the omitted information. In the event that an incomplete request has been returned or omitted information requested, the request is not deemed to be received for purposes of the review period described in section 92017(f) and paragraph (a) above until all required information has been provided.

(c) *Additional Information*. The Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] may request information in addition to the information required to be submitted under § 92.5.

(d) *Waiver*. In exigent circumstances, the Attorney General, or the Assistant Attorney General, Criminal Division/Deputy Attorney General may waive any requirements of this Part, provided that the requirements of section 90107 are met.

(e) *Internal Consultation*. The Assistant Attorney General, Criminal Division/Deputy Attorney General may, on behalf of the Attorney General, consult with any appropriate Federal, State, or local official regarding a request made pursuant to section 90107.

(f) *Review Criteria*. Section 90107 of the Act provides that the President may designate a violent crime or drug emergency area if there exists an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property

and public health and safety. In reviewing requests for ⌐ adusk
designation, the Attorney General will consider all factors relevant to the question whether the violent crime or drug-related activity in the requested area has reached such emergency levels. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. Factors that the Attorney General may consider include the following:

(1) the nature, cause, and extent of the emergency within the requested area;

(2) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency;

(3) the efforts of State and local government(s) to free up resources to respond to the emergency, including whether local officials have temporarily or permanently restructured resources to maximize the number of officers involved in direct community and patrol law enforcement;

(4) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts;

(5) the coherence and feasibility of the applicant government's plan for responding to the emergency, and whether

the requested Federal assistance will significantly contribute to achieving the goals set forth in that plan;

(6) whether the applicant jurisdiction has received, or could receive, Federal resources under some other program to alleviate the emergency; and

(7) other demands on Federal law enforcement resources.

(g) *No Limitation on Presidential Actions.* Notwithstanding any provision of this Part, the President may take any action otherwise permitted by law or section 90107 of the Act. This Part shall not be construed to limit the authority of the President in any way.

§ 92.7 Limitations on Use and Duration of Federal Assistance

(a) *Limitations on Use.* Section 90107 of the Act provides for use of Federal resources to supplement State and local efforts to alleviate major violent crime or drug-related emergencies. No funds, equipment or services provided under section 90107 shall be used for any purpose other than to alleviate the violent crime or drug emergency, or to supplant any State or local resources that would otherwise be used to respond to such emergency.

(b) *Duration of Assistance.* (1) Federal assistance under section 90107 shall not be provided to a violent crime or drug emergency area for more than 1 year;

(2) The chief executive officer of a jurisdiction may apply for an extension of assistance beyond 1 year, and the

President may extend the provision of Federal assistance for not more than an additional 180 days.

[(c) *Violation of Conditions: Return, Relinquishment, and Repayment of Assistance.* If the Federal assistance provided under section 90107 is used by the recipient of such assistance in violation of section 90107 or the regulations set forth in this Part, or for any purpose other than the purpose for which that assistance is provided, then such recipient shall promptly return any equipment or supplies provided under section 90107, relinquish use of any personnel, facilities or managerial, technical and advisory services provided under section 90107, and repay to the Attorney General an amount equal to the value of any financial assistance provided under section 90107.]

COORDINATE WITH THE OIG

§ 92.8 Records, Audits and Repayments.

(a) *Records.* Each chief executive officer receiving Federal assistance under section 90107 shall keep such records of the use and disposition of any resources provided thereunder as are required under generally accepted accounting standards to facilitate a full and complete audit of the use and disposition of such resources.

(b) *Audits.* The Attorney General, or any designated agent of the Attorney General or the Inspector General of the Department of Justice, shall be given access, for the purpose or audit and examination, to any books, documents, and records of the chief executive officer of the State or local government provided assistance under section 90107 which, in the opinion of the Attorney General or the Inspector General of the Department of Justice, or his or her designee, are related to the use and disposition of such resources.

(c) *Confidentiality.* [DISCUSS WITH OIG WHETHER ANY CONFIDENTIALITY PROVISION SHOULD BE ADDED]

§ 92.9 Disclaimer

These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the President, Attorney General, the Department of Justice, or any other Federal agency. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

U. S. Department of Justice

Office of Policy Development

Counsel

Washington, D.C. 20530

January 12, 1995

TO: Distribution List Below

FROM: Tim Macht, Counsel

RE: Draft of Proposed Rule Implementing Section 90107 of the Crime Act (Violent Crime and Drug Emergency Areas)

Attached, for your review and comment, is a draft of a proposed rule implementing section 90107 of the Crime Act. That section authorizes the President to designate any State or part of a State to be a violent crime or drug emergency area, and to direct any federal agency to use its authorities and the resources granted to it under federal law to assist state and local efforts to alleviate the emergency. The section also authorizes the Attorney General to issue regulations implementing the section. The enclosed regulation is being sent for publication at the beginning of next week, therefore ALL COMMENTS ON THE DRAFT REGULATION MUST BE RECEIVED BY THE C.O.B. THIS FRIDAY, JANUARY 13, 1995. Because of the tight timeframe in which we are operating, please try to be as specific in your comments as possible and provide suggested language to implement your recommendations.

We welcome comments on any part of the regulation or preamble; however, we are especially interested in your views on any of the bracketed items in the text, which are optional inclusions, matters yet to be added, or matters that raise unresolved issues. Specifically, we are very interested in comments on: (1) whether we need any FOIA or confidentiality provision(s), particularly with respect to law enforcement-related intelligence information provided to a State or locality and criminal intelligence systems operating with the support of Federal law enforcement assistance; (2) what should happen to federal resources granted to a State or locality in the event that the resources are used for a purpose other than that intended by the Act (see § 92.7(c) of the regulation); and (3) any additional data that applicant jurisdictions should provide regarding the alleged emergency situation and any additional measures that should be employed in evaluating the requests.

Please provide comments to me, Tim Macht, by E-mail (OPD01 (MACHT)), by internet (macht@justice.usdoj.gov), or by hand (room 4513 of the Justice Department's Main Building, 10th & Constitution Ave., NW). I look forward to receiving your comments on the proposed rule.

Feel free to phone me with any questions, at 514-4228.

