



Secretary Chertoff, left, with President
and Lt. Gen. H. Steven Blum
National Guard photo

Department of Homeland Security: Roles and Responsibilities

General Authorities and Responsibilities

Both in design and in fact, the Department of Homeland Security (DHS) is the central federal entity for preparedness and response to disasters, including catastrophic events like Hurricane Katrina. The Homeland Security Act of 2002 established the Department and provides that one of DHS's missions is "acting as a focal point regarding natural and manmade crises and emergency planning."¹ DHS was created to bring together multiple, disparate agencies to create synergy and ensure a coordinated approach to preventing, preparing for, and responding to catastrophes, whether caused by terrorism or nature.²

Since DHS's creation, several executive actions have further articulated its role. Homeland Security Presidential Directive 5, issued by President Bush on February 28, 2003, formally designated the Secretary of Homeland Security as the "principal federal official for domestic incident management."³ It also made the Secretary responsible for developing and administering the National Response Plan (NRP) and the National Incident Management System (NIMS), a system for enabling responders from different jurisdictions to work together.⁴ Homeland Security Presidential Directive 8 (HSPD-8), issued on December 17, 2003, further designated the Secretary as "the principal Federal official for coordinating the implementation of all-hazards preparedness in the United States," and gave the Secretary, in cooperation with other Federal departments and agencies, responsibility for "coordinat[ing] the preparedness of federal response assets, and the support for, and assessment of, the preparedness of state and local first responders."⁵

In addition, DHS has assumed responsibilities under the Robert T. Stafford Relief and Emergency Assistance Act (Stafford Act).⁶ Among other things, the Stafford Act authorizes and provides the administrative mechanisms for the federal government to assist state and local governments in disasters.⁷ The President, or the Secretary of Homeland Security as his delegate, has the authority to provide "assistance essential to meeting immediate threats to life and property resulting from a major disaster."⁸ This authority specifically allows the Secretary to do any work essential to saving lives or preserving public health and safety, including search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons.⁹ In addition, the Homeland Security Act gives the Secretary, through the Under Secretary for Emergency Management and Response, the responsibility for "providing the federal government's response to terrorist attacks and major disasters,"¹⁰ and charges FEMA with conducting emergency operations to save lives and property "through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services."¹¹

On February 28, 2003, the day before the new Department began operating and FEMA became part of DHS, President Bush modified Executive Order 12148, delegating most Presidential responsibilities under the Stafford Act to the Secretary of Homeland Security, rather than to the Director of FEMA, as had previously been the case.¹²



New Orleans family

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The NRP further confirms DHS's central role in disaster preparedness and response. The Plan, reviewed by the White House's Homeland Security Council and signed by the heads of 30 federal agencies, states that:

During actual or potential Incidents of National Significance, the overall coordination of federal incident management activities is executed through the Secretary of Homeland Security. Other federal departments and agencies carry out their incident management and emergency response authorities and responsibilities within this overarching coordinating framework.¹³

Practically, these authorities invested DHS with at least four categories of responsibility:

1. *Leadership.* The Secretary of the Department of Homeland Security has clear duties to lead and manage the federal response to disasters such as Katrina. He carries ultimate responsibility for managing FEMA and other DHS components and is charged with coordinating overall federal operations.¹⁴ Among his many responsibilities, the Secretary must marshal federal resources, decide whether to appoint a Principal Federal Official to lead the federal response on the ground,¹⁵ and decide whether to implement the Catastrophic Incident Annex, which provides for an accelerated, proactive national response to a catastrophic incident.¹⁶

2. *Coordination and Support.* DHS can use various structures and resources to coordinate and support the overall response effort. Among these, the Homeland Security Operations Center (HSOC) is supposed to act as a hub for situational awareness and incident management in a disaster. Some 45 agencies staff the HSOC to facilitate information flow among agencies;¹⁷ during Katrina, the HSOC distributed situation reports twice a day that were widely disseminated throughout the government. The Interagency Incident Management Group (IIMG) is also housed at DHS. Comprising senior-level representatives of a variety of agencies, the IIMG is supposed to coordinate federal resource and operational requirements and make strategic recommendations to the Secretary, who has the power to activate the IIMG based on the nature, severity, magnitude, and complexity of a threat or incident.¹⁸

3. *Operational Responsibilities.* DHS has significant, ground-level operational responsibilities in responding to disasters. DHS and its component agencies are primary or coordinating agencies for nine of the 15 Emergency Support Functions (ESFs) in the NRP – categories of federal capabilities that can be brought to bear to provide support in domestic incidents – including public safety and security, communications support, and emergency management.¹⁹ DHS components such as the Coast Guard also have significant missions and statutory responsibilities independent of the NRP.²⁰ FEMA also controls the activation and movement of search and rescue and directs the National Disaster Medical Support System.

