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December 22, 1967

STAFF MEMORANDUM OF OFFICE OF LEGAL COUNSEL,  
DEPARTMENT OF JUSTICE

Re: Review of Presidential Emergency Documents

I

PLAN D

A. Issuance of each of the Presidential Emergency Documents is predicated on the existence of the situation described in Federal Emergency Plan D-Minus dated June 1959. The plan is based on the following "General Situation Assumption" (p. 5):

\* \* \* an assumed international situation involving actual or imminent attack, with little or no warning, on the United States and its allies, so crippling in effect as to impair government control, seriously reduce military strength, produce millions of casualties, disrupt industrial and agricultural production and endanger the existence of the nation and the free world.

Although expressed in various forms in the FEADS, the general formulation which would authorize their issuance is stated in terms of an unprovoked armed attack having been launched against the United States by foreign military forces, and its territory invaded by persons seeking to destroy its government by force and violence. It is understood that this general formulation was prescribed by President Eisenhower.

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E.O. 13526, Sec. 3.5

NLJ/RAC 18-13

NARA, Date 4/17/17

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It seems evident from both Plan D-Minus and the documents supporting the PEADS that the attack contemplated is a broad-scale nuclear attack. This is not, however, clear from the General Situation Assumption described in Plan D-Minus. Accordingly, it appears desirable to revise Plan D-Minus so as to tie it expressly and exclusively to a situation involving a devastating nuclear attack upon the United States. This could be accomplished by the following language in the revised Plan D (the title of which should be changed, as suggested by the Department of Defense, to Federal Emergency Plan D)\* under the heading "General Situation Assumptions" (p. 8):

The Plan is based on an assumed international situation involving a nuclear attack on the United States, with little or no warning, involving destruction of industry, heavy casualties, and a crippling of government at all levels, and constituting a threat to the existence of the nation.

It will be noted that the reference in Plan D-Minus to an attack on the allies of the United States has been omitted. It is conceivable that an attack of the character indicated could be made

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\* As noted by Defense, the present title may be misleading in that it suggests actions before H-Hour whereas the plan deals exclusively with actions at or after H-Hour occurs.

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against the United States but not against its allies. For the plan to be activated in its present form both are necessary. It is obvious that such a limitation is undesirable and could lead to confusion, even though the PEADS refer only to an attack upon the United States.

In order to reflect the assumption stated in the revised Plan D each of the PEADS should be revised to incorporate the following uniform language in the WHEREAS clauses:

WHEREAS a hostile foreign power has launched an attack upon this country which compels the institution of emergency measures, including the immediate marshalling of this Nation's defenses and resources; and

WHEREAS I have proclaimed an unlimited national and civil defense emergency;

Plan D has also been revised by the Office of Emergency Planning to eliminate obsolete and unnecessary language, and generally to update it. This revision reflects generally the comments submitted by the agencies represented on the reviewing committee. The revised plan includes a reference, as suggested by several of the agencies, to the fact that it is classified

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national defense information subject to the provisions of 18 U.S.C. 793 and 794.

The Plan has also been revised to include the following statement:

In the event of any significant disruption of communications after notice has been received that the President has issued the Executive Order entitled "Providing for the Mobilization of the Nation's Resources," executive elements of the Federal Government, including field establishments, shall, on the assumption that actions contained in Annex C of this Plan have been issued, shall carry out the essential functions assigned to them.

In view of the time element and the fact that only the agencies represented on the committee have considered the revised Plan, it is recommended that the Plan should be subjected to further review by all agencies having essential emergency functions, including those represented on the committee. Both the Department of Defense and the Bureau of the Budget have stressed the need for such further review.

B. Plan D-Minus is accompanied by three annexes (A (definitions), B (Effects of Nuclear Weapons) and E (Procedures for Presidential Actions and Documents)). Two other annexes (C and D, relating to planning and operational assignments to permanent

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departments and agencies, and emergency organizations, respectively) were contemplated at the time Plan D-Minus was drafted. The assignment of planning responsibilities in 1962 and 1963 to existing organizations by Executive Orders (Nos. 10997-11005, 11087-11095, and 11310) make these two annexes unnecessary.

