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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(1) National security classified information [(b)(1) of the FOIA]
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b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TO: REED, M

FROM: ITOH

DOC DATE: 21 JUL 93
SOURCE REF:

KEYWORDS: EMERGENCY PREPAREDNESS
EO

CIVIL DEFENSE

PERSONS:

SUBJECT: POLICY DECISION - FEMA & DOD EO ENTITLED NATL SECURITY RESOURCES
PREPAREDNESS

ACTION: KENNEY SGD MEMO

DUE DATE: 20 JUL 93 STATUS: C

STAFF OFFICER: JONES

LOGREF:

FILES: PA

NSCP:

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FOR ACTION

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BELL

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DOC 2 OF 2

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

July 21, 1993

MEMORANDUM FOR MAC REED

Assistant General Counsel, OMB

FROM:

WILLIAM H. ITO *W.H. Ito*

SUBJECT:

Policy Decision - FEMA and Defense Executive Orders Entitled "National Security Resources Preparedness"

This responds to your July 9 memorandum requesting a National Security Council position on which Executive Order--the FEMA or Defense draft--should be processed for approval by the President.

Your memorandum sets forth the background on the proposed Executive Orders and points out several of the substantial differences between the two competing drafts. After reviewing these drafts and discussing policy differences with staff from Defense, FEMA and Commerce, we believe that interagency discussions of these differences would be beneficial prior to circulation of either of the current Executive Order drafts.

The NSC requests that you inform DoD and FEMA that processing of their draft Executive Orders is being withheld pending a review by the National Security Council of related policy issues. The NSC plans to convene an interagency group later this month to explore the rationale supporting the current Defense and FEMA drafts, and identify critical policy issues which may require resolution via the PRD process.

If you have any questions regarding this approach, please contact Bob Bell or Steve Jones.

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20508

July 15, 1993


Deputy Nat Sec Advisor
has seenACTION

MEMORANDUM FOR SANDY BERGER

THROUGH: ROBERT G. BELL *RB*
FROM: STEVEN R. JONES *7*
SUBJECT: Policy Decision - FEMA and Defense Executive
Orders Entitled "National Security Resources
Preparedness"

SECRET

OMB has requested an NSC position as to which of two competing Executive Orders that would implement authorities specified in the Defense Production Act (DPA)--the FEMA or Defense draft--should be circulated for agency comment and approval by the President (Tab C).

The OMB Memo (Tab C) lays out the background and substantial differences in the FEMA and DoD draft Executive Orders. The draft Executive Orders delegate various authorities to Federal agencies to ensure the United States has the capability to mobilize its industrial resources to respond to a national security emergency. They implement 1991 and 1992 legislative amendments to the DPA, which broaden the Administration's authority to act in several areas relating to economic security.

FEMA's draft expands the existing FEMA policy guidance role into areas such as managing the Title III fund and establishing a defense industrial base information system. FEMA maintains (Tab B) that it must retain control of the DPA delegations to provide civil agency coordination and safeguards to protect the civil economy from inappropriate diversions of civil resources for defense needs.

The Defense Department maintains that most of FEMA's day-to-day authority is redelegated to the departments, including DoD, and that such duplication is unwarranted in an austere budget environment. DoD maintains (Tab C) that it has the experience and can more efficiently operate the Title III fund and defense industrial base information system. In DoD's view critical civil resource priorities and allocations would be coordinated with Commerce and be adjudicated by the NSC rather than FEMA in those exceptional instances where disputes cannot be resolved.

FEMA has coordinated and gained some measure of acceptance of its version at the "mobilization" staff level with civil agencies including Commerce, Transportation, Energy, and Agriculture. Defense and Commerce have discussed compromises that would allow Commerce acceptance of the DoD position. DoD has expressed little interest in compromising and accepting a FEMA policy role.

There are several broader issues surrounding this narrower issue of the DPA Executive Orders. These include the identification of analysis and policies required to ensure our nation's industrial base can support future defense needs as we drawdown our defense procurement budget, the extent to which an expanded Title III authority should be used to support individual companies to maintain critical domestic production capability, and the evolution of FEMA's role in "all hazards response" and its responsibilities with regard to national security emergency preparedness.

Proposed Approach:

After reviewing the drafts and discussing policy differences with staff from Defense, FEMA and Commerce, I believe that interagency discussions of these differences would be beneficial prior to circulation of either of the current Executive Order drafts. OMB has agreed to hold the Executive Orders while the NSC calls an interagency meeting to gain a better understanding of the rationale behind the DoD and FEMA drafts.

After this initial meeting we would either (1) incorporate agreed-upon revisions into a common draft E.O. or (2) initiate a PRD to define and resolve key issues underlying the Defense Production Act implementation and the associated FEMA, civil agency and DoD roles.

Timing:

There are no immediate issues awaiting completion of the new Executive Order. A delegation is needed to submit to Congress a Defense Industrial Base Information System plan by December 31, 1993. There are some ongoing DoD and the NEC reviews regarding potential use of expanded Title III authority to support critical technologies and production capabilities at GCA and Babcock and Wilcox. If needed prior to completion of the PRD, Presidential approval could be sought on a case-by-case basis. The Vice President's Performance Review will also include general recommendations regarding FEMA in early September.

Concurrences by: *In draft* Keith Hahn, *In draft* Tom Kalil (NEC)

RECOMMENDATION

That you approve Will Itoh sending the memo at Tab I to OMB, which withholds the draft Executive Orders pending an NSC-led interagency review of related policy issues.

A determination on the need for a PRD would be made after the initial interagency discussion.

Approve  Disapprove _____

Attachments

Tab I	NSC Memo to OMB
Tab A	FEMA Issue Paper
Tab B	DoD Response to FEMA Issue Paper
Tab C	OMB Incoming Correspondence



Federal Emergency Management Agency

Washington, D.C. 20472

The Honorable Leon E. Panetta
Director, Office of Management
and Budget
Old Executive Office Building
Washington, D.C. 20503

ADP C "

Dear Mr. Panetta:

By letter of April 19, 1991, Mr. Mac Reed, Assistant General Counsel, Office of Management and Budget (OMB), returned the proposed Executive order (EO), entitled "National Security Resources Preparedness," because the Defense Production Act of 1950 (DPA) had lapsed.

We are resubmitting the proposed order to the OMB for formal clearance. The revised EO reflects the 1991 and 1992 amendments to the DPA (Public Laws 102-99 and 102-558). Public Law 102-99 provides expanded antitrust protection and breach of contract protection for voluntary agreement participants under section 708 of DPA. Public Law 102-558 establishes a fund for projects under section 303 of the DPA. This fund is similar to the fund that was originally in the DPA that was managed by FEMA's predecessor agencies. The Director of FEMA is proposed as the Fund Manager because the fund is to be used for both military and civilian projects and it has been FEMA's traditional role to coordinate such projects. Moreover, FEMA would be better able to serve as an "honest broker" because it would not itself be a major claimant on the Fund's resources.

In addition, the proposed order would delegate responsibilities necessary to establish a Defense Industrial Base Information System. I am requesting action on this proposed order because the 1992 amendments require a plan for the system and a report to Congress by December 31, 1993.

Thank you for your assistance in expediting clearance of this important document. Its approval and promulgation will represent a significant step in the President's effort to improve our resource preparedness capabilities.

Sincerely,

James L. Witt
James L. Witt
Director

Enclosure

EXECUTIVE ORDER

- - - - -

NATIONAL SECURITY RESOURCES PREPAREDNESS

WHEREAS the health of the industrial and technological base of the United States in peacetime promotes technological superiority which is the cornerstone of the national security strategy and the efficiency with which defense requirements are met in peacetime and in time of a national security emergency; and WHEREAS a healthy and competitive industrial base will support the graduated response needed to effectively meet the demands of a crisis; and

WHEREAS resources preparedness capability is a prerequisite to forward deployment and sustainment of our armed forces and ensuring that essential civilian needs are met in peacetime and in a national security emergency; and

WHEREAS the United States must have the ability to respond to actions which could result in the reduction of the availability of strategic and critical materials, including energy, and which could adversely affect the defense preparedness of the United States; and

WHEREAS to promote the national defense and to respond effectively to a national security emergency, it may be necessary to require the priority performance of contracts or orders and to allocate materials, services, and facilities that are essential to the national defense; and

WHEREAS sufficient and timely availability of critical components, critical technology items or industrial resources including domestic energy supplies is essential to meeting military and essential civilian requirements in peacetime and in response to a national security emergency; and

WHEREAS the Congress has directed that plans, programs and policies to improve the domestic defense industrial base efficiency and responsiveness be developed in order to ensure national security resource preparedness.

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of

America, including the authorities contained in the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 et seq., and section 301 of title 3 of the United States Code, it is hereby ordered as follows-

EXECUTIVE ORDER _____

NATIONAL SECURITY RESOURCES PREPAREDNESS

PART 1 - PURPOSE, POLICY AND IMPLEMENTATION

Section 101. Purpose.