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MEMORANDUM

TO: Clarissa Cerda
FROM: Dan Manatt
DATE: January 18, 1995
DEADLINE: January 13-- PAST DUE
RE: Crime Act Sec. 90107 Implementing Rule

RECOMMENDATION: CC Attn. NC No Obj. Concur Object Edit DC

This memo analyzes the Draft Proposed Rule for Crime Bill Section 90107 which raises significant federalism and presidential emergency powers issues which were presumably addressed during Congressional consideration. The Draft Rule is not itself objectionable, but merits consideration of the larger issues the Act itself poses.

I. ISSUE/BACKGROUND

The Crime Bill Section 90107 creates the Violent Crime and Drug Emergency Areas procedure whereby state and local leaders may request the President to declare their jurisdiction an emergency area, and to provide federal assistance to alleviate the crime emergency.

DOJ's draft proposed rule implementing Section 90107 stays close to the Act's text, and is neither long nor overly detailed. The Draft Rule largely details criteria for DOJ review of requests, and what information states must provide in making an emergency request, including crime data, certification of existing state efforts, resources, plans for resolving the emergency, etc. Draft 28 C.F.R. 92.5-6.

The President is required to decide whether to declare an emergency area within 30 days of receipt of request. The AG is responsible under the legislation to receive and review requests, and may return a request not providing the required information, in which case no presidential action is required.

II. LEGAL ISSUES

The President apparently may declare an emergency area unilaterally, see sec. 90107(b), or after a request for such declaration and DOJ review of the request, sec.90107(f). Therefore, Presidential emergency powers are significantly expanded by the new emergency power created by the Act, but are circumscribed by a 1 year limit, which the President may extend for up to 180 days.

The Act also included boilerplate language indicating that the legislation would not otherwise diminish or detract existing presidential or AG authority. Sec. 90107(j).

SUBCHAPTER D—DISASTER ASSISTANCE

PARTS 200-201 [RESERVED]

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

Subpart A—General

Subpart B—[Reserved]

Subpart C—The Declaration Process

Subpart D—Individual Assistance

Subpart E—Public Assistance

Subpart F—Community Disaster Loans

Subpart G—Fire Suppression Assistance

Subpart H—Project Administration

Subpart I—Reimbursement of Other Federal Agencies

...art J—General Insurance Requirements

Subpart K—Flood Insurance Requirements

Subpart L—[Reserved]

Subpart M—Hazard Mitigation

Subpart N—Implementation of Coastal Barrier Resources Act

AUTHORITY: 42 U.S.C. 5201 Reorganization Plan No. 3 of 1978, E.O. 12148, and subpart N is issued under 16 U.S.C. 3501, 3505; 42 U.S.C. 5201.

SOURCE: 40 FR 23253, May 28, 1975, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—General

SOURCE: 45 FR 53335, Aug. 11, 1980, unless otherwise noted.

§ 205.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Public Law 93-288 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director, FEMA.

§ 205.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Act* means the Disaster Relief Act of 1974 Public Law 93-288, as amended: 42 U.S.C. 5121 *et seq.*

(2) *Applicant* (i) for public assistance (subpart E) means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action, and (ii) for individual assistance (subpart D) means an individual or family who submits an application or request for assistance under the Act.

(3) *Associate Director* means the Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) *Contractor* means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(5) *Designated area* means any emergency or disaster-affected portion of a State which the Associate Director has determined is eligible for Federal assistance.

(6) *Director* means the Director, FEMA.

(7) *Disaster Recovery Manager* means the person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(8) *Emergency* means any hurricane, tornado, storm, flood, high water,

winddrive water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a major disaster. For the purpose of these regulations, an emergency exists when the President so determines.

(9) *Federal agency* means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) *Federal Coordinating Officer (FCO)* means the person appointed by the Director, or in his absence, the Deputy Director, or alternatively the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(11) *Governor* means the chief executive of any State or the Acting Governor.

(12) *Governor's Authorized Representative* means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government, eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

(13) *Local government* means (i) any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; or Alaska Native village or organization, and (ii) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by State or political subdivision thereof.

(14) *Major disaster* means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the Uni States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(15) *Private nonprofit organization* means any nongovernmental agency or entity that currently has (i) an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954 or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(16) *Public facility* means any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes, or any park.

(17) *Regional Director* means a director of a regional office of the Federal Emergency Management Agency (FEMA), of his/her designated representative. As used in these regulations Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of Regional Director for a particular emergency or major disaster.

(18) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(19) *State Coordinating Officer (SCO)* means the person appointed by the Governor to act in cooperation with the Federal Coordinating Officer.

(20) *State emergency plan* as used in section 301(b) of the Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which

sets forth actic to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(21) *Temporary housing* means emergency or temporary accommodations provided by the Federal Government to individuals or families made homeless by an emergency or a major disaster (see § 205.52).

(22) *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(23) *Voluntary organization* means any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with a disaster.

(b) Definitions which apply to individual subparts are found in those subparts.

[45 FR 53335, Aug. 11, 1980, as amended at 46 FR 45138, Sept. 10, 1981; 50 FR 40007, Oct. 1, 1985]

§ 205.3 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(1) Providing Federal assistance for public and private losses and needs sustained from disasters;

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance;

(5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness to meet the effects of disasters.

(c) It is further a policy of FEMA to ensure that the individual disaster victims are informed of available Federal assistance and to assist individual victims in obtaining the Federal assistance to which they are entitled. Through coordination of all Federal programs and procedures, FEMA shall facilitate, wherever possible, the victims' understanding of these programs and simplify any actions required on the part of those victims who apply for assistance.

§ 205.4 State emergency plans.

The State shall set forth in the State's emergency plan all responsibilities and actions specified in the Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to disasters and to facilitate the delivery of Federal disaster assistance.

§ 205.5 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster or an emergency by the President, the Associate Director or the Regional Director may direct any Federal agency to provide assistance to State and local governments by:

(1) Utilizing or lending their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any act;

(2) Distributing medicine, food, and other consumable supplies; and

(3) Rendering assistance under the authority of the Act. Such assistance is provided with or without compensation as considered appropriate by the Associate Director or Regional Director under the provisions of "Subpart I—Reimbursement of Other Federal Agencies" of these regulations.