Annex B can be dropped since the Department of Defense and the Atomic Energy Commission have jointly issued a publication having an identical title. This can be obtained by any agency needing information as to the effects of nuclear weapons.

Annexes A and B (formerly Annex E) have been revised by OEP to reflect the changes made by Plan D and to eliminate obsolete and unnecessary language. The title of Annex B has been revised to read: "Procedures for Preparing and Submitting Presidential Actions and Documents."

Defense has submitted revised Planning Assumptions and has suggested that they be included as an Annex to the Plan. In view of the revised General Situation Assumption (supra), it is questionable whether such planning assumptions are necessary for the purposes of the Plan.

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It is also believed appropriate, as suggested by OEP, that the Plan should remain under constant review by OEP and subject to appropriate revision whenever circumstances warrant such action.

C. The babove changes in the Plan and the Annexes will reduce their bulk by two-thirds with no loss of useful content. The revised Plan D will consist of 20 pages as compared to 45 pages; the annexes will consist of 17 pages as compared to 65 pages.

A new Annex C has been prepared by OEP containing the proposed OOR Actions to implement AI-16.

Aside from the foregoing, the Office of Emergency Planning notes that Emergency Plan D deals with a devastating nuclear attack upon the United States and Emergency Plan C deals with all levels of conventional war, but that no plan exists now with respect to a situation involving a light or limited nuclear attack. That agency recommends that such a plan be promptly developed. This recommendation appears to be worthwhile. However that activity should not be allowed to interfere with the further review of Emergency Plan D.

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## II

### THE PRESIDENTIAL EMERGENCY DOCUMENTS (PEADS)

#### A. GENERAL COMMENTS

1. The Bureau of the Budget has stated that "due to the severe time limitations and other factors applicable to this project, including our understanding with the Attorney General, the Bureau has not carried out its usual role of coordination and clearance with the agencies concerned. We believe such coordination and clearance would be necessary in order for us to give final approval to the documents. We have noted \* \* \* certain documents that we believe particularly need further consideration. Our comments on these documents must be considered as tentative pending further consideration. In this connection, the Bureau notes that many approved PEADS have not undergone agency review for several years and other draft PEADS are in various stages of completion or clearance. While the current exercise should certainly improve this situation, the Bureau believes that sufficient cause exists to justify a more comprehensive, in-depth study of the Federal Emergency Plans, document requirements, and existing documents--both approved and in draft stages."

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The Department of Defense has directed its attention principally to AI-16, dealing with the post-attack mobilization of the Nation's resources. It states that the limited time frame in which the present review is being conducted prohibits "a thorough and valid review" of AI-16 and the resulting Office of Defense Resources Actions. It recommends that the present draft of AI-16 should not be officially adopted at this time, since it is of such importance that it not only requires a thorough review within each interested department or agency but thorough coordination under the procedures established for PEAD review and clearance.

The above observations appear to be valid, and a further study should be initiated by the committee, with a final report to be submitted to the President at a later date.

2. It should be noted that although many of the actions which would be authorized by the PEADS could be taken in situations short of a devastating nuclear attack upon the United States, the PEADS are intended for issuance, as stated in their preambles, only in the event of such an attack. If any of such

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actions are to be taken in an emergency short of this, it is contemplated that specific documents reflecting the precise existing circumstances will be prepared and presented to the President.

3. The PEADS should be renumbered to reflect the approximate order in which they should be issued and revised to reflect statutory changes and other technical changes.

4. While most of the PEADS are designed for immediate issuance upon the occurrence of a devastating nuclear attack, three can be characterized as reserve documents designed for issuance by the President only as a last resort when he finds that no other alternative is available:

Al-42 and Al-69, providing alternative forms of limited martial rule;

Al-70, providing for the establishment of military areas, which is similar to the World War II Executive order under which the Japanese, both aliens and citizens, were relocated.

An appropriate reserve notation should be added to Al-42 to reflect its reserve status. It is suggested that Al-69 and Al-70 be omitted for the reasons indicated below.