(a) This Order delegates authority and addresses national security resources policies and programs under the Defense Production Act of 1950, as amended, (hereinafter referred to as the Act) except for the amendments to Title III of the Act set forth in the Energy Security Act of 1980 and telecommunication authorities under E.O. 12472.

(b) The authorities delegated under this Order are intended to be consistent with responsibilities assigned to the departments and agencies by statute and by other Executive orders.

Sec. 102. Policy.

The United States must have the capability to sustain its armed forces on an ongoing basis and the capacity to reconstitute new military capabilities and to rapidly mobilize resources in response to any national security emergency. This will require timely and sufficient availability of critical components, critical technology items and other industrial resources to meet military and essential civilian requirements and to promote national security strategy and policy. National defense preparedness plans and programs must maximize the potential contributions of the domestic industrial and technological base to meeting these needs with due consideration for promoting efficiency and competition.

Sec. 103. Implementation. To provide the foundation for the United States to ensure timely and sufficient availability of critical components, technological items and other industrial resources, Federal departments and agencies

shall, as appropriate:

(a) Identify requirements for the full spectrum of national security emergencies, including both military and essential civilian demand;

(b) Continually assess the capability of the domestic defense industrial and technological base to satisfy peacetime requirements as well as national security emergency requirements, including support to our allies, and allied capability to support our requirements. Assessments shall include evaluating the availability of critical components and critical technology items, with specific attention to adequate production sources, including subcontractors and suppliers, materials, skilled labor and professional and technical personnel;

(c) Identify graduated response options and develop solutions for constraints and shortfalls in industrial production and infrastructure resources in satisfying military and essential civilian requirements;

(d) Plan to respond to early warning indicators using graduated mobilization response to ensure the availability of adequate industrial production, services, and supply for national defense requirements;

(e) Consider domestic defense industrial and technological base responsiveness capability in the development of national strategy, military operation plans, and the acquisition process;

(f) Use capabilities of the North American defense industrial resources base and explore cooperative opportunities with other friendly nations; and

(g) Plan for the conversion of civilian industry and use of commercial manufacturing technologies, components, and materials to meet specific national defense needs.

PART 2 - RESOURCES PREPAREDNESS PROGRAMS

Sec. 201. Coordination and Guidance.

(a) The National Security Council is the principal forum for consideration and resolution of national security resources preparedness policy.

(b) The Director, Federal Emergency Management Agency (hereinafter referred to as the Director) shall serve as an advisor to the National Security Council on issues of national security resource preparedness, including military, industrial, and essential civilian resource requirements, and on the use of the authorities and functions delegated by this Order.

(c) The Director shall provide for the central coordination of the plans and programs incident to authorities and functions delegated under this Order, with the other Federal departments and agencies and with State and local governments and, as appropriate, with the private sector.

(d) The Director shall establish procedures to timely and effectively resolve conflicts and issues that may arise in implementing the authorities and functions delegated under this Order.

(e) The Director, to ensure the effective central coordination of the implementation of the plans and programs incident to the authorities and functions delegated under this Order, shall provide policy and program guidance, and technical advice to the heads of Federal departments and agencies with respect to:

(i) plans and programs for the use of priorities and allocations and to ensure that the priorities and allocation authorities are used only as necessary and appropriate to promote the national defense or to maximize domestic energy

supplies;

(ii) the use of the Defense Production Act Fund and plans and programs for utilizing the authorities of title III of the Act to develop, maintain, modernize, and expand the productive capacities of domestic sources for materials, critical components, critical technology items, and industrial resources.

(iii) making voluntary agreements under the authority of section 708 of the Act; and

(iv) using sections 107 and 108 and Title VII authorities in carrying out program functions under the Act and this Order; and

(v) using the defense industrial base information system established under section 722 of the Act; and

(f) The Director shall report to the President periodically concerning all program activities conducted pursuant to this Order.

(g) The head of every Federal department and agency assigned functions under this Order shall consult and coordinate with the Director to ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

Sec. 202. Priorities and Allocations.

(a) The authority of the President, under subsection 101(a) of the Act, to require priority acceptance and performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

(i) The Secretary of Agriculture with respect to food

resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(ii) The Secretary of Energy with respect to all forms of energy;

(iii) The Secretary of Health and Human Services with respect to health resources;

(iv) The Secretary of Transportation with respect to all forms of civil transportation;

(v) The Secretary of Defense with respect to water resources; and

(vi) The Secretary of Commerce with respect to all other materials, services, and facilities, including construction materials.

(b) The authority delegated by this section may only be used to support programs that have been certified in writing as necessary or appropriate to promote the national defense by the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, space, and directly related activity; the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activity; and the Director of the Federal Emergency Management Agency with respect to civil defense and continuity of government.

(c) A copy of the certification required under subsection (b) shall be provided to the Director of the Federal Emergency Management Agency. If a request for a program certification is denied, the department or agency may appeal the denial through the Director to the Assistant to the President for National Security Affairs for resolution.

(d) The head of each Federal department or agency assigned functions under subsection 202(a) of this Order is

delegated the authority of the President to make the finding required under subsection 101(b) of the Act. The finding shall determine that the material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship, and that superior means of alleviating either the dislocation or the hardship, or of coping with such hardship, are not available. This finding shall be submitted through the Director of the Federal Emergency Management Agency to the President for approval. Upon such approval the officials may use the authority of subsection 101(a) of the Act to control the general distribution of any material (including applicable services) in the civilian market.

(e) The authority of the President to perform the functions provided by subsection 101(c) of the Act is delegated to the Secretary of Commerce, who shall redelegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services, and facilities are critical and essential. The Secretary of Commerce shall make the finding in subsection 101(c)(2)(A) that the materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that it is necessary to use the authority provided by subsection 101(c)(1).

(f) The Director is hereby delegated the authority under subsection 101(c)(3) of the Act, to take such action as may be appropriate to ensure that this authority is being exercised in a manner which assures the coordinated

administration of such authority with any priorities or allocations established under subsection 101(a) of the Act and in effect during the same period.

Sec. 203. Expansion of Productive Capacity and Supply.

(a) In order to expedite production and delivery of materials and services under Government contracts, the head of any Federal department or agency engaged in procurement for the national defense (referred to as "agency head" in this section), without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, is authorized, subject to the provisions of section 301 and implementing regulations, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount or advance, or on any commitment in connection therewith. This authority may be used for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or in connection with or contemplation of the termination, in the interest of the United States, of any contract made for the national defense. Such guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. No small business concern (as defined in the Small Business Act, as amended, 15 U.S.C 632) shall be held ineligible for the issuance of such guaranty by reason of

alternative sources of supply. The Director of the Office of Management and Budget shall be informed when such guarantees are to be made.

(b) Each Federal Reserve Bank is designated and authorized to act, on behalf of any agency head, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Act, with respect to private financing institutions. All actions and operations of Federal Reserve Banks, under the authority of the Act, shall be subject to the supervision of the Board of Governors of the Federal Reserve System. The Board is authorized, after consultation with the agency head, the Secretary of the Treasury and the Director of the Office of Management and Budget, (i) to prescribe regulations governing the actions and operations of fiscal agents hereunder; (ii) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the agency heads; and (iii) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(c)(i) The Secretary of the Treasury, upon receipt of an application from an agency head, subject to the provisions of section 302 of the Act, is authorized to make loans (including participation in, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals,

exclusive of such expansion, development and production in foreign countries.

(ii) Loans under this subsection may be made without regard to the limitations of existing law and on such terms and conditions as the Secretary of the Treasury deems necessary, except that, such loans shall be made only after the Secretary has determined in each instance that financial assistance is not otherwise available on reasonable terms.

(d)(i) The President and Chairman of the Export-Import Bank of the United States, upon receipt of an application from an agency head, subject to the provisions of sections 301 and 302 of the Act, is authorized after consultation with the Secretary of the Treasury, to make loans (including participation in, or guarantees, of loans) to private business enterprises, for the expansion of capacity, development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, in those cases where such expansion, development or production is carried on in foreign countries.

(ii) Loans under this subsection may be made upon such terms and conditions as the President and Chairman of the Export-Import Bank of the United States deems necessary, except that, such loans may be made only after a determination is made by the President and Chairman in each instance that financial assistance is not otherwise available on reasonable terms and that the loan involved cannot be made under the provisions of and from funds available to the Bank under the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635, et seq.

(e) An application for a loan under subsection (c) or (d) of this section shall be received only from an agency

head and, except as set forth in subsection (c)(4) of section 302 of the Act, a copy of the determination required to be made under subsection (b)(2) of section 302 of the Act must accompany the application. A copy of such determination also shall be provided to the Director, the Director of the Office of Management and Budget and when making application under subsection (d) of this section, to the Secretary of the Treasury.

(f) An agency head may purchase and make commitments to purchase industrial resources or a critical technology items for Government use or resale, as authorized under and subject to the provisions of section 303 of the Act.

(g) The Secretary of the Interior, in consultation with the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act, is authorized to encourage the exploration, development, and mining of critical and strategic materials, and other materials.