(b) Federal agencies shall provide any reports or information about disas-

tor   istance rendered under provi-
si   of t   regulations, that the FCO or Regional Director considers necessary and requests from the agencies.

(c) Assistance furnished by any Federal agency under paragraph (a) of this section is subject to the eligibility criteria provided by the Associate Director under these regulations and other instructions as the Associate Director or Regional Director may issue.

(d) Assistance under paragraph (a) of this section, when directed by the Associate Director or the Regional Director, shall not affect the authority of any Federal agency to provide disaster assistance independent of the Act. However, disaster assistance by other Federal agencies is subject to the coordination of the Federal Coordinating Officer.

(e) In carrying out the purposes of the Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(f) Eligible work under the provisions of the Act is not performed by or under the direct supervision of a Federal agency except when the State or local government lacks the capability to perform or contract for the approved work or the Regional Director determines that direct assistance is necessary to meet an immediate threat to life, health, or safety. (See § 205.121, Direct Federal Assistance.)

§ 205.6 Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

(c) In providing assistance under the Act, the Federal Government shall use surplus Federal property to the fullest extent feasible.

§ 205.7 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Act, the Associate Director or the Federal Coordinating Officer may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the Associate Director or the Federal Coordinating Officer finds that such utilization is necessary.

(b) In any major disaster or emergency, the Regional Director may provide assistance by distributing or rendering through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations medicine, food, and other consumable supplies or emergency services.

(c) The Associate Director may enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations under which the Federal Coordinating Officer may coordinate the disaster relief activities of such organizations whenever the organizations are engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 205.16 (non-discrimination) and § 205.10 (Duplication of Benefits) of these regulations and such other regulations as the Associate Director may issue.

(d) Nothing contained in this   shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Public Law 58–4, approved January 5, 1905 (33 Stat. 599).

§§ 205.8—205.9 [Reserved]

§ 205.10 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing section 315 of the Disaster Relief Act, entitled Duplication of Benefits.

(b) *Agency policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance, by providing assistance under the Act only when other assistance, which is the primary responsibility of another State or Federal agency to provide, will be significantly delayed or is unavailable, and when the delay or unavailability is not caused by the applicant;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the United States government justify taking the necessary recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure, by consultation with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(c) *Delivery sequence.* (1) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be followed in the   livery of assistance. When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

First—volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

Second—temporary housing assistance (to include provision of a housing unit and minimal repairs);

Third—Small Business Administration and Farmers Home Administration disaster loans;

Fourth—Individuals and Family Grant program assistance;

Fifth—volunteer agencies' "additional assistance" programs; and

Sixth—the "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that:

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence; and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (e.g., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, the following exception may be invoked. When there is a time delay, an agency may offer assistance which is the primary responsibility of another agency. There may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A re-opens the case. If the primary re-

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sponse Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either: (i) Assist Agency B in preventing the duplication of benefits or (ii) in the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(d) *Program Guidance*—(1) *Programs Under the Act v. Other Agency Assistance*.(i) In making an eligibility determination, the FEMA Regional Director, in the case of Federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be significantly delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available.

(2) *Programs Under the Act v. Insurance*. In making an eligibility determination, the FEMA Regional Director or State shall:

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement. The applicant must provide information concerning insurance recoveries. The burden of proof is on the applicant to prove that, despite conditions of settlement or expected settlement, the need for disaster assistance is paramount;

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way, thus precluding the need for disaster assistance, or whether assistance should be provided immediately to prevent a hardship. Where flood insurance is involved, the Regional Director shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) *Random sample*. Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 315. To determine whether duplication has occurred and established procedures have been followed, the Regional Director shall, within 90 days after the close of the disaster assistance programs' application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved*. If duplication is discovered, the Regional Director shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Director will take no further action. If the agency was not successful in correcting the duplication, and the Regional Director is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Director is not satisfied that the procedures were followed in an acceptable manner, then the Regional Director shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Director shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the United States government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Director's discretion).

(5) *Duplication when assistance under other authorities is involved*. When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Director and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section 315, the Regional Director shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(e) *Recovering FEMA funds: Debt collection*. FEMA's Debt Collection Regulations (44 CFR part 11) and policy statements give agency debt collection officers and the Comptroller certain responsibilities in recovering funds due to FEMA. In addition, they specify thresholds for compromise, suspension, and termination of debts. These regulations prescribe the procedures FEMA will follow to recover duplications FEMA is responsible for acting upon.

[51 FR 13502, Apr. 21, 1986]

§ 205.11 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

§ 205.12 Criminal and civil penalties.

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under the Act shall be fined not more than $10,000 or imprisoned for not more than one year or both for each violation.

(b) Any individual who knowingly violates any order or regulation under the Act shall be subject to a civil penalty of not more than $5,000 for each violation.

(c) Whoever knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half the times the original principal amount of the loan or cash benefit.

§ 205.13 Reviews and reports.

(a) The Associate Director shall review the activities of Federal agencies and State and local governments providing disaster assistance, in order to assure maximum coordination and effectiveness of such programs, and shall report to Congress from time to time on these activities.

(b) In carrying out this provision, the Associate Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Associate Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 205.14 Appeals.

Any appeal is a request for reconsideration of a determination on any action related to Federal assistance under the Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

§ 205.15 Effective date.

(a) These regulations are effective and supersede existing regulations as of September 10, 1980.

(b) Any action taken in accordance with previous regulations remains valid.

§ 205.16 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with Regulation 44 CFR part 7.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, religion, sex, color, age, economic status, or national origin.

(c) As a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance under the Act, government bodies, and other organizations shall provide a written assurance of their intent to comply with regulations relating to non-discrimination promulgated by the President or the Associate Director and shall comply with such other regulations applicable to activities within an area affected by major disaster or emergency as the Associate Director deems necessary for the effective coordination of relief efforts. The provisions to be included in every Federal-State Agreement shall be the provisions provided by Executive Order 11246 as amended by Executive Orders 11375, 11478 and 12086.

§ 205.17 Emergency mass care.

Emergency mass care, such as emergency medical care, emergency shelter, emergency provision of food, water and medicine, and other essential needs, are normally provided by the Red Cross or other voluntary organizations and Federal emergency assistance will be approved by the Regional Director only upon an affirmative showing that such organizations are not providing all or part of emergency mass care essential needs.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979 and 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

Subpart B—(Reserved)

Subpart C—The Declaration Process

SOURCE: 48 FR 51057, Nov. 4, 1983, unless otherwise noted.