#### B. ADDITIONAL PEADS

A number of proposed PEADS have been considered in the past but have not been placed in the President's portfolio.

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It appears that many of them were dropped as being unnecessary because of the existence of other legal authority, because they were combined in some other PEAD (A1-16, for instance), or because of changes in plans. Others were dropped because the Attorney General declined to approve them as to legality. It appears that seven of those proposed PEADS merit further study and consideration. They are--

1. PEAD A1-29, relating to the control of diplomatic property, has been recommended for inclusion by the Department of State. However, it appears that that Department at one time indicated that this PEAD was not needed, and was accordingly withdrawn from the President's portfolio of PEADS. The need for this document should be further examined.

2. PEAD A1-56, providing for an emergency financial plan, was disapproved by Attorney General Rogers in 1959 because of legal difficulties. It might be possible to revise this document so as to make it legally acceptable without destroying its usefulness. The Bureau of the Budget, the Department of Justice, and OEP should endeavor to develop such a document.

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3. A1-65, relating to wartime restructuring of the Civil Service System, was also disapproved by Attorney General Rogers on legal grounds. As in the case of A1-56, this document should be reconsidered to determine whether it can be revised so as to avoid legal impediments.

4. A1-73, establishing control over communications with respect to position and movement of ships.

5. A1-76, suspending requirements as to display of lights and sounding of signals on board certain vessels.

6. A1-100, relating to the transfer of the Federal Aviation Administration to Defense, was not approved because the President directed those two agencies (Executive Order 11161 of July 7, 1961) to develop a plan for such a transfer. That plan should be completed and those agencies should be asked to submit an appropriate PEAD to take care of that transfer.

7. The Treasury Department recommended a PEAD (A1-113) dealing with banking activities. It appears that that Department may already have sufficient legal authority in this regard, and needs no new authority. However, the Treasury Department should be consulted concerning this matter.

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It is also felt, as indicated in the discussion of PEAD A1-42, that a new reserve PEAD should be included providing for suspension of the writ of habeas corpus.

In addition to the foregoing, the head of each agency having emergency preparedness functions should be requested to review its plans and provide advice as to whether he will need any additional wartime powers which could be provided by an appropriate PEAD.

C. PEADS FOR DELETION

1. PEAD A1-119, relating to the use of the Seal of the United States on Presidential Proclamations, can be omitted since Executive Order 11354 makes this document obsolete. That order eliminated the seal requirement for such proclamations.

2. OEP has no objection to the omission of PEAD A1-64, proclaiming that an act of war has been perpetrated against the United States, since it appears to provide no new legal authority and to be of no significant value in a post-nuclear attack situation. It was included to preclude any lingering doubts which might exist concerning the propriety of exercising wartime statutory powers in the absence of a Congressional declaration of an existence of a state of war.

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The other members of the committee should give consideration to whether this PEAD should be omitted as unnecessary.

3. It is suggested that PEAD A1-69 (Continuity of State and Local Governments) should be omitted.

A1-69 was developed as a possible alternative to A1-42 to provide civilian rather than military direction. This was done prior to the transfer of civil defense functions to the Department of Defense and it appears doubtful that any civil agency has the capability of performing the functions involved. Since it appears that A1-42 provides a satisfactory means of accomplishing the objectives of A1-69, it appears appropriate to omit A1-69. This would avoid the confusion which might result from having two documents of essentially the same character.

However, the Bureau of the Budget has suggested that performance of the functions involved in A1-69 would be appropriate for the Department of Justice rather than for Defense. It appears doubtful that Justice can effectively perform these functions. However, it may well be that Department of Justice

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participation in AI-42 (Maintenance of Government and Law and Order) is appropriate just as this Department has participated with the military in controlling civil disorders pursuant to an exercise of the President's authority under Title 10, Chapter 15. If so, development of arrangements for Justice participation should be worked out during the further review.