(h) An agency head is authorized to make determinations, statements, certifications, judgments, or findings required under the provisions of subsection (a)(3) of section 301, paragraph (e)(1)(A) and subsection (e)(2) of section 301, subsections (b)(2) and (c)(1) of section 302, and subsections (a)(5) and (a)(6), (c), (e), and (g) of section 303 of the Act before a guarantee, loan, or other action may be executed. A copy of such determination, statement, judgment or findings is to be provided to the Director, the Secretary of the Treasury and the Director of the Office of Management and Budget.

(i) After making the required findings under subsection (c)(1) or (2) of section 303 of the Act and after consultation with the Secretary of the Treasury and the Director of the Office of Management and Budget, an agency

head may make subsidy payments in those unusual situations as set forth therein and determine the amounts, manner, terms, and conditions thereof, as authorized under subsection 303(c) of the Act.

(j) When in his or her judgement it will aid national defense, an agency head is authorized under section 303(e) of the Act to install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the United States Government, and to install Government-owned equipment in plants, factories, and other industrial facilities owned by private persons.

(k) The authority conferred upon the President by subsection 303(f) of the Act, (i) to make judgments that metals, minerals, and materials acquired pursuant to the provisions of section 303 of the Act are excess to the needs of the programs under the Act and that such excess metals, minerals, and materials shall be transferred to the National Defense Stockpile, is delegated to the head of the department or agency engaged in the acquisition of the metals, minerals, or materials under the provisions of section 303 of the Act; and (ii) to determine that a transfer of such metals, minerals, or materials to the National Defense Stockpile is in the public interest, is delegated to the National Defense Stockpile Manager.

(l) Except as otherwise provided, no guarantee or loan may be made, or other action taken, unless the industrial resource shortfall to be corrected, as specified in subsection (e)(1)(A) of section 301, subsection (c)(1) of section 302, or paragraph (a)(6)(A) of section 303 of the Act, has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, and is

accompanied by a statement from the Director affirming that the budget submission is in accordance with the applicable provisions of subsection (a)(3) section 301, subsection (b)(2) of section 302, or subsection 303(a) of the Act.

(m) The Secretaries of Interior and Agriculture are authorized to make provision for the development of substitutes for strategic and critical materials (excluding petroleum, gas, solid fuel, and source materials defined in the Atomic Energy Act of 1954, as amended), and the head of each Federal department or agency engaged in procurement for national defense is authorized to make provision for the development of substitutes for critical components, critical technology items and other industrial resources.

(n) The functions and authorities of the President under subsections 107(a) and (b)(2) and section 108 of the Act are delegated to the head of each Federal department and agency engaged in procurement for the national defense.

(o) Pursuant to section 304(f) of the Act, the Director of the Federal Emergency Management Agency is designated the Defense Production Act Fund manager.

Sec. 204. National Defense Executive Reserve.

(a) Pursuant to section 710(e) of the Act, there is authorized to be established in the Executive Branch of the Government a National Defense Executive Reserve (NDER) composed of persons of recognized expertise from various segments of the private sector and from government (except full time Federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

(b) The head of any department or agency may establish a unit of the NDER in that department or agency.

(c) The head of each department or agency that has an

established unit of the NDER is authorized to exercise the President's authority to employ civilian personnel in accordance with Section 703(a) of the Defense Production Act of 1950 when activating all or a part of its reserve unit. The exercise of this authority shall be subject to the provisions of subsections (d) and (e) of this section and shall not be redelegated.

(d) The head of a department or agency may activate his or her unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the department's or agency's emergency program functions.

(e) At least seventy-two hours prior to activating the NDER unit, the head of the department or agency shall notify in writing the Assistant to the President for National Security of the impending activation, including a copy of the determination required under subsection (d) of this section.

(f) The Director of the Federal Emergency Management Agency shall coordinate the NDER program activities of departments and agencies in establishing units of the Reserve; provide for appropriate guidance for recruitment, training and activation; and issue necessary rules and guidance in connection with the program.

(g) This order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER unit, in whole or in part, or appointment of any NDER member that are inconsistent with the authorities delegated herein. Provided, that the aforesaid suspension applies only as long as Sections 703(a) and 710(e) of the Defense Production Act of 1950, as amended, are in effect.

Sec. 205. Labor Supply.

The Secretary of Labor, referred to in this section as the Secretary, shall:

(a) Collect, analyze and maintain data needed to make a continuing appraisal of the Nation's labor requirements and the supply of workers for purposes of national defense. All agencies of the Government shall cooperate with the Secretary in furnishing information necessary for this purpose;

(b) In response to requests from the head of a Federal department and agency engaged in the procurement for national defense, consult with and advise that department or agency with respect to (A) the effect of contemplated actions on labor supply and utilization, (B) the relation of labor supply to materials and facilities requirements, and (C) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;

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

(d) Project skill shortages to meet defense and essential civilian needs and establish training programs;

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

(f) Administer an effective labor-management relations policy to support the activities and programs under this Order with the cooperation of other Federal agencies

including the National Labor Relations Board and the Federal Mediation and Conciliation Service.

Sec. 206. Voluntary Agreements

(a) The authority granted the President in subsection 708(c) and (d) of the Act is hereby delegated to the heads of departments and agencies assigned functions under this order with the right of redelegation to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate. The authority delegated under this subsection shall be exercised pursuant to the provisions of section 708 of the Act and in consultation with and consistent with the advice and guidance of the Director of the Federal Emergency Management Agency.

(b) The authority granted the President in subsection 708(d) of the Act and delegated under this section, relating to the establishment of advisory committees, shall be exercised only after consultation with, and in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 207. Appointment of Certain Persons.

The head of each department or agency assigned functions under this Order is delegated authority under subsections 710(b) and (c) of the Act to employ persons of outstanding experience and ability without compensation, and to employ experts, consultants, or organizations. The authority delegated by this section shall not be redelegated.

Sec. 208. Defense Industrial Base Information System.

(a) The Secretary of Defense with the Secretary of Commerce, Secretary of Energy, Secretary of Labor and Director of the Federal Emergency Management Agency, shall provide for the establishment of a modern information system

on the domestic defense industrial base that incorporates DINET (now called PROBASE), and which meets the requirements of section 722 of the Act. As required by section 722(c) of the Act, the above agencies shall develop a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. As appropriate and to the maximum extent feasible, the information system shall be built on existing methods of data collection and analysis, integrating information from intelligence agencies on foreign industrial and technological conditions. The agencies shall include in the plan an assessment of the performance and cost-effectiveness of the procedures implemented under section 722(b) of the Act and shall seek to build upon these procedures as necessary and appropriate.

(b) The Secretary of Defense, Secretary of Commerce, Secretary of each military department, Secretary of Energy, Secretary of the Interior, Secretary of Labor, Secretary of State, Secretary of Transportation, Director of Central Intelligence, Director of the Federal Emergency Management Agency and those Federal departments and agencies engaged in procurement for the national defense or in the collection and analysis of industrial and economic data are directed to perform the requirements set forth in subsections 722(d)(1)(A), (B), (C) and (D) of the Act.

(c) The Director of the Federal Emergency Management Agency together with the departments and agencies set forth in subsection (b) of this section, shall establish procedures and guidelines to ensure that all Federal departments and agencies which acquire information with respect to the domestic defense industrial base are fully participating in

the system, unless the Director determines that all the above departments and agencies are voluntarily providing information which is necessary for the system to carry out the purpose of the Act and chapter 148 of title 10, United States Code.

(d) The Secretary of Defense with assistance of the Secretary of Commerce, Secretary of Energy, Secretary of Labor and Director of the Federal Emergency Management Agency, shall issue a report pursuant to the provisions of section 722(e)(1) of the Act. The first report shall be issued not later than July 1, 1994 and every two years thereafter. The report may include specific policy recommendations to correct deficiencies identified therein which would aid in strengthen domestic sources of critical components, technologies and technology items.

PART 3 - GENERAL PROVISIONS

Sec. 301. Definitions. In addition to the definitions in section 702 of the Act, the following definitions are used in this Order:

(a) "Civil transportation" shall include movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its Territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, civil transportation shall not include transportation owned or controlled by the Department of Defense, nor petroleum and gas pipelines, and coal slurry pipelines used only to directly supply energy production facilities. As applied herein, civil transportation shall include direction, control, and coordination of civil

transportation capacity regardless of ownership.

(b) "Energy" shall mean all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification and coal gasification), and atomic energy, and the production, conservation, use, control and distribution (including pipelines) of all of these forms of energy.

(c) "Farm equipment" shall mean equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) "Fertilizer" shall mean any product or combination of products which contains one or more of the elements--nitrogen, phosphorus, and potassium--for use as a plant nutrient in useable form for distribution to users thereof.

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

(f) "Food resource facilities" shall mean plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and

storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) "Functions" include powers, duties, authority, responsibilities and discretion.

(h) "Head of any Federal department or agency engaged in procurement for the national defense" shall mean Secretaries of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order 10789.

(i) "Health resources" shall mean materials, facilities, health supplies and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, and restore the physical and mental health conditions of the population.