§ 205.30 Purpose.

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

§ 205.31 Definitions.

All definitions listed in Public Law 93–288 and in § 205.2 apply. In addition, the following definitions apply:

(a) *Associate Director*: The Associate Director, State and Local Programs and Support, Federal Emergency Management Agency, or his/her designated representative.

(b) *Commitment*: Certification by the Governor in support of his request for a declaration of a major disaster or an emergency, pledging for the current major disaster or emergency, State and local government obligations and expenditures, which are disaster-related, extraordinary and unforeseen (of which the State's pledges must be a significant proportion), and stating that such obligations and expenditures, identified as nonreimbursable by Federal funds, are a reasonable amount of funds of such State and local governments for alleviating the damage, loss, hardship or suffering resulting from such major disaster or emergency.

(c) *Emergency support team*: Organized group of program and support personnel established by the Regional Director or the Associate Director to be deployed in an area affected by a major disaster or emergency to assist the Federal Coordinating Officer (FCO) in carrying out his/her responsibilities under the Act.

(d) *FEMA-State agreement*: A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident*: Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period*: As determined at the discretion of the Associate Director, the time interval stated in the FEMA-State Agreement during which the disaster-causing incident occurs. No Federal assistance under Public Law 93–288 shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period. The incident period for emergencies starts at 12:01 a.m., on the date of the declaration by the President unless otherwise specified in the declaration document. The termination date of an incident period may

be k[illegible]wn at the t[illegible] the F[illegible]A-State Agreement is signed. However, at such time as the termination date is determined by FEMA, it will be added to the Agreement by amendment.

(g) *Individual assistance*: Supplementary Federal assistance provided under Public Law 93–288 to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governmelts or disaster relief organizations. For further information, see subpart D of these regulations.

(h) *Mission assignment*: Work order or request for performance of work issued by the Regional Director, Associate Director or Director to a Federal agency directing completion by that agency of specified tasks and citing funding, other managerial controls or guidance.

(i) *Public assistance*: Supplementary Federal assistance provided under Public Law 93–288 to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subpart E of these regulations.

§ 205.32 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Goverment to supplement the efforts of the State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from declared major disasters and emergencies.

(b) The policies listed in § 205.3 apply. It is also the policy of FEMA in approving disaster assistance, to encourage States and local governments to seek permanent solutions to problems in areas which are disaster-prone from sources other than the President's Disaster Relief Fund. Failure to properly implement State hazard mitigation plans approved by FEMA as the result of a major disaster or emergency may contribute to losses, hardships or damages resulting from future catastrophes or emergencies. The resulting damages will be assessed and considered whenever applicable in processing any requests for a [illegible]aration of a [illegible]or disaster or emergency.

(c) It is the policy of FEMA to recommend a denial of a major disaster request when the requested assistance can be provided by other Federal agencies under their statutory authorities and from volunteer agencies or groups.

§ 205.33 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor may request that the President declare a major disaster for the State upon the Governor's finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, and disaster relief organizations.

(b) Only the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. Use of the formats suggested by the Associate Director for such requests will assure coverage of essential information and should avoid delays in processing. These suggested formats have been published by the Associate Director in the FEDERAL REGISTER and shall be updated as necessary. The complete request must be submitted within 30 days of the occurrence of the incident in order to be considered. (See also § 205.44)

(c) The completed request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and has directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the extent and nature of State and local resources which have been or will be used to alleviate conditions of the disaster, stating

specifi ly those activities for which no Federal funding will be req ted;

(4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the disaster (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of funds for alleviating the damage, loss, hardship or suffering resulting from such disaster. The required certification of the State and local government commitments must be documented by filling out the "commitments" section of the formats referred to in paragraph (b) of this section.

(d) For those catastrophies of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send a telegram through the Regional director for a declaration of a major disaster. In the event the FEMA Regional Office is severely impacted by the catastrophe, the telegram may be addressed to the Director of FEMA. The telegram must indicate a finding in accordance with § 205.33(a), and must include as a minimum the information requested by § 305.33(c) (1), (3) and (5). Upon receipt of such a telegram, the Regional Director shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 205.37. The Associate Director shall assure that documentation of the declaration is later assembled to comply fully with these regulations.

(Approved by Office of Management and Budget under control number 3067-0113)

§ 205.34 Requests for emergency declarations.

(a) When a catastrophe occurs or threatens to occur in a State, the Governor may request that the President declare an emergency upon the Governor's finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and protect property, health and safety, or to avert or lessen the threat of a disaster and which should be provided by the Federal Government because of the pressures of time or the unique capabilities of the Federal Government.

(b) Only the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. Use of the formats suggested by FEMA for such requests will assure coverage of essential information and should avoid delays in processing. The complete request must be submitted within 30 days of the occurrence of the incident in order to be considered. (See also § 205.44)

(c) The complete request shall include:

(1) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, including those for which no Federal funding will be requested;

(2) Identification of the particular type and specific extent of Federal aid required, and of any proposed cost sharing; and

(3) An assessment by the Governor that the capabilities and resources of the State and local government(s) have been or are being fully committed to cope with the catastrophe. Such capabilities and resources need not be exhausted, but State and local government efforts, as deemed appropriate by FEMA, are necessary before FEMA emergency assistance can be authorized.

(Approved by the Office of Management and Budget under control number 3067-0113)

§ 205.35 Processing requests for declarations of a major disaster or emergency.

(a) The Regional Director shall provide written acknowledgment of the Governor's request. Based on a FEMA investigation, which may include damage assessments of the affected area(s)

and consultations with appropriate State and Federal officials other interested parties, the Regional Director shall promptly submit a report and a recommendation to the FEMA Director through the Associate Director.

(b) The Director shall forward the Governor's request together with a report and a recommendation to the President.

(1) *Major disaster request.* The recommendation will be based on a report which will indicate whether or not the situation is of such severity and magnitude so as to be beyond the capabilities of the State and its local governments and whether or not Federal assistance under Public Law 93-288 is necessary to supplement the efforts and available resources of the State and local governments, and other disaster relief organizations or activities.