4. AI-70 (Establishment of Military Areas), is a reserve document and is similar to the World War II Executive order under which Japanese, both aliens and citizens, were removed from the West Coast and in many cases detained in relocation centers. The curfew, blackout and removal provisions of the order were sustained by the Supreme Court. However, the detention provisions as they related to citizens were held by the Court to be unconstitutional where the Government could not show that detention was necessary to avoid a "clear and present danger" to the security of the Nation. The broad scale criticism of the Japanese relocation program is well known and well founded. It is open to serious question whether any similar program should be authorized which would permit the removal or detention

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of American citizens as a group solely because of their race, religion, or national origin.

D. FEADS FOR RETENTION

1. It is believed desirable to retain, with appropriate revision, the following listed FEADS, as to which no special comment appears to be needed:

Al-53 (Existence of Unlimited National Defense and Civil Defense Emergencies);

Al-57 (Classification of Information);

Al-59 (Federal Register);

Al-62 (Coast Guard);

Al-67 (Declaration of a State of War);

Al-98 (Documentary Requirements for Persons Entering or Leaving the United States).

The changes which have been suggested for these documents are merely formal and technical in nature and in no way alter their substance or effect.

2. The following comments are submitted with respect to certain other FEADS believed appropriate for retention:

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(a) Al-1 (Commissioned Corps of the Public Health Service).

Each agency has recommended retention of this document. The Bureau of the Budget points out, however, that proposed legislation is under consideration which would have the effect of eliminating the military character of the Commissioned Corps of the Public Health Service. Accordingly it recommends the development of mobilization plans for assigning the Corps to civilian rather than military use, and that upon completion of such plans Al-1 should be omitted. Budget's suggestion should be considered in connection with any further review to be undertaken.

(b) Al-7 (Control of Alien Enemies).

This document appears to be legally unobjectionable. It is substantially the same as comparable documents issued during World War II, none of which were judicially invalidated. It should, however, be downgraded from "Top Secret" to "Secret" since that classification provides adequate protection and will simplify its handling.

(c) Al-3 (Apprehension and Detention Programs).

This PEAD was originally presented and approved by the Department of Justice. It is suggested that it should be

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considered only as an interim procedure pending the implementation of the Emergency Detention Act (50 U.S.C. 811 et seq.) providing for the apprehension and detention of persons as to whom there is reasonable ground to believe that they will probably engage in acts of espionage or sabotage where an invasion has occurred and the President proclaims the existence of an Internal Security Emergency. It would appear that the Emergency Detention Act must govern as soon as it can be effectively implemented.

It seems reasonable to believe that a devastating nuclear attack upon the United States will constitute an invasion within the meaning of that Act. It is also suggested that the provisions of the document relating to the suspension of the writ of habeas corpus be deleted for the reasons set forth with respect to PEAD A1-42, discussed below, and that a separate PEAD be prepared for that purpose. It would be helpful if the coverage of the document is conformed to that of the Emergency Detention Act, namely, persons as to whom there is reasonable ground to believe that they will probably engage in acts of espionage or sabotage. It is not believed that this change will in any way impair the national security.

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(d) AI-9 (Control of Weather Reports).

All agencies have recommended the retention of this document.

The Bureau of the Budget, however, makes the following comment:

"The state of the art of weather forecasting has advanced rapidly. One of the greatest recent advances has been the weather satellite that can be 'read' by relatively unsophisticated equipment on the ground. This order should be given a thorough review by the Office of the Coordinator for Meteorology (an inter-agency group headed by the Administrator of the Environmental Science Services Administration)."

Budget's suggestion should be followed in connection with any further review.

(e) AI-11 (Control of the Canal Zone).

Anticipating the enactment of legislation which would permit the designation of the senior officer of the Armed Forces rather than the senior officer of the Army to have control in the area, the Department of Defense recommends that AI-11 be revised at this time to reflect the anticipated legislative change. It is questionable whether AI-11 should be revised until the legislation is enacted.

(f) AI-16 (Mobilization of the Nation's Resources).

AI-16 is the only PEAD which has been reviewed by the present administration. The history of the document and the

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comments concerning it are set forth in Part III of this statement. It is believed that it should be included as an interim document, subject to further review.

(g) AI-23 (Protection of Diplomatic Personnel).

This document, which is of particular concern to the Department of State, has been reviewed by that department which states that it is believed to be adequate to permit the action intended. The document has been revised by OEP to reflect the technical changes recommended by the Department of State.