(j) "Metals and minerals" shall mean all raw materials of mineral origin (excluding petroleum, gas, solid fuels, and source materials as defined in the Atomic Energy Act of 1954, as amended) including their refining, smelting, or processing, but excluding their fabrication.

(k) "National security emergency" is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.

(l) "Water resources" shall mean all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

Sec. 302. General.

(a) Except as otherwise provided in subsection (c) of this section, the authorities vested in the President by Title VII of the Act may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under the Act and this Order.

(b) The authorities which may be exercised and performed pursuant to subsection (a) of this section shall include, but not by way of limitation, (i) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the Government, and (ii) the power of subpoena with respect to the authorities delegated in sections 202 and 203 of this Order; Provided, that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer referred to in subsection (a) of this section or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by subsection (a) of this section are authority delegated by sections 204 and 208 of the Order and the authority with respect to fixing compensation under subsection 703(a) of the Act.

Sec. 303. Authority.

All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this Order shall remain in effect except as they are inconsistent with this Order or are subsequently amended or revoked under proper authority. Nothing in this Order shall affect the validity or force of anything done

under previous delegations or other assignment of authority under the Act.

Sec. 104. Effect on other Orders.

(a) The following are superseded or revoked:

(i) Section 3, Executive Order 8248 of September 8, 1939 (4 FR 3864).

(ii) Executive Order No. 10222 of March 8, 1951 (16 FR 2247).

(iii) Executive Order No. 10480 of August 14, 1953 (18 FR 4939).

(iv) Executive Order No. 10647 of November 28, 1955 (20 FR 8769).

(v) Executive Order No. 11179 of Sept. 22, 1964 (29 FR 13239).

(vi) Executive Order No. 11355 of May 26, 1967 (32 FR 7803).

(vii) Sections 7 and 8, Executive Order No. 11912 of April 13, 1976 (41 FR 15825, 15826-27).

(viii) Section 3, Executive Order No. 12148 of July 20, 1979 (44 FR 43239, 43241).

(ix) Executive Order 12521 of June 24, 1985 (50 FR 26335).

(x) Executive Order 12649 of August 11, 1988 (53 FR 30639).

(xi) Executive Order 12773 of September 26, 1991 (56 FR 49387), except that part of the Order that amends section 604 of Executive Order 10480.

(b) Executive Order No. 10789 of November 14, 1958, is amended by deleting "and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950," as it appears in the first sentence.

(c) Executive Order No. 11790, as amended, relating to

the Federal Energy Administration Act of 1974, is amended by deleting "Executive Order No. 10480" where it appears in section 4 and substituting this Order's number.

(d) Subject to subsection 305(c) of this Order, to the extent that any provision of any prior Executive Order is inconsistent with the provisions of this Order, this Order shall control and such prior provision is amended accordingly.

Sec. 305. Updating. Whenever the functions of any department or agency have been modified in such manner as to require the amendment of this Order, the Director shall promptly submit a proposal for amendment to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order 11030, as amended.

Sec. 306. Judicial Review. This Order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WHITE HOUSE,



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

17 APR 1993

The Honorable Leon E. Panetta
Director, Office of Management and Budget
Washington, DC 20503

Dear Mr. Panetta:

The enclosed proposed Executive order, "National Security Resources Preparedness," is transmitted in accordance with Executive Order 11030.

The Defense Production Act Amendments of 1992 changed the Defense Production Act authorities significantly. Many of these changes are within the purview of the Department of Defense. The proposed Executive order is a comprehensive draft incorporating all of these changes.

I would appreciate expeditious action on this matter since the Defense Production Act Amendments of 1992 contain not only "new" authorities for national security which must be delegated but also authorities which can play a significant role in fostering economic security.

Sincerely,

A handwritten signature in cursive script, reading "William J. Perry".

Enclosure

81886

EXECUTIVE ORDER _____

NATIONAL SECURITY RESOURCES PREPAREDNESS

By the authority vested in me by the Constitution and laws of the United States of America, including the Defense Production Act of 1950, (64 Stat. 798; 50 U.S.C. App. 2061 *et seq.*) and section 301 of title 3, United States Code, and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

PART I — PURPOSE, POLICY AND IMPLEMENTATION

Sec. 101. Purpose. This Order delegates authorities and addresses national security resources policies and programs under the Defense Production Act of 1950, as amended, (hereinafter referred to as the Act).

Sec. 102. Policy. The United States must have the capability to sustain its armed forces on an ongoing basis and the capacity to reconstitute new military capabilities and to rapidly mobilize resources in response to any national security emergency. The domestic industrial and technological base is the foundation for such national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure emergency preparedness planning to respond to all threats to the national security of the United States.

Sec. 103. General Functions. Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall—

(1) assess continually the capability of the domestic industrial and technological base to satisfy defense requirements, in peacetime and in times of national emergency;

(2) plan appropriate and timely responses to graduated levels of emergency defense production requirements; and

(3) foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment, to enhance domestic defense base efficiency and responsiveness.

PART II — PRIORITIES AND ALLOCATIONS

Sec. 201. Delegations. (a) The authority of the President conferred by subsections (a) and (b) of section 101 of the Act is delegated to the following agency heads:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy and materials, equipment, and services needed to maximize domestic energy supplies;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to all other materials, services and facilities needed for operation of defense programs and with respect to all water resources;

(6) The Secretary of Commerce for all other materials, services and facilities, including construction materials.

(b) Upon a request from the Secretary of Defense for assistance in requiring acceptance or priority performance of a contract or order, all other heads of departments or agencies receiving a delegation under this section shall exercise such authority within 10 calendar days of the receipt of the request; provided, that if such department or agency head disagrees with the request the matter shall then be referred to the Assistant to the President for National Security Affairs, who shall ensure expeditious resolution of the issue.

Sec. 202. Determinations. The authority delegated by section 201 of this Order may only be used to support programs that have been determined in writing, as necessary or appropriate to promote the national defense—

(1) by the Secretary of Defense with respect to military

production and construction, military assistance to foreign nations, stockpiling, space and directly related activities;

(2) by the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activity; and

(3) by the Director, Federal Emergency Management Agency (FEMA) with respect to essential civilian needs including civil defense and continuity of government and directly related activities.

Sec. 203. Delegations. The authorities of the President under section 101(c) of the Act are delegated to the Secretary of Energy.

Sec. 204. Chemical and Biological Warfare. The authority delegated in this part shall not be used with respect to production of or other involvement in chemical or biological warfare capabilities, unless authorized by the Secretary of Defense.

PART III — EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. Loan Guarantee. (a) To expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, the head of each Federal department or agency engaged in procurement for the national defense (referred to as "agency head" in this part) and the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) is authorized to guarantee in whole or in part any public or private financing institution, subject to provisions of section 301 of the Act. Guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. The Director of the Office of Management and Budget (OMB) shall be informed when such guarantees are to be made.

(b) **Fiscal Agent.** Each Federal Reserve Bank is designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent in the making of guarantee contracts and in otherwise carrying out the

purposes of section 301 of the Act.

(c) *Regulations.* The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest and fees for such guarantee contracts.

Sec. 302. Loans. (a) To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of industrial resources or a critical technology item for the national defense, an agency head is authorized to submit to the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) applications for loans, subject to provisions of section 302 of the Act.

(b) After receiving a loan application and determining that financial assistance is not otherwise available on reasonable terms, the Secretary of the Treasury, is authorized to make loans, subject to provisions of section 302 of the Act.

Sec. 303. Purchase Commitments. (a) In order to carry out the objectives of the Act and subject to the provisions of section 303 thereof, the Secretary of Defense is authorized to make provision for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale.

(b) Materials acquired under section 303 of the Act which are excess to the needs of the programs under the Act may be transferred to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest.

Sec. 304. Subsidy Payments. In order to ensure the supply of raw or non-processed materials from high-cost sources, an agency head is authorized to make subsidy payments, after consultation with the Secretary of Treasury and the Director, OMB, and subject to the

provisions of section 303(c) of the Act.

Sec. 305. Determinations and Findings. When carrying out the authorities in sections 301 through 304 of this Order, an agency head is authorized to make the required determinations, judgments and findings and shall provide copies to the Director, OMB, and when appropriate, to the Secretary of Treasury.

Sec. 306. Strategic and Critical Materials. (a) The Secretary of the Interior, in consultation with the Secretary of Defense as the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act, is authorized to encourage the exploration, development and mining of critical and strategic materials, and other materials.

(b) The Secretary of Defense with the assistance of the heads of departments and agencies, as needed, is authorized to make provision for the development of substitutes for strategic and critical materials (excluding energy), and is authorized to make provisions for the development of substitutes for critical components, critical technology items and other industrial resources to aid the national defense.

Sec. 307. Government-owned equipment. An agency head is authorized, pursuant to section 303(e) of the Act, to install additional equipment, facilities, processes or improvements to facilities owned by the Government and to install Government-owned equipment in industrial facilities owned by private persons.

Sec. 308. Identification of shortfalls. Except during periods of national emergency or after a Presidential determination in accordance with section 301(e)(1)(D), section 302(c)(4), or section 303(a)(7) of the Act, no guarantee, loan or other action, pursuant to sections 301, 302 and 303 of the Act, to correct an industrial shortfall shall be taken unless the shortfall has been identified in the Budget of the United States or amendments thereto.