(2) *Emergency request.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under Public Law 93-288 is necessary to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster, which because of the pressures of time or because of the unique capabilities of a Federal agency, should be provided by the Federal Government.

§ 205.36 Presidential determination.

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major disaster or an emergency.

(b) The Governor's request for an emergency declaration may result in a Presidential declaration of an emergency.

§ 205.37 Notification.

(a) The Governor will be promptly notified by the Director or his/her designee of a declaration by the President that an emergency or a major disaster exists. FEMA also will notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Director or his/her designee of a determination that the Governor's request does not justify the use of the authorities of Public Law 93-288.

§ 38 Appeal.

When a request for a major disaster declaration or for an emergency declaration is denied, the Governor may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. (See also § 205.44). This one-time request for reconsideration, along with appropriate additional information, is submitted to the President through the appropriate Regional Director. The processing of this request is similar to the initial request.

§ 205.39 FEMA-State Agreements.

(a) *General.* The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States and their local governments in the form of conditions for assistance which are legally enforceable. However, such conditions may be modified by a properly executed amendment to the FEMA-State Agreement. No FEMA funding may be authorized or provided to any grantees or other recipients, and authorized by mission assignment until such time as this Agreement for the Presidential delcaration has been signed and is fully in effect.

(b) *Major disasters.* Upon the declaration of a major disaster, the Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This Agreement describes the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive orders and regulations. The Governor's Authorized Representative and the Regional Director or his/her designee may execute subsequent amendments to the Ag[illegible]ent for the same major disaster.

(c) *Emergencies.* Upon the declaration of an emergency, the Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This Agreement contains the necessary terms and conditions consistent with the declaration and the provisions of applicable laws, Executive orders and regulations. This Agreement specifies the beginning and the end of the incident period, identifies the type and extent of Federal assistance and includes any details unique to the current emergency. The Governor's Authorized Representative and the Regional Director or his/her designee may execute subsequent amendments to the Agreement for the same emergency. The Federal assistance specified in the Agreement or an amendment is the only assistance eligible for Federal funding or reimbursement under Public Law 93–288, as amended.

(d) *Transfer of funds.* In the event that funds are to be transferred to a State for disaster relief purposes, the FEMA-State Agreement shall contain, and the State and its political subdivisions shall agree to, the following conditions for assistance:

> If a State, local government, or eligible private, nonprofit organization violates any of the conditions of disaster relief assistance under the Act, this Agreement, or applicable Federal regulations, the Associate Director shall notify the State that additional financial assistance for the project in which the violation occurred will be withheld until such violation has been corrected to the satisfaction of the Associate Director. If the Associate Director is not satisfied with the corrective action taken in response to such notification, then the Associate Director will notify the State that further financial assistance for the project in which the violation occurred will be withheld until adequate corrective action is taken. In addition, the Associate Director may also withhold all or any portion of financial assistance which has been or is to be made available to the State, local governments, or eligible private, nonprofit organizations for other disaster relief projects under the Act, this or other Agreements, and applicable Federal regulations until adequate action is taken. The State further agrees that FEMA or State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audit and examination have access to any books, documents, papers and records of any recipients of Federal disaster assistance and of any persons or entities which perform any activity which is reimbursed to any extent with Federal disaster assistance funds distributed under the authority of the Act.

(e) *Other conditions for assistance.* All FEMA-State Agreements shall also contain the following:

(1) The State agrees, on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal government in seeking recovery of funds which are expended in alleviating the damages and suffering caused by any declared major disaster or emergency against any party or parties whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to a Presidential declaration of major disaster or emergency.

(2) The State will establish and maintain an active State program of nondiscrimination in disaster assistance, outlined in 44 CFR 205.16. This program will encompass all State and local government actions pursuant to this Agreement.

(3) The State will establish and maintain a program to assure that State and local government recipients of Federal disaster assistance comply with the Department of Housing and Urban Development (HUD) Consolidated List of Debarred, Suspended and Ineligible Contractors. This program also will encompass all State and local contracts pursuant to this Agreement.

(4) No members of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon; *Provided, however, That* this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(f) *Typical conditions for assistance.* As determined necessary by the Associate Director, certain typical conditions for assistance may be included in the FEMA-State Agreement. However, some changes in wording may be made to fit the current major disaster or

emergency. T[illegible] condit[illegible] for assistance are:

(1) The State agrees that, as a condition for any Federal loan or grant, the State or that applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees:

(i) To prepare and submit, not later than 180 days after the declaration, to the Regional Director for concurrence, a hazard mitigation plan or plans for the FEMA designated areas; and

(ii) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; and

(iii) To review and update as necessary disaster mitigation portions of the State emergency plan.

The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions. The State understands that future Federal disaster assistance may be curtailed in situations where hazard mitigation plans have not been implemented properly.

(2) Within his/her authorities, the Governor shall ensure, through the State agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster victims. The State also shall take all reasonable steps to ensure that disaster victims are aware of procedures for filing insurance claims, are informed of any State procedures instituted for assisting insured disaster victims, and are aware of their responsibility to repay government assistance which is duplicated by insurance proceeds.

(3) The mandatory FEMA-State Agreement language at § 205.39(e)(1) shall, when determined necessary by the Regional Director, be amended to address any of the following issues which the Regional Director deems appropriate: The need for the State to pursue recoveries against responsible parties; reimbursement to the Federal government from any recoveries from responsible parties; review by the Federal government of proposed settle[illegible]s [illegible]en the State, its political subdivisions, or other recipients of Federal disaster assistance and any responsible parties; assignment to the Federal government of any rights of recovery which the State, its political subdivisions, or any other recipients of Federal disaster assistance might have against any responsible parties; intervention by the United States in any action instituted by the State, its political subdivisions, or any other recipients of Federal disaster assistance against any responsible parties; and other related issues.

(4) Since Federal operational and financial responsibility for temporary housing assistance shall not exceed eighteen (18) months from the date of the declaration by the President, the State agrees to accept such responsibility upon expiration of the Federal responsibility.