(h) AI-42 (Maintenance of Government and Law and Order).

As noted previously, this is a reserve document. The following suggestions are made with respect to the document:

(1) The authority for the actions to be taken should include appropriate reference to 10 U.S.C., Chapter 15, vesting authority in the President to enforce the laws, in certain extraordinary situations, through the use of the Armed Forces or by other means;

(2) Deletion of the provision suspending the privilege of the writ of habeas corpus with respect to persons detained under the order.

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It is not believed that suspension of the writ is essential to assure accomplishment of the objectives of the order, and its inclusion from a legal standpoint might well cause more harm than good. If an extraordinary situation should develop compelling suspension of the writ, a separate document should be issued for that purpose. With this omission, there would appear to be no substantial question concerning the legality of the document.

PEAD A1-42 should be considered as a substitute for the martial law PEAD proposed by the Department of Defense, and in this connection PEAD A1-69 should be omitted. See discussion below. The Department of Justice should prepare a reserve PEAD providing for the suspension of the writ of habeas corpus.

(1) A1-43 (Convening of Congress).

The Bureau of the Budget suggests that it would be desirable to brief the Congress regarding this document which calls for convening the Congress at the Congressional Relocation Site. While such a briefing seems desirable, the members of the committee should consider the timing of such a briefing.

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(j) Al-34 (Limitations on Personnel and Reserve Components of the Armed Forces).

Retention of this document is recommended, incorporating the technical changes suggested by the Department of Defense.

(k) Al-99 (Control of Persons Entering or Leaving the United States).

Insofar as this relates to the entry and departure of citizens it should be examined further by the Departments of State and Justice in the light of recent court decisions dealing with the departure and entry of citizens.

(l) A4-2 (Censorship).

This order, in general, would establish an Office of Censorship, and provide for the censorship of communications crossing the borders of the United States and a voluntary censorship system with respect to news media. There is no legal question as to news media since no compulsion is involved. But with respect to mandatory censorship there is no statutory basis of the type that existed when similar programs were instituted during World Wars I and II. Despite this absence of express statutory authority, it can be argued that these actions would be legal in the aftermath of a devastating

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nuclear attack based on the President's constitutional powers to preserve the national security. However, upon issuance of the document it is believed that prompt action should be taken to secure express ratifying legislation. The necessary standby ratifying legislation should be prepared and maintained for submission to the Congress.

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### III

#### OFFICE OF DEFENSE RESOURCES DELEGATIONS AND DIRECTIVES

A. PRAD A1-16 is in the form of an Executive Order entitled "Providing for Mobilization of the Nation's Resources." It provides for such things as Government requisitioning of property, allocation of materials, price, wage, and rent controls, rationing, and settlement of labor disputes. These powers would be exercised through a new agency known as the Office of Defense Resources and headed by a Director appointed by the President. (In the interim the Director of the Office of Emergency Planning would act as such director.) The order authorizes but does not require the Director to delegate any of his powers to agency heads. The order also provides that with respect to civil defense functions the Secretary of Defense may take specified actions for a temporary period.

The Office of Emergency Planning has reviewed all existing and contemplated ODR delegations and directives which might be issued by the Director of ODR during the immediate post-attack period. It has submitted for study and consideration 20 proposed ODR actions to implement A1-16, together with the corresponding action documents. Among the actions to be taken

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by the Director are the issuance of a "Federal General Freeze Order" (imposition of ceilings on prices, wages, rents, provision for rationing (ODR Action 1); establishment of an Economic Stabilization Agency, a National Office of Telecommunications, and a Defense Resources Board (ODR Action 8); establishing of policies and procedures for seizure of plants, mines and facilities where necessary to prevent interference with urgent production and distribution for purposes of national defense (ODR Action 14); implementation of Section 203 of Al-16 providing for mobilization of the Nation's resources (ODR Action 18)).