Sec. 309. Defense Production Act Fund Manager. The Secretary of Defense is designated the Defense Production Act Fund Manager, ⁱⁿ ~~accordance with~~ ^{provided by} section 304 of the Act, and shall carry out the duties

specified in that section.

Sec. 310. Critical Items List. (a) Pursuant to section 107 of the Act, the Secretary of Defense shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

(b) The Secretary of Defense shall take appropriate action to assure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. "Appropriate action" may include restricting contracting solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

PART IV — IMPACT OF OFFSETS

Sec. 401. Consultation on offsets. For the President's annual report on impact of offsets—

(1) There is established an interagency group on the President's offsets report, which shall be composed of the Secretaries of Commerce, Defense, State, Treasury, Labor, the United States Trade Representative and the Director, OMB. The Secretary of Commerce shall chair the interagency group on the President's offsets report.

(2) The Secretary of Commerce shall ensure that the report required by section 309(a) of the Act is prepared in coordination with the members of the interagency group and submitted to the Director, OMB, by September 15 of each year for review and submission to the Congress. The function conferred upon the President by section 309(a) of the Act with respect to the submission of reports to the Congress concerning offsets shall be performed by the Director, OMB. The heads of Federal departments and agencies shall, to the extent provided by law, provide the Director with such information as may be necessary for the effective performance of this function.

(3) In order to ensure that information gathered pursuant to this authority shall be subject to appropriate confidentiality protections, the Bureau of Economic Analysis of the Department of Commerce, which previously has been designated a "central collecting agency" in gathering this information under 44 U.S.C. 3509, is authorized pursuant to section 705 of the Act to collect the information required for compilation of the data base to be used in preparation of the reports to Congress required by section 309(a) of the Act.

PART V — VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

Sec. 501. *Appointments.* The authority of the President under sections 708(c) and (d) of the Act is delegated to the head of each Federal department or agency. The authority delegated under this section shall be exercised pursuant to the provisions of section 708 of the Act and in consultation with the Director, FEMA.

Sec. 502. *Advisory committees.* The authority of the President under section 708(d) of the Act and delegated in section 501 (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with guidelines and procedures established by the Administrator of General Services.

PART VI — EMPLOYMENT OF PERSONNEL

Sec. 601. *National Defense Executive Reserve.* (a) In accordance with section 710(e) of the Act, there is established in the Executive Branch of the Government a National Defense Executive Reserve (NDER) composed of persons of recognized expertise from various segments of the private sector and from government (except full-time Federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

(b) The head of any department or agency may establish, subject to the policy and program guidance of the Director, FEMA, a unit of the NDER in the department or agency.

(c) The head of each department or agency with an NDER unit is

authorized to exercise the President's authority to employ civilian personnel in accordance with section 703(a) of the Act when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of subsections (d) and (e) of this section and shall not be redelegated.

(d) The head of a department or agency may activate an NDER unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the department's or agency's emergency program functions.

(e) At least seventy-two hours prior to activating the NDER unit, the head of the department or agency shall notify in writing the Assistant to the President for National Security of the impending activation and provide a copy of the determination required under subsection (d) of this section.

(f) The Director, FEMA, shall coordinate the NDER program activities of departments and agencies and shall issue necessary rules and guidance in connection with the program.

(g) This Order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER member that is inconsistent with the authorities delegated herein; provided, that the aforesaid suspension applies only as long as sections 703(a) and 710(e) of the Act are in effect.

Sec. 603. Consultants. The head of each department or agency assigned functions under this Order is delegated authority under sections 710(b) and (c) of the Act (to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations). The authority delegated by this section shall not be redelegated.

PART VII — DEFENSE INDUSTRIAL BASE INFORMATION AND REPORTS

Sec. 701. Foreign acquisition of companies. The Secretary of the

Treasury, in cooperation with the Department of State, the Department of Defense, the Department of Commerce, the Department of Agriculture, the Attorney General, and the Director of the Central Intelligence Agency, shall complete and furnish a report to Congress, in accordance with the requirements of section 721(k) of the Act (concerning foreign efforts to acquire United States companies involved in research, development, or production and concerning industrial espionage activities directed by foreign governments against private U.S. companies).

Sec. 702. Defense Industrial Base Information System. (a) The Secretary of Defense, shall establish an information system on the domestic defense industrial base in accordance with the requirements of section 722 of the Act.

(b) In establishing the information system required by subsection (a) of this section, the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate Federal departments and agencies, shall perform the duties listed in section 722(d)(1) of the Act.

(c) The Secretary of Defense is assigned the duties of the President under section 722(d)(2) of the Act.

(d) The Secretary of Defense shall report to Congress, not later than December 31, 1993, on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. The plan shall include an assessment of the performance and cost-effectiveness of procedures specified in section 722(b) of the Act.

(e) The Secretary of Commerce, acting through the Bureau of the Census and in consultation with the Secretary of Defense and the Director, FEMA, shall improve the usefulness of information derived from the Census of Manufacturers in carrying out the provisions of section 722 of the Act.

(f) The Secretary of Defense shall perform an analysis of the production base for not more than two major weapons systems of each military department in establishing the information system under section

722 of the Act. Each analysis shall identify the critical components of each system.

(g) The Secretary of Defense shall issue a biennial report on critical components and technology in accordance with section 722(e) of the Act.

PART VIII — GENERAL PROVISIONS

Sec. 801. Definitions. In addition to the definitions in section 702 of the Act, the following definitions are used in this Order:

(1) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its Territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, civil transportation shall not include transportation owned or controlled by the Department of Defense, nor petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, civil transportation shall include direction, control, and coordination of civil transportation capacity regardless of ownership.

(2) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification and coal gasification), and atomic energy, and the production conservation, use, control and distribution (including pipelines) of all of these forms of energy.

(3) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(4) "Fertilizer" means any product or combination of products which contains one or more of the following elements for use as a plant nutrient in usable form for distribution to users thereof: nitrogen, phosphorous, and potassium.

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

(6) "Food resource facilities" means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources.

(7) "Functions" include powers, duties, authority, responsibilities and discretion.

(8) "Department or agency engaged in procurement for the national defense" means the Departments of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order No. 10789.

(9) "Health resources" means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

(10) "Metals and minerals" means all raw materials of mineral origin (excluding energy) including their refining, smelting, or processing, but excluding their fabrication.

(11) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, which are

controlled, and allocated to meet emergency requirements.

Sec. 802. General. (a) Except as otherwise provided in subsection (c) of this section, the authorities vested in the President by title VII of the Act may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under this Act and this Order.

(b) The authorities which may be exercised and performed pursuant to subsection (a) of this section shall include, but not by way of limitation—

(1) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the Government; and

(2) the power of subpoena with respect to authorities delegated in parts II, III, and IV of this Order; provided, that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer referred to in subsection (a) of this section or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by subsection (a) of this section are authority delegated by parts V, VI, and VII of this Order and the authority with respect to fixing compensation under section 703(a) of the Act.

Sec. 803. Authority. All previously issued Orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this Order shall remain in effect except as they are inconsistent with this Order or are subsequently amended or revoked under proper authority. Nothing in this Order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

Sec. 804. Effect of other Orders. (a) The following are superseded or revoked:

(1) Section 3, Executive Order No. 8248 of September 8, 1939,
(4 FR 3864);

(2) Executive Order No. 10222 of March 8, 1951 (16 FR 2247);

(3) Executive Order No. 10480 of August 14, 1953 (18 FR 4939);

(4) Executive Order No. 10647 of November 28, 1955
(20 FR 8769);

(5) Executive Order No. 11179 of September 22, 1964
(29 FR 13239);

(6) Executive Order No. 11355 of May 26, 1967 (32 FR 7803);

(7) Sections 7 and 8, Executive Order No. 11912 of April 13,
1976 (41 FR 15825, 15826-27);

(8) Section 3, Executive Order No. 12148 of July 20, 1979
(44 FR 43239, 43241);

(9) Executive Order No. 12521 of June 24, 1985 (50 FR 26335);

(10) Executive Order No. 12649 of August 11, 1988 (53 FR
30639); and

(11) Executive Order No. 12773 of September 26, 1991
(56 FR 49387), except that part of the Order that amends section
604 of Executive Order 10480.

(b) Executive Order No. 10789 of November 14, 1958, is amended by
deleting "and in view of the existing national emergency declared by
Proclamation No. 2914 of December 16, 1950," as it appears in the first
sentence.

(c) Executive Order No. 11790, as amended, relating to the Federal
Energy Administration Act of 1974, is amended by deleting "Executive
Order No. 10480" where it appears in section 4 and substituting this
Order's number.

(d) To the extent that any provision of any prior Executive Order is
inconsistent with the provisions of this Order, this Order shall control and
such prior provision is amended accordingly.

Sec. 805. Updating. Whenever the functions of any department or
agency have been modified in such manner as to require the amendment

of this Order, the Secretary of Defense shall promptly submit a proposal for amendment to the Director, OMB.