(5) For any program administered by the State involving FEMA funding, the State agrees to establish and maintain an active State program to avoid duplication of Federal benefits in disaster assistance. The State further agrees to take necessary action to recover any FEMA funding administered by the State in those situations where such duplication is reported or appears likely to have occurred.

§ 205.40 Designation of affected areas and eligible assistance.

(a) After a declaration by the President, the Associate Director shall designate the disaster-affected areas eligible for supplementary Federal assistance under Public Law 93–288 and shall publish these designations in the FEDERAL REGISTER. A disaster-affected area designated by the Associate Director includes all local government jurisdictions within its boundaries. Unless specifically limited in the declaration documents, the Associate Director shall also determine and designate the types of assistance to be made available in the designated areas. These designations shall be based on the Governor's request or supplemental requests for assistance, taking into consideration available information and FEMA assessments of requirements. In addition to the areas designated eligible for Individual Assistance, the Associate Director may designate adjacent areas eligible for Individual Assistance unless such adjacent areas are specifically excluded in the Governor's request. However, the designation of unrequested areas as adjacent areas for Individual Assistance will not be made until coordination has been made by FEMA with the Governor or the Governor's Authorized Representative. The Associate Director may, at his/her discretion, designate all or only portions of the areas requested by the Governor as eligible for supplementary Federal assistance. In addition, the Associate Director may, at his/her discretion, or as directed by the President in the declaration letter, authorize all or only portions of the types of supplementary Federal assistance requested by the Governor. Determinations by the Associate Director of the types and extent of FEMA disaster assistance to be provided and of the areas eligible to receive such assistance, are based upon findings whether, in any particular area, the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance.

(b) The Regional Director will promptly notify the Governor of the Associate Director's designations. In those instances where the type of assistance or certain areas requested by the Governor are not designated or authorized by the Associate Director, the Governor, or the Governor's Authorized Representative, may appeal the decision. An appeal must be made within 30 days of the date of the written notification by submitting a formal written appeal. (See also §205.44.) This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(c) After a declaration by the President, the Governor, or the Governor's Authorized Representative, may request that additional areas or types of supplementary Federal assistance be designated by the Associate Director. Such requests shall be accompanied by appropriate commitments by State and local governments and assessments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance.

§ 205.41 Initiation of Federal assistance.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Director, or in his absence, the Deputy Director, or alternatively, the Associate Director shall appoint a Federal Coordinating Officer (FCO) who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Designees.* In the FEMA-State Agreement, the Governor shall appoint a State Coordinating Officer (SCO) and also shall designate the Governor's Authorized Representative (GAR), who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

[48 FR 51057, Nov. 4, 1983, as amended at 50 FR 42023, Oct. 17, 1985]

§ 205.42 Responsibilities of the Coordinating Officer.

(a) Following a declaration of a major disaster or an emergency, the Federal Coordinating Officer (FCO) shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies as well as those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The State Coordinating Officer (SCO) coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan.

[48 FR 51057, Nov. 4, 1983, as amended at 51 FR 34606, Sept. 30, 1986]

§ 205.43 Emergency support teams.

The Associate Director or Regional Director shall form emergency support teams of Federal personnel to send into an area affected by a major disaster or emergency. The Federal Coordinating Officer may request that the Regional Director activate appropriate emergency support teams. These emergency support teams assist the Regional Director or the Federal Coordinating Officer in carrying out his/her responsibilities under the Act and these regulations. Any Federal agency is authorized by the Act to detail personnel within the agency's administrative jurisdiction to temporary duty with the emergency support teams. The Regional Director or the Associate Director determines whether the detail is on a reimbursable or nonreimbursable basis. Each detail shall be without loss of seniority, pay, or other employee status. Except under unusual circumstances, as determined by the Regional Director, such emergency support teams shall be organized and trained by each Regional Director to meet the needs for emergency assistance applicable to his/her Region. When requested by the Regional Director, State, local, or voluntary agencies may, as necessary, provide personnel to be deployed with the emergency support teams.

§ 205.44 Time limitations.

The 30-day period referred to in §§ 205.33(b), 205.34(b), 205.38 and 205.40(b) may be extended by the Associate Director provided that a request with proper justification for such an extension is made by the Governor during this 30-day period. In general, proper justification would include the inability to gather new and/or additional information required to support the action being requested in the cited sections.

Subpart D—Individual Assistance

§ 205.52 Temporary housing assistance.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 404, Disaster Relief Act of 1974, 42 U.S.C. 5174.

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related uninhabitability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing (e.g., renting an apartment or contracting for minimal repairs), using the funds provided by this program. Ineligibility relates only to the criteria for temporary housing assistance; denial of such assistance does not imply that repairs to a residence are not required. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the habitability of the residence. FEMA has also deter-

EDITORIAL NOTE: Other regulations issued by the Department of the Army appear in title 33, chapter II; and title 36, chapter III.

ABBREVIATIONS: The following abbreviations are used in this chapter: AGCT=*Army General Classification Test.* AGO=*Adjutant General's Office.* APP=*Army Procurement Procedure.* AR=*Army Regulations.* ASPR=*Armed Services Procurement Regulations.* ATC=*Air Transport Command.* A. W.=*Articles of War.* AWOL=*Absent Without Leave.* Comp. Gen.=*Comptroller General.* OCP=*Office, Chief of Finance.* ROTC=*Reserve Officer's Training Corps.* ZI=*Zone of Interior.*

SUBCHAPTER A—AID OF CIVIL AUTHORI ' 5 AND PUBLIC RELATIONS

PARTS 400-500—[RESERVED]

PART 501—EMPLOYMENT OF TROOPS IN AID OF CIVIL AUTHORITIES

AUTHORITY: Secs. 331, 332, 333, and 3012, 70A Stat. 15, 157; 10 U.S.C. 331, 332, 333, 3012.

SOURCE: 34 FR 14126, Sept. 6, 1969, unless otherwise noted.

§ 501.1 Basic policies.

(a) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State are the primary responsibility of State and local civil authorities. Generally, Federal Armed Forces are committed after State and local civil authorities have utilized all of their own forces and are unable to control the situation, or when the situation is beyond the capabilities of State or local civil authorities, or when State and local civil authorities will not take appropriate action. Commitment of Federal Armed Forces will take place only—

(1) Under the provisions of this part, and

(2) When the Secretary of the Army, pursuant to the orders and policies of the Secretary of Defense and the President, has generally or specifically so ordered, except in cases of emergency (§ 501.2).