4. *Preparedness.* Besides its response roles, DHS has primary responsibility for strengthening national preparedness – including the planning, training, and equipment necessary to prevent, respond to, and recover from major domestic incidents – under HSPD-8 and the Homeland Security Act.²¹ Section 502 of the Homeland Security Act gives the Secretary, acting through the FEMA Director, responsibility for “helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies.”²² The Department has authority over primary grants and training programs for state and local first responders and emergency managers.²³ Pursuant to HSPD-8, DHS has developed a National Preparedness Goal, establishing national emergency-management and preparedness priorities.²⁴ DHS ties its preparedness requirements to grant funding, requiring that all states submit emergency plans in order to get funding and that the money be used to meet the capabilities and priorities set forth by the National Preparedness Goal.²⁵

Title VI of the Stafford Act also places significant responsibilities for national emergency preparedness on the FEMA Director and, through the Homeland Security Act, on DHS,²⁶ providing, among other things, that the federal government is to provide the necessary direction, guidance, and assistance “so that a comprehensive preparedness system exists for all hazards.”²⁷

The Role of the Federal Government

Our nation has a system of dual sovereignty. The federal government has limited, enumerated powers, and state governments retain primary responsibility to protect the public’s health and safety, so-called “police powers.”²⁸ This is commonly known as “federalism.” Traditionally, state and local officials have managed the response to an incident in the first instance, and the federal government for the most part provides assistance only as request-

ed. This approach makes sense: during an emergency, states typically have authority to exercise extraordinary powers to commandeer resources, control property, order evacuations, suspend laws, and take other extreme measures.²⁹ In addition, state and local authorities have large numbers of public-safety employees that are first responders to every emergency. The individuals closest to an emergency incident generally know the locality best, and are wholly accountable to the local electorate for their actions.

Congress established the Stafford Act to provide assistance “by the federal government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from . . . disasters.”³⁰ The Stafford Act respects the state’s role in determining when it is overwhelmed and the assistance that it wants from the federal government. The Stafford Act requires that the governor of a state request the President declare a major disaster for a portion or all of a state. Such requests include a description of how the state’s resources are overwhelmed.³¹ The President then can decide to declare a major disaster and determine the federal assistance that will be provided “in support of state and local assistance efforts.”³² Thus, the Stafford Act provides for consultation with state officials prior to the provision of federal assistance in the first instance. The subsequent federal government response is cognizant of underlying concerns for the state’s continued authority over the direction of the response efforts and respects state autonomy under our federal system of government. Traditionally, FEMA has required that states make requests not only for the initial declaration of a disaster or emergency but also for specific types of assistance such as the provision of commodities or assistance with search and rescue efforts.

In a catastrophic situation, however, the traditional mode of operation under the Stafford Act may not serve the Act’s purposes because state and local governments may become so overwhelmed that they can’t effectively make specific requests for assistance. In such circumstances, the federal government may have to act without a request from a state.

The NRP explicitly provides for a proactive federal response in the Catastrophic Incident Annex (NRP-CIA).³³ The NRP defines a catastrophic event as “any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions.”³⁴ According to the NRP, only the Secretary of Homeland Security or the Secretary’s designee may initiate implementation of the NRP-CIA.³⁵

The NRP-CIA recognizes that, in a catastrophe, “federal and/or national resources are required to augment overwhelmed state, local, and tribal response efforts” and therefore provides for the identification and rapid deployment of essential resources expected to be urgently needed to save lives and contain incidents.³⁶ The NRP-CIA provides that standard procedures regarding requests for assistance “may be expedited or, under extreme circumstances, temporarily suspended” in the aftermath of a catastrophe.³⁷

At the same time, the NRP-CIA is sensitive to concerns for state autonomy. Thus, notification and coordination with states are still to occur, though “the coordination process should not delay or impede the rapid mobilization and deployment of critical federal resources.”³⁸ And federal resources are generally deployed to mobilization centers close to the incident scene “until requested by state/local incident command authorities,”³⁹ though in certain circumstances, they may be deployed directly to the incident scene to assist in responding to the incident.