Sec. 806. Judicial Review. This Order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 9, 1993

MEMORANDUM FOR STEVE JONES
DIRECTOR FOR DEFENSE POLICY
NATIONAL SECURITY COUNCIL

FROM: Mac Reed *MR*
Assistant General Counsel

SUBJECT: Policy Decision - FEMA and Defense Executive
Orders entitled "National Security Resources
Preparedness"

SUMMARY: This memorandum requests a policy decision concerning two national security related Executive orders. The two orders, one prepared by the Federal Emergency Management Agency (FEMA) and the other by the Department of Defense (Defense), delegate various authorities to Federal agencies to ensure that the United States has the capability to mobilize its resources to respond to a national security emergency. (See attached documents.). The two orders differ substantially in key areas. To avoid the confusion which would be caused by processing two different Executive orders governmentwide on the same matter, this office requests that your office decide which of the two Executive orders should be processed for approval by the President.

BACKGROUND: On April 9, 1993, FEMA submitted to OMB for processing a proposed Executive order entitled "National Security Resources Preparedness." On April 17, 1993, Defense submitted its Executive order entitled "National Security Resources Preparedness." Both orders purport to delegate authorities under the Defense Production Act Amendments of 1992 to the agencies that can best carry out those authorities for national security resources preparedness. The FEMA order, however, gives FEMA a new leading role in coordinating national security resources preparedness responsibilities. The Defense order preserves Defense's role in coordinating national security resources preparedness responsibilities. FEMA is willing to work with Defense to resolve Defense concerns about the FEMA order. Defense rejects the FEMA order and requests that OMB process the Defense order.

DISCUSSION: OMB has reviewed the orders and makes the following observations. Both of the orders have been carefully drafted and it is evident that much thought and care went into their preparation. We also note that the FEMA order has been

informally circulated to other agencies for comment and that FEMA has received some interagency support for its order.

We believe, however, that certain provisions of the FEMA order make its governmentwide acceptance problematic. The FEMA order, sections 201(b) through (g), states that it will serve as the advisor to the National Security Council on national security resources preparedness issues and that it will provide the central coordination of plans and programs incident to the order. It provides that the Director of FEMA will report directly to the President on the programs under the order. Further, sections 202(c) and (d) of the order would require agency heads (including the Secretary of Defense) to go through the Director of FEMA to obtain appeals or findings required by the order. Moreover, it would designate the Director of FEMA as the manager of the Defense Production Act Fund.

In our experience, it is unlikely that the Executive agencies - particularly Defense - will accept FEMA's broad and overarching coordinating role as it is set out in the order. In addition, it is our view that Defense, not FEMA, has the expertise to manage the Defense Production Act Fund.

The Defense order has the advantages of being more clearly drafted, better organized, and easier to read. It gives FEMA responsibilities for the National Defense Executive Reserve, civil defense, and other areas where FEMA has does have experience.

CONCLUSION: We request that your office decide which of the two orders to process. If possible we would like your decision by close of business Friday July 16, 1993. If you have any questions, please call me at 395-3563.

Attachments

TO: PETERSON, R

FROM: ITOH

DOC DATE: 22 JUL 93
SOURCE REF:

KEYWORDS: ARMS CONTROL

LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: STATE PROPOSED RE S--1085 ECONOMY IN ARMS CONTROL

ACTION: ITOH SGD MEMO

DUE DATE: 16 JUL 93 STATUS: C

STAFF OFFICER: WITKOWSKY

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

BELL
EXECSEC
WITKOWSKY

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSWEA

CLOSED BY: NSJDA

DOC 3 OF 3

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9305188

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 WITKOWSKY
002 ITOH
003

Z 93071419 PREPARE MEMO ITOH TO PETERSON
Z 93072308 FOR SIGNATURE
X 93072308 ITOH SGD MEMO

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

003 930722 PETERSON, R

UNCLASSIFIED

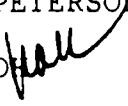
NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20508

July 22, 1993

MEMORANDUM FOR RONALD K. PETERSON

FROM:

WILLIAM ITO 

SUBJECT: State's Proposed Report Re: S. 1085, Economy in Arms Control

With reference to the State Department's proposed letter to Senator Hatch on S-1085, "The Economy in Arms Control Act", the NSC clears with the following change:

-- The second sentence of the third paragraph should be rewritten to read as follows:

"We believe the nation's needs will be best served by revitalizing the Arms Control and Disarmament Agency in order to help us accomplish our important objectives in these areas."

-- Rationale: Although ACDA will not have the lead on nonproliferation, it will be a full participant in interagency deliberations as will other relevant agencies. The sentence as redrafted reflects more accurately the Secretary of State's own views which he expressed in a recent letter to the Chairman of the Senate Foreign Relations Committee.

NATIONAL SECURITY COUNCIL
WASHINGTON, D C 20506

July 15, 1993

ACTION

MEMORANDUM FOR WILLIAM ITOH

THROUGH: ROBERT BELL *RB*

FROM: ANNE WITKOWSKY *AW*

SUBJECT: Legislative Referral: State Response to S-1085

Attached is a legislative referral memorandum from OMB containing the State Department's draft response to Senator Hatch's request for the Administration's position on S-1085, "The Economy in Arms Control Act". The bill proposes to abolish the Arms Control and Disarmament Agency, transfer its arms control functions to the Department of State, and create a new Assistant Secretary of Defense with responsibility for coordinating U.S. nonproliferation policy.

We would recommend one change to the letter, as indicated on the attached memo.

Concurrence by: Dan Poneman and Jeremy Rosner *NA* *GR*

Recommendation

That you transmit the attached response to OMB.

Attachments

Tab I Memorandum to OMB

Tab A Legislative Referral

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

5188
SPECIAL

July 14, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #1-873

TO: Legislative Liaison Officer -

ACDA - Barbara Starr - (202)647-8478 - 234
NSC - William H. Itoh - (202)395-3723 - 249
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
ENERGY - Bob Rapben - (202)586-6718 - 209
TREASURY - Richard S. Carro - (202)622-1146 - 228

FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Annette ROONEY (395-7300)
Secretary's line (for simple responses): 395-6194

SUBJECT: State Proposed Report RE: S 1085, Economy in
Arms Control Act

DEADLINE: July 16, 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
J. Ashford
J. Nix
K. Posen
J. Palmieri
H. Paster

For Bpg



United States Department of State

Washington, D.C. 20520

S. 1085,

Dear Senator Hatch:

Thank you for the opportunity to review and provide the Administration's views on the "Economy in Arms Control Act." This proposed legislation would eliminate the Arms Control and Disarmament Agency, transfer its arms control functions to the Department of State, and create a new Assistant Secretary of Defense with the responsibility for coordinating U.S. nonproliferation policy.

The Administration has recently completed a thorough review of arms control and nonproliferation functions. Following this review, President Clinton announced that he would be "taking steps to revitalize the Arms Control and Disarmament Agency." In addition, the Department of State has reorganized so as to coordinate nonproliferation policy more effectively.

President Clinton has emphasized that arms control and nonproliferation will be central elements of the Administration's foreign policy agenda. We believe the nation's needs in these areas will be best served by maintaining a vital Arms Control and Disarmament Agency, and by ~~continuing to make nonproliferation policy a central element of our overall foreign policy, as developed by the Department of State.~~ The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to this response.

I hope we have been responsive to your request. Please contact us if we may be of assistance in any way.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

The Honorable
Orrin G. Hatch,
United States Senate

*in order to help us
accomplish our objectives in
these areas,*

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9305188
RECEIVED: 14 JUL 93 19

TO: ITOH

FROM: PETERSON, R

DOC DATE: 14 JUL 93
SOURCE REF:

KEYWORDS: ARMS CONTROL

LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: STATE PROPOSED RPT RE S-1085 / ECONOMY IN ARMS CONTROL ACT

ACTION: PREPARE MEMO ITOH TO PETERSON

DUE DATE: 16 JUL 93 STATUS: S

STAFF OFFICER: WITKOWSKY

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION
WITKOWSKY

FOR CONCURRENCE
ROSNER

FOR INFO
ANDREASEN
BELL
GROSS
PONEMAN

COMMENTS: *** DUE 16 JUL *** YOU MAY CONCUR BY PHONE, BUT PLEASE FOLLOW UP W/
ITOH MEMO.