(b) The Secretary of the Army has been designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and deployment and employ- t of military rces in the event of civil disturbances. The Department of the Army is responsib for coordinating the functions of a the Military Services in this activi for the Executive Agent. The eta ies of the other Military Servi a responsible for providing such assis ance as may be requested by the Executive Agent.

(c) Persons not normally subject t military law taken into custody by th military forces incident to the c Armed Forces, as contemplated by thi part, will be turned over, as soon a possible, to the civil authori Th Army will not operate temporary co finement/detention facilities unle local facilities under the control c city, county, and State government and the U.S. Department of Justic cannot accommodate the number c persons apprehended or detained. Fu ther, this authority may be exercise only in the event Federal Arme Forces have been committed under th provisions of this part and only wit the prior approval of the D tmer of the Army. When the requiremen exists for the Army to operate such f cilities, the provisions of Army co finement regulations will apply to th maximum extent feasible under th circumstances.

(d) Whenever military aid is reques ed by civil authorities in the event o civil disturbances within the States o Alaska, or Hawaii, the Commonwealt of Puerto Rico, or U.S. possessions an territories, the commander of the un fied command concerned coordinate the provision of such aid.

(e) Units and members of the Arm Reserve on active duty may be em ployed in civil disturbance operation in the same manner as active force Units and members of the Army Re serve may be ordered to active dut for this purpose by the President a provided by law. Members of the Arm Reserve, with their consent, b ordered to active duty for civil disturb ance operations under the provision of 10 U.S.C. 672.

§ 501.2 Emergency.

(a) In cases of sudden and unexpected invasion or civil disturbance, including civil disturbances incident to earthquake, fire, flood, or other public calamity endangering life or Federal property or disrupting Federal functions or the normal processes of Government, or other equivalent emergency so imminent as to make it dangerous to await instructions from the Department of the Army requested through the speediest means of communications available, an officer of the Active Army in command of troops may take such action, before the receipt of instructions, as the circumstances of the case reasonably justify. However, in view of the availability of rapid communications capabilities, it is unlikely that action under this authority would be justified without prior Department of the Army approval while communications facilities are operating. Such action, without prior authorization, of necessity may be prompt and vigorous, but should be designed for the preservation of law and order and the protection of life and property until such time as instructions from higher authority have been received, rather than as an assumption of functions normally performed by the civil authorities.

(b) Emergency firefighting assistance may be provided pursuant to agreements with local authorities; emergency explosive ordnance disposal service may be provided in accordance with paragraph 18, AR 75-15.

§ 501.3 Command authority.

(a) In the enforcement of the laws, Federal Armed Forces are employed as a part of the military power of the United States and act under the orders of the President as Commander in Chief. When commitment of Federal Armed Forces has taken place, the duly designated military commander at the objective area will act to the extent necessary to accomplish his mission. In the accomplishment of his mission, reasonable necessity is the measure of his authority, subject of course, to instructions he may receive from his superiors.

(b) Federal Armed Forces committed in aid of the civil authorities will be under the command of, and directly responsible to, their military and civilian superiors through the Department of the Army chain of command. They will not be placed under the command of an officer of the State Defense Forces or of the National Guard not in the Federal service, or of any local or State civil official; any unlawful or unauthorized act on the part of such troops would not be excusable on the ground that it was the result of an order received from any such officer or official. As directed by the Army Chief of Staff, military commanders will be responsive to authorized Federal civil officials.

§ 501.4 Martial law.

It is unlikely that situations requiring the commitment of Federal Armed Forces will necessitate the declaration of martial law. When Federal Armed Forces are committed in the event of civil disturbances, their proper role is to support, not supplant, civil authority. Martial law depends for its justification upon public necessity. Necessity gives rise to its creation; necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time. In most instances the decision to impose martial law is made by the President, who normally announces his decision by a proclamation, which usually contains his instructions concerning its exercise and any limitations thereon. However, the decision to impose martial law may be made by the local commander on the spot, if the circumstances demand immediate action, and time and available communications facilities do not permit obtaining prior approval from higher authority (§ 501.2). Whether or not a proclamation exists, it is incumbent upon commanders concerned to weigh every proposed action against the threat to public order and safety it is designed to meet, in order that the necessity therefor may be ascertained. When Federal Armed Forces have been committed in an objective area in a martial law situation, the population

of the affected area will be informed of the rules of conduct and other restrictive measures the military is authorized to enforce. These will normally be announced by proclamation or order and will be given the widest possible publicity by all available media. Federal Armed Forces ordinarily will exercise police powers previously inoperative in the affected area, restore and maintain order, insure the essential mechanics of distribution, transportation, and communication, and initiate necessary relief measures.

§ 501.5 Protection of Federal property.

The right of the United States to protect Federal property or functions by intervention with Federal Armed Forces is an accepted principle of our Government. This form of intervention is warranted only where the need for protection exists and the local civil authorities cannot or will not give adequate protection. This right is exercised by executive authority and extends to all Federal property and functions.

§ 501.6 End of commitment.

The use of Federal Armed Forces for civil disturbance operations should end as soon as the necessity therefor ceases and the normal civil processes can be restored. Determination of the end of the necessity will be made by the Department of the Army.

§ 501.7 Loan of military resources to civil authorities.

(a) The Department of the Army in certain limited situations can lend military equipment to civil law enforcement authorities in the event of civil disturbances. Such loans of equipment are limited to those necessary to meet an urgent need during an actual civil disturbance (except as provided in paragraph (b) of this section) and the loans are considered to be a temporary emergency action. Civil law enforcement authorities are to be encouraged to procure their own equipment for police use since, even though requests are handled expeditiously, normally some time will elapse before the military equipment can be in the hands of the civil law enforcement authorities. Law enforcement authorities are to be cautioned not to rely on the loan of military equipment in the event of a civil disturbance in their locality because the availability of military equipment for civilian use is contingent upon military requirements for the Department of the Army resources.