- 1 “The Homeland Security Act of 2002.” (P.L. 107-296), 6 U.S.C. § 111(b).
- 2 U.S. House, Homeland Security Act of 2002, S. Rept. 107-609, July 24, 2002, p. 63. Among the 22 pre-existing entities that were brought together as part of DHS were FEMA, the U.S. Coast Guard, the Transportation Security Administration, the National Communications System (which coordinates emergency communications), and law enforcement entities such as the U.S. Secret Service and the Federal Protective Service. Prior to becoming part of the Department of Homeland Security, FEMA was a stand-alone agency. Most of the other entities that were incorporated into DHS were transferred from other cabinet departments: for example, the Coast Guard had previously been part of the Department of Transportation and the Secret Service had been part of the Treasury Department.
- 3 The White House, Homeland Security Presidential Directive-5: Management of Domestic Incidents, Feb. 28, 2003, Section 4.
- 4 The White House, Homeland Security Presidential Directive-5: Management of Domestic Incidents, Feb. 28, 2003, Sections 15-16.
- 5 The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003, Section 4. All-hazards preparedness is defined in the Directive as “preparedness for domestic terrorist attacks, major disasters, and other emergencies.” *Source:* The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003, Section 2(a). Preparedness is defined as “the existence of plans, procedures, policies, training, and equipment necessary at the Federal, State, and local level to maximize the ability prevent, respond to, and recover from major events.” *Source:* The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003, Section 2(h).
- 6 “Robert T. Stafford Disaster Relief and Emergency Assistance Act.” (P.L. 93-288), 42 U.S.C. §§ 5121-5206. FEMA’s responsibilities were delegated to the Department of Homeland Security by Executive Order 13286, Feb. 28, 2003, 68 Fed. Reg. 10619 (Mar. 3, 2003).
- 7 “Stafford Act,” 42 U.S.C. § 5170a.
- 8 “Stafford Act,” 42 U.S.C. § 5170b.
- 9 “Stafford Act,” 42 U.S.C. § 5170b; 42 U.S.C. § 5170b(a)(3). This is the authority pursuant to a major disaster declaration. Under an emergency declaration, the authority is similar but phrased more generally, providing that “Whenever the federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.” “Stafford Act,” 42 U.S.C. § 5192(b).
- 10 “Homeland Security Act,” 6 U.S.C. § 312(3).
- 11 “Homeland Security Act,” 6 U.S.C. § 317(a)(2)(c).
- 12 Executive Order 13286, 68 Fed. Reg. 10619 (Mar. 5, 2003), Section 52. Executive Order 12148, July 20, 1979, (Federal Emergency Management), as amended, is further amended by: (a) striking “the Federal Emergency Management Agency” whenever it appears and inserting “the Department of Homeland Security” in lieu thereof; and (b) striking “the Director of the Federal Emergency Management Agency” wherever it appears and inserting “the Secretary of Homeland Security” in lieu thereof. *See also:* Executive Order 12673, 54 Fed. Reg. 12573 (Mar. 28, 1989), Section 1 (amending Executive Order 12148).
- 13 U.S. Department of Homeland Security, *National Response Plan*. Washington: Government Printing Office, Dec. 2004, p. 15 [hereinafter *NRP*].
- 14 *NRP*, p. 9 (“Pursuant to HSPD-5, the Secretary of Homeland Security is responsible for coordinating Federal operations within the United States to prepare for, respond to and recover from terrorist attacks, major disasters, and other emergencies.”).
- 15 *NRP*, p. 33.
- 16 *NRP*, Catastrophic Incident Annex, p. CAT-1.
- 17 *NRP*, p. 24.
- 18 *NRP*, p. 22.
- 19 *NRP*, ESF Annex, p. ESF-v.
- 20 As discussed in greater detail in subsequent sections, DHS itself shares the lead responsibility for supporting public safety and security (ESF-13) with the Department of Justice, and its component, the National Communications System (NCS), is supposed to take the lead in providing communications support (ESF-2) during a disaster. FEMA has the lead responsibility for emergency management under ESF-5, which includes central responsibilities for domestic incident management as well as management and administrative support for the National Response Coordination Center (NRCC), Regional Response Coordination Center (RRCC), and Joint Field Office (JFO), according the *NRP*. Also under the *NRP*, FEMA serves as the primary and/or coordinating agency for Public Works and Engineering (ESF-3); Mass Care, Housing and Human Services (ESF-6); Urban Search and Rescue (ESF-9); Long-Term Community Recovery and Mitigation (ESF-14); and, in conjunction with DHS, External Affairs (ESF-15). The Coast Guard, in addition to its responsibilities under the *NRP* for oil and hazardous material response (ESF-10), has the statutory authority to save lives and property imperiled by flood by performing any and all acts necessary to rescue and aid persons and protect and save property...at any time and any place at which the Coast Guard facilities and personnel are available and can be effectively utilized. 14 U.S.C. § 88(a)(1) and (b).