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSWEA

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

~~CONFIDENTIAL~~
NSC/RMO PROFILE

RECORD ID: 9305303
RECEIVED: 20 JUL 93 16

TO: SHERFIELD, M

FROM: ITOH

DOC DATE: 22 JUL 93
SOURCE REF:

KEYWORDS: MILITARY EXERCISES

TURKEY

PERSONS:

SUBJECT: SIGNIFICANT MILITARY EXERCISE MPA BILATERAL TRAINING 2 - 93

ACTION: KENNEY SGD MEMO

DUE DATE: 23 JUL 93 STATUS: C

STAFF OFFICER: HAHN

LOGREF:

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

BELL
EXECSEC
HAHN

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By VL NARA, Date 10/3/2006

2016-052-F

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSASK

CLOSED BY: NSASK

DOC 3 OF 3

~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL

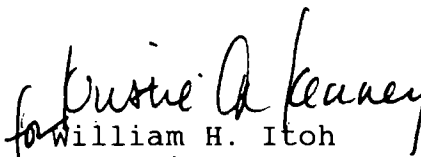
WASHINGTON, D.C. 20506

July 22, 1993

MEMORANDUM FOR BG MICHAEL B. SHERFIELD
Executive Secretary
Department of Defense

SUBJECT: Significant Military Exercise MPA BILATERAL
TRAINING 2-93

Military exercise MPA BILATERAL TRAINING 2-93 is approved.


William H. Itoh
Executive Secretary

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~
NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

5303

July 21, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL *RB*

FROM: KEITH HAHN *KH*

SUBJECT: Significant Military Exercise MPA BILATERAL
TRAINING 2-93

Attached at Tab I is a proposed memorandum to the Executive Secretary, Department of Defense, approving military exercise MPA BILATERAL TRAINING 2-93. At Tab II Defense recommends approval and State concurs.

MPA BILATERAL TRAINING 2-93 is a small bilateral training exercise with maritime patrol aircrew from the U.S. and Turkey. This exercise will include classroom training in maintenance and ASW techniques, cross-decking of personnel for training and ASW prosecution and professional interchanges. It will involve one U.S. P-3C aircraft (20 people), one Turkish diesel submarine and approximately 30 Turkish MPA personnel. It will take place in the Sea of Marmara or the Black Sea off the coast of Turkey.

The critical cancellation date is July 27, 1993.

Concurrence by: Jane Holt *JH*

RECOMMENDATION

That you sign the memorandum at Tab I approving the exercise.

Attachments

Tab I Memorandum for Signature

Tab II OSD Executive Secretary Memorandum, July 20, 1993

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By *VR* NARA, Date *10/3/2016*

2016-0152-F

~~CONFIDENTIAL~~

Declassify on: OADR

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1000

20 JUL 1993

MEMORANDUM FOR EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

SUBJECT: Significant Military Exercise -
MPA BILATERAL TRAINING 2-93

The Department of Defense recommends NSC approval of the attached Significant Military Exercise Brief, Exercise MPA BILATERAL TRAINING 2-93. The Department of State concurs with this recommendation.

Please note the critical cancellation date is 27 July 1993.

A handwritten signature in cursive script, likely of Michael B. Sherfield, is positioned above his printed name.

Michael B. Sherfield
Executive Secretary

Attachment:
As stated

This document is UNCLASSIFIED
when separated from its attachment.

~~CONFIDENTIAL~~Sec Def Cont Nr. 162052

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. cable	Duplicate of vz4439_001. (1 page)	07/02/1993	P1/b(1)
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COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 46

FOLDER TITLE:

Chron File - July 1993 #3 [3]

2016-0152-F
vz4440

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

July 22, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL *RB*FROM: KEITH HAHN *KH*SUBJECT: Letter to the President from Senator Bingaman
RE: Sikh Military Service

At Tab II Senator Jeff Bingaman has written the President to ask that the DoD ban on long hair, beards and turbans for members of the Sikh religion be changed so they can serve in the armed forces.

We asked DoD for its position on this issue and received the response at Tab A. In short, Defense bans practicing Sikhs from serving in the armed forces because their long hair and beards interfere with personal protective equipment, and because selectively granting waivers for appearance and grooming could impair discipline and morale.

We have recently received a request from Senator Bingaman's office that, if the DoD position on this issue is negative, it be responded to by the Secretary of Defense in order to save the President from possible negative political exposure. The memorandum at Tab I asks that DoD respond directly to Senator Bingaman on this issue.

Concurrence by:

In draft
Don GrossRECOMMENDATION

That you sign the memorandum to Defense at Tab I.

Attachments

Tab I Memorandum for Signature

Tab A Department of Defense Position and Recommendation
on Sikh Military Eligibility

Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

MEMORANDUM FOR BG MICHAEL B. SHERFIELD
Executive Secretary
Department of Defense

SUBJECT: Letter to the President from Senator Bingaman
RE: Sikh Military Service

Attached is the paper you provided us on the Department of Defense position and recommendation concerning the ban on Sikh participation in the U.S. military. Senator Bingaman's staff has contacted us and requested that you respond directly to them on this issue.

William H. Itoh
Executive Secretary

Attachment
Department of Defense Position and
Recommendations on Sikh Military Eligibility



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MEMORANDUM FOR EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

SUBJECT: Sikh Military Service

This is in response to your memorandum requesting an official Department of Defense position and recommendation on Sikh eligibility for military service. One of the fundamental tenets of the Sikh religion is that its adherents keep all hair on their bodies intact. Male Sikhs typically wear beards, unshorn hair, and turbans.

It is the policy of the Department of Defense to accommodate the religious practices of military personnel that do not have an adverse impact on military readiness, unit cohesion, standards or discipline. Under 10 U.S.C. section 774, a member of the Armed Forces may wear an item of religious apparel when in uniform, except where the Secretary of the Military Department determines that the wearing of the item would interfere with the performance of the member's military duties, or the item of apparel is not "neat and conservative." Under DoD Directive 1300.17, entitled "Accommodation of Religious Practices within the Military Services," dated February 3, 1988 (copy attached), "religious apparel" is defined as "articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member." "Neat and conservative items of religious apparel are those that: (a) are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color [and] (b) do not replace or interfere with the proper wearing of any authorized article of the uniform...." "Hair and grooming practices required or observed by religious groups are not included within the meaning of religious apparel." The practice of Sikhs to maintain beards, unshorn hair, and turbans lies outside what is permitted by the DoD directive and Service regulations.

The Army granted appearance and grooming waivers to Sikhs from approximately the mid-1950's to 1981. The Army's decision to discontinue these waivers was based on safety considerations relating to interference of unshorn hair and beards with personal protective equipment, and impairment of discipline and esprit resulting from the selective granting of appearance and grooming waivers.

The interference of Sikh unshorn hair and beards with protective masks and equipment, which is essential for all military members in modern-day battle conditions, created an unacceptable health and safety threat for themselves and other soldiers. Several scientific

and occupational health studies have concluded that beards and sideburns interfere significantly with the operation of protective masks and respirators. In a study entitled, "Effect of Facial Hair on the Face Seal of Negative-Pressure Respirators," reported in the American Industrial Hygiene Association Journal, January 1984, at pages 63-66, the median leakage of full-face respirators worn by bearded subjects was found to be over 300 times that of clean-shaven individuals. Seventy-seven percent of bearded test subjects were unable to obtain a respirator fit that would meet minimum safety standards established by the Occupational Safety and Health Administration (OSHA).

These findings are supported by DoD agencies responsible for testing military protective equipment. For example, tests conducted by the Life Support Division, Aeronautical Systems Division, Air Force Systems Command, have shown that beards preclude oxygen masks and nuclear, biological, and chemical (NBC) protective masks from sealing properly. The imperfect fit of an oxygen mask generally is not life threatening; leaks in NBC equipment caused by facial hair, however, result in a total degradation of the life support system. With the proliferation of chemical, biological, and limited nuclear weapons, virtually every military member assigned in or near a combat zone, regardless of occupational specialty, must be capable of functioning effectively in an NBC environment. If military members were allowed to wear beards and unshorn hair, not only would they be in danger themselves, but they would endanger other Service members whose lives depend upon their leadership, military skills, teamwork, and mutual support.

In addition to safety concerns, the Army stopped granting grooming and appearance waivers for Sikhs because similar waivers would have had to be granted to members of other religious groups whose appearance and grooming practices may be considerably less conservative. Accommodations granted to one religious group would have to be allowed for others. Moreover, granting hair and beard accommodations on religious grounds, but not on the basis of non-religious **personal preference**, could invite serious morale and discipline **problems**. The average Service member could view a selective **waiver of hair and grooming standards** as preferential treatment, not as a **valid religious accommodation**. Essential unit cohesion, camaraderie, and morale would suffer as a result.

During floor debates on legislation that later became 10 U.S.C. section 774, congressional proponents discussed the Army's prior policy of accommodating Sikhs; however, Congress enacted a statute that is silent with respect to hair and grooming practices despite knowledge that the Army had reversed its policy on Sikhs for this reason. Moreover, when the bill was first introduced in the Senate

in 1986, Senator Lautenberg, its primary proponent, stated with respect to religious grooming practices:

In the United Kingdom, Sikh members of the services are permitted to wear turbans, and to keep their hair long, if they choose. And we are not advocating that. (Congressional Record, vol. 132, no. 107, August 7, 1986, at p. S10698).

In summary, Service appearance and grooming regulations are rationally related to operational readiness and the maintenance of good order and discipline in the Armed Forces. It would be inappropriate, in our view, to direct an exception for one religious group.