(b) A loan agreement will be executed with the civil authority in each case. The agreement will indicate t the property may be retained by the civil authorities only for the duration of the civil disturbance, but for not more than 15 days; however, should the civil disturbance exceed 15 days the approving authority may extend the agreement for another 15-day period. It is recognized that there is often a substantial leadtime before equipment procured by civil law forcement authorities will be delivered to them. For this reason loans of equipment beyond the 15-day limit are authorized when a request is made in anticipation of imminent threatened civil disturbance and the civil authority requesting the loan has initiated procurement action for equipment substantially similar to the military property requested. Loans may be approved for terms of up to 90 days pending delivery to the civil authority of its own equipment and renewed by the approving authority for another 90-day period if necessary.

(c) Each loan agreement will contain provisions for a cash bond, performance bond, or the equivalent equal to the value of the loaned equipment, as a condition to making the loan; waiver of the requirement to post bond will be approved only by the Department of the Army. With the prior concurrence of the Department of the Army, the bond will be forfeited in the event the equipment is not returned at the time specified. However, the forfeiture of the bond will not constitute a sale of the equipment, and the borrower will not be relieved of his obligation to return the loaned equipment. I agreements will clearly state the expenses and obligations assumed by the civil authority.

Labor/Management

Labor Organizations
DoD Supervisors and Management Associations

Community Services, Fraternal & Benevolent

Component Relief/Aid Organizations
USO
Red Cross
United Seamen's Service

(f) Type 2—Affiliated.

SUBTYPES

Professional, Scientific and Management

Engineering or Scientific
NCO Associations
Nurses
Personnel Management
Financial Management

Sports, Hobbies & Crafts

ABC Bowling Leagues
Sports Officials
Affiliated Hobby or Craft Groups

Religious Groups

Altar Societies
Guilds
Youth Organizations

Community Services, Fraternal & Benevolent

Veterans Organizations
Surviving Spouse or Surviving Parent Organizations
Parent-Teacher Association (PTA)
Ethnic Group Affiliations
Reserve or Retired Associations
Affiliated Community Service Clubs

Youth Organizations

Junior Army Navy Guild Organization (JANGO)
4-H Clubs
Scouting Organizations
Little League

Distaff/Spouse Organizations

(only those affiliated)

(g) Type 3—Independent.

Sports, Hobbies & Crafts

Model Clubs
Stamp, Coin, Other Collectors
Theater and Dance
Fish and Game
Golf Leagues
Investment Clubs

Youth Organizations

Contemporary Age Clubs (T   etc.)
Youth sports/recreation

Professional, Scientific and Management

Local, independent, unaffiliated organizations or groups

Community Services, Fraternal & Benevolent

Thrift Shops
School Booster Clubs
Local Ethnic Groups
Child Care Centers
Preschool and Kindergarten
Social Problem Study Groups

Distaff/Spouse Organizations

Wives Clubs (may include Thrift Shop operation)
National origin clubs

Religious Groups

§212.7 Definitions.

(a) *DoD Family.* Active duty military personnel, retired members and those of Reserve components, dependents and surviving spouses of the foregoing, and authorized civilians as determined by DoD Components.

(b) *DoD Installation.* A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.

(c) *Private Organization.* A generally self-sustaining, non-Federal entity, incorporated or not, and constituted or established and operated on a DoD installation, with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

(d) *Type 1—Federally Sanctioned Private Organizations.* Type 1 private organizations are those which are recognized in accordance with specific DoD authority or by special authority granted at DoD Component level. All Type 1 private organizations, except those exempted in section D., are subject to the provisions of this Instruction. Examples of federally sanctioned private organizations are provided in §212.6.

(e) *Type 2—Affiliated Private Organizations.* Type 2 private organizations which (1) operate on a DoD installation upon the written approval of the DoD installation commander, (2) operate as local affiliations of chapters, lodges (fraternal or benevolent organizations), posts (veterans' organizations), or ele n ts of natic or State chartered organizations of the private sector, and to engage in activities of special interest to a voluntary membership or group of participants; examples of which are provided in §212.6.

(f) *Type 3—Independent Private Organizations.* Independent private organizations which are organized, established, operated and controlled *locally* by common interest groups conducting specific activities that fulfill certain accepted needs or wants of some members of the DoD family, and have no formal connection or affiliation with an organization outside of the installation; examples of which are provided in §212.6. Local initiative is exercised in securing written permission from the head of the DoD installation for their operation on the DoD installation.

(g) *Subtype of Private Organizations.* For classification purposes this is a relatively homogeneous functional grouping of private organizations, based on one or more of the following characteristics, having similar purposes or objectives, furthering related interests or conducting related activities, and comprising membership or participation of contemporary age levels.

(1) A subtype designation may be applied to more than one type of private organization, since the function being performed on a DoD installation is not limited by the connection or affiliation of the organization(s) comprising the subtype.

(2) For example, the funtion of community services, as a subtype of private organization, may be carried out through a Type 1 federally sanctioned private organization (Red Cross), a Type 2 affiliated private organization (PTA), or a Type 3 independent private organization (Thrift Shop).

3 Section 212.6 provides a listing of the eight authorized classifications of private organizations by subtype and furnishes examples. The examples are illustrative and not all-inclusive.

4 Classification of each private organization by type and subtype is a basis for positive identification of all private organizations and is a means of differentiating from nonappropriated instrumentalities.

PART 215—EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES

AUTHORITY: Chapter 15 of title 10 U.S.C. (10 U.S.C. 331 et seq.).

SOURCE: 37 FR 3637, Feb. 18, 1972, unless otherwise noted.

§215.1 Purpose and scope.

This part establishes uniform Department of Defense policies, assigns responsibilities, and furnishes general guidance for utilizing DoD military and civilian personnel, facilities, equipment or supplies:

(a) In support of civil authorities during civil disturbances within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof.

(b) In other related instances where military resources may be used to protect life or Federal property or to prevent disruption of Federal functions.

§215.2 Applicability.

This part is applicable to all components of the Department of Defense (the Military Departments, Organization of the Joint Chiefs of Staff, Defense Agencies, and the unified and specified commands) having cognizance over military resources which may be utilized in accordance with the policies set forth herein.

§215.3 Definitions.

(a) *Civil disturbances* are group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term civil disturbance includes all domestic condi-