- 21 “Homeland Security Act,” 6 U.S.C. 312(1); The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003.
- 22 “Homeland Security Act,” 42 U.S.C. § 502(1); 6 U.S.C. § 312(1).
- 23 *See e.g.*: “Homeland Security Act,” 6 U.S.C. § 238; The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003; U.S. Department of Homeland Security, Interim National Preparedness Goal, Mar. 31, 2005.
- 24 The White House, Homeland Security Presidential Directive-8: Domestic Preparedness, Dec. 17, 2003, Section 5.
- 25 U.S. Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Financial Management Guide, Jan. 2006, p. 11.
- 26 “Stafford Act,” 42 U.S.C. §§ 5195-5197(g); “Homeland Security Act,” 6 U.S.C. § 112(a)(3) (vesting all functions of all officers, employees, and organizational units of the Department of Homeland Security in the Secretary of Homeland Security). In fulfilling these responsibilities, the Director of FEMA may conduct or arrange training programs for emergency-preparedness officials, and may provide financial contributions to the states for emergency preparedness. “Stafford Act,” 42 U.S.C. § 5131. Moreover, under Section 201 of the Stafford Act, the President is authorized to establish a program of disaster preparedness that includes: (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery; (2) training and exercises; and (3) coordination of federal, state, and local preparedness programs. “Stafford Act,” 42 U.S.C. § 5131(a).
- 27 “Stafford Act,” 42 U.S.C. § 5195. Under the Act, the term “emergency preparedness” is defined to mean all those activities designed to minimize the effects of a hazard upon a civilian population. “Stafford Act,” 42 U.S.C. § 5195. These activities include “the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials, and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population.” “Stafford Act,” 42 U.S.C. § 5195(a)(3)(A).
- 28 *See e.g.*: Gregory v. Ashcroft, 501 U.S. 452, 457-60 (1991).
- 29 *See e.g.*: La R.S. 29:721 *et seq.* (Louisiana Emergency Assistance and Disaster Act).
- 30 “Stafford Act,” 42 U.S.C. § 5121(b).
- 31 “Stafford Act,” 42 U.S.C. § 5770.
- 32 “Stafford Act,” 42 U.S.C. § 5170(a)(1).
- 33 *NRP*, Catastrophic Incident Annex, p. CAT-1.
- 34 *NRP*, p. 43; Catastrophic Incident Annex, p. CAT-1.
- 35 *NRP*, Catastrophic Incident Annex, p. CAT-1.
- 36 *NRP*, Catastrophic Incident Annex, p. CAT-1. *See also*: *NRP*, Catastrophic Incident Annex, p. CAT-3 (“The response capabilities and resources of the local jurisdiction ... may be insufficient and quickly overwhelmed. Local emergency personnel who normally respond to incidents may be among those affected and unable to perform their duties.”).
- 37 *NRP*, p. 44; Catastrophic Incident Annex, p. CAT-4.
- 38 *NRP*, Catastrophic Incident Annex, p. CAT-4.
- 39 *NRP*, Catastrophic Incident Annex, p. CAT-2.