OFFICE OF THE SECRETARY OF DEFENSE

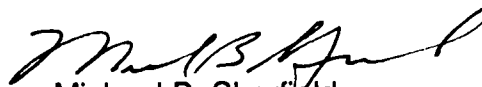
WASHINGTON, D.C. 20301

18 JUN 1993

MEMORANDUM FOR EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

SUBJECT: Sikh Military Service

Attached as requested is the DoD position and recommendation concerning the ban on Sikh participation in the U.S. military.


Michael B. Sherfield
Executive Secretary

Attachment

United States Senate

February 24, 1993

The Honorable William J. Clinton
President
United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

Earlier this year, you received a letter from the Ministry of the Sikh Dharma for the Western Hemisphere regarding service by members of the Sikh religion in the United States military. I would like to express my strong support for a change in current Department of Defense regulations that would permit Sikhs to once again serve in the Armed Forces.

As you know, one of the fundamental tenets of the Sikh religion is the requirement that its adherents keep all hair on their body intact. From 1974 to 1981, the Army provided an exemption to its dress code to allow bona fide members of the Sikh religion to serve in the military with beard, unshorn hair, and turban. Before that, Sikhs who were drafted into the military were allowed to serve under the provisions of an executive order issued by President Truman. However, in 1981 the Army rescinded its exemption, effectively barring members of the Sikh religion from serving in the military.

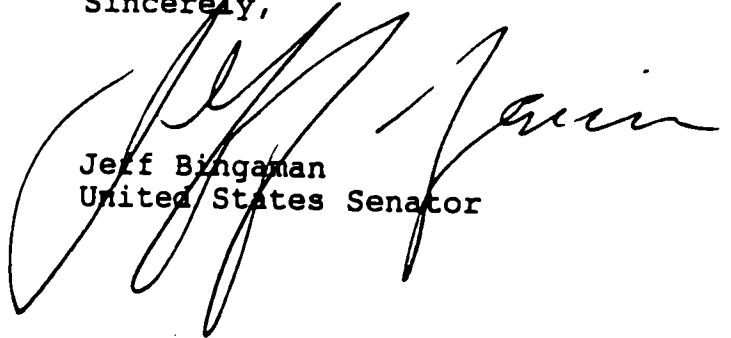
In response to two Supreme Court rulings in 1986 upholding the military's ban on religious apparel while in uniform (one involving the right of a Sikh to serve with unshorn hair, beard, and turban; the second involving the right of a Jewish servicemember to wear a yarmulke), Congress in 1987 enacted a law lifting the ban when the articles of religious apparel did not interfere the performance of military duties. The record clearly shows that Congress intended to include Sikhs in this act. The Department of defense, however, drafted its exemption so narrowly as to exclude Sikhs from the exemption.

I believe that the ban on unshorn hair, beards, and turbans for bona fide members of the Sikh religion should be changed to allow members of the Sikh religion to serve in the military, and I urge you to look into this matter. For your reference I have included a copy of the earlier letter from the Ministry of the Sikh Dharma.

Page 2

Thank you for your consideration of my request. Please do not hesitate to contact me if I can provide further information on this matter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jeff Bingaman".

Jeff Bingaman
United States Senator

JB/jpg
Enclosure



January 12, 1993

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

My Dear Mr. President,

Sat Nam! Greetings in the name of God, the light of every soul.

An injustice was perpetrated against the Sikh citizens of the United States of America by the Reagan Administration. That same injustice was perpetuated against the Sikhs in our country by the Bush Administration.

It is now time for the Clinton Administration to end that injustice. As the enclosed essay, "Service By Members of the Sikh Religion in the United States Military: A Brief History", so accurately explains, since the time when the last two Republican Administrations first took power, members of the Sikh religion in America have been denied the right to serve in the United States Armed Forces.

There are no words which can adequately explain to you how devastating it is for members of the Sikh religion to be denied military service. Even the most cursory examination of the history of the Sikh religion is highlighted by both the martial tradition and spirit of the Sikhs, and by the distinguished military service records of Sikhs who have served and who continue to serve their countries as well.

The time is now and now is the time to end this injustice. It is our fervent request that you take that immediate action, as is detailed in the essay, to again permit members of the Sikh religion to serve in the United States Armed Forces.

In the name of the Cosmos which prevails through everyBODY and the Holy Nam which holds the world.

Humbly Yours,

Siri Singh Sahib Bhai Sahib
Harbajan Singh Khalsa Yogiji

Chief Religious and Administrative Authority of the Ordained Ministry of the Sikh Dharma for the Western Hemisphere

1649 S. Robertson Blvd. P.O. Box 351149 Los Angeles, California 90035 (310) 552-3416

Fax (310) 557-8414



Chancellor to the Siri Singh Sahib of Sikh Dharma

1038 So. Robertson Blvd., Suite One, P.O. Box 35330, Los Angeles, California 90035-0330
Telephone (310) 659-8844, Fax (310) 659-8234

**SERVICE BY MEMBERS
OF THE
SIKH RELIGION
IN THE
UNITED STATES MILITARY
A Brief History**

INTRODUCTION

It is a fundamental tenet of the Sikh religion that its members be ready and willing to serve their community with selfless devotion. It is also an historical constant that members of the Sikh religion have served with honor and distinction in the military of their country. However, members of the Sikh religion are effectively banned from service in the military of the United States at this time.

SIKH RELIGIOUS PRACTICES

The Sikh religion was founded over 500 years ago in India. There are over 16,000,000 Sikhs worldwide. There are nearly 250,000 Sikhs in the United States. Among the fundamental tenets of the Sikh religion is the requirement that its adherents keep all hair on their body intact. That means that a bonafide member of the Sikh religion has unshorn hair and, for the men, untrimmed beards as well.

PRESENT STATUS

In 1981, the United States Army revised its Dress Code to eliminate an exemption it had adopted in 1974 (A.R.600-20) which had permitted bonafide members of the Sikh religion to serve in the United States Army with beard, unshorn hair and turban. Members of the Sikh religion who were already in the United States Army at that time were permitted to continue their service with beard, unshorn hair and turban.

Although in December, 1987, Public Law 100-180 directed the Armed Forces to allow the wearing of 'religious apparel' while in uniform when said religious apparel did not otherwise interfere with the performance of military duties, the United States Army chose to strictly interpret the phrase 'religious apparel' to exclude beards or unshorn hair.

As a result, bonafide members of the Sikh religion cannot serve in the United States Army or any other branch of the Armed Forces at this time without giving up their right to practice their religion.

STANDARD OF SERVICE

From 1974 to 1981, there were many members of the Sikh religion who served in the United States Army. The military records of almost all of these servicemen are filled with commendations for their fine service. Their military records also reflect that their unique appearance in no way interfered with their military service and, in fact, enhanced the esprit de corp of their fellow soldiers.

HISTORY

During his term of office, President Truman issued a Presidential Order permitting members of the Sikh religion who were drafted into the United States Army to retain their beards, unshorn hair and wear their turbans.

In 1974, a member of the United States Army became a member of the Sikh religion while in the service. His status did not fit the Truman exemption. He was Court Martialed for being in violation of the Army Dress Code. However, the Court Martial Officer found that there was no good reason to distinguish between draftees and volunteers regarding religious practices, and found the soldier not guilty.

That same year, the United States Army adopted an exemption to its Dress Code permitting bonafide members of the Sikh religion to serve in the United States Army with beard, unshorn hair and turbans.

However, in 1981, the United States Army rescinded that exemption. The Army stated that it was concerned that members of other religious groups might demand exemptions for their religious practices and that the Army could not exempt one religion and not another.

In 1986, the United States Supreme Court turned down an appeal by a member of the Sikh religion who had sued the Department of Defense to allow him to enlist with beard,

unshorn hair and turban. That same year, the United States Supreme Court upheld the Court Martial conviction of a Jewish member of the United States Air Force who wore a prayer cap while in uniform.

In response to these cases, in December, 1987, Public Law 100-180 was enacted directing the Armed Forces to allow the wearing of 'religious apparel' while in uniform when said religious apparel did not otherwise interfere with the performance of military duties. The Congressional Record reflects that allowing members of the Jewish religion and the Sikh religion to serve in the Armed Forces was the primary reason this law was passed. However, the United States Army chose to strictly interpret the phrase 'religious apparel' to exclude beards or unshorn hair, thereby excluding bonafide members of the Sikh religion from joining the Armed Forces.

IRONIES

The first irony is that although members of the Sikh religion are ready and willing to serve their community with selfless devotion and have a great history of military service with honor and distinction, members of the Sikh religion are now banned from service in the military of the United States.

The second irony is that should the Armed Forces reinstitute Conscription, large numbers of persons who wish to avoid military service might claim to have adopted the Sikh religion in order to be exempted from being drafted.

CONCLUSION

Without some action being taken by either the President, in the form of a Presidential Order, or by the Congress, in the form of legislation, specifically permitting beards, unshorn hair and turbans in the Armed Forces, members of the Sikh religion in America will continue to be excluded from military service to their country. It is the request and prayer of the members of the Sikh religion that this injustice be immediately corrected so that Sikhs, with beard, unshorn hair and turban, can again serve in the Armed Forces of this great nation.

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Respectfully submitted,



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