A number of actions are delegated including the following: To the Secretary of Labor, interim authority for prompt settlement of labor disputes (ODR Action 1); to the Department of Defense, civil defense functions (ODR Action 4); General Services Administration, support of Federal emergency operating facilities by providing security forces, land transportation and support to the Post Office in carrying out emergency mail service (ODR Action 5); the Secretary of the Interior, priority and allocation functions with respect to food and

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farm equipment; the Secretary of Transportation, priority and allocation functions with respect to transportation; to the Secretary of Commerce, priority and allocation functions with respect to all other materials, facilities and services (ODR Action 9); to the Departments of Defense, Agriculture, Interior, Commerce, HEW, Housing and Urban Development, Transportation, AEC and GSA, requisitioning authority within their respective spheres of activity (ODR Action 10); to the Secretary of Labor, general authority for emergency management of manpower; to the Secretary of HEW, general authority with respect to "civilian health manpower" (ODR Action 11); to various departments and agencies, emergency contracting authority and seizure of plants failing to perform contracts (ODR Actions 13, 14); to various departments and agencies, authority to make loans and loan guarantees, and to obligate or expend Government funds for restoration, repair, expansion, or construction of essential facilities (ODR Action 17); to the Federal Reserve System, authority to regulate consumer and real estate credit (ODR Action 19); to the Secretary of Commerce, authority to regulate exports and imports (ODR Action 20).

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B. The background of PRAD A1-16 and the OOR delegations and directives is as follows:

On February 14, 1962, President Kennedy established an Emergency Planning Committee comprised of representatives of the Department of Defense, the Bureau of the Budget, and the Office of Emergency Planning, to review various aspects of nonmilitary emergency preparedness planning. These representatives were Solis Horwitz and Adam Yarmolinsky for the Department of Defense, Elmer Staats, then Deputy Director of BOB, and Edward A. McDermott, Director of OEP. Other agencies, including the Department of Justice, participated on an ad hoc basis.

One area of concern to the committee was the lack of a clearly defined system for the central management of resources in the event of a nuclear attack. The committee directed OEP to prepare such a plan and a proposed organizational structure to carry out the plan. The plan, which was approved by the Emergency Planning Committee, recommended the following:

(1) Approval by the President of the concept of an Office of Defense Resources to be activated by the President in an emergency;

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(2) Selection of an Emergency Designee to head the ODR when activated;

(3) Preparation and submission to the President of a standby order to provide the necessary emergency authorities;

(4) Preparation of documents to redelegate to the appropriate departments and agencies the authorities vested in ODR by the President, and to provide central policy guidance and direction on their use. The plan stated (p. 10):

"\* \* \* the system for the management of resources must be one which provides for the use of resources to accomplish the most urgent post-attack task, including civil defense. It is proposed that resources will be assigned to these activities, on a priority basis, and that the agencies responsible for the program will be delegated by ODR, the authorities to obtain the necessary resources. In order to assure that all activities, which are vital to the survival and recovery of the Nation, receive resource support, it is necessary to have an agency responsible for the over-all direction and control of resources. This agency is the Office of Defense Resources."

By memorandum dated June 24, 1964, the Director of OEP transmitted the plan to the President. He recommended that the President approve the concept of an Office of Defense Resources, to be activated in an emergency by decision of the President, and that the President select an Emergency

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Designee to head the Office, when and if activated. He further stated that following the President's approval, OEP would proceed with the development of plans for the organizational structure of the Office and the proposed system for central resources management, work with the Federal agencies having mobilization responsibilities, and take other measures to bring these emergency preparedness measures to a state of standby readiness. Under date of June 30, 1964, the President by memorandum to the Director of OEP approved "the concept of an Office of Defense Resources" as "a key element," and requested the Director to proceed with the development of the necessary measures. He also informed the Director that he agreed with the desirability of selecting an Emergency Designee for ODR and requested his recommendations regarding qualified persons.

The revised AI-16 and the ODR delegations and directives appear to be the response to the President's memorandum.

C. PEAD AI-16, as pointed out above, provides that until the President appoints a Director of ODR the Director of OEP shall act as its Director. Presumably, this responds



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to the President's request to OEP in 1964 for a recommendation for the selection of an Emergency Designee to head OOR until a Director is appointed by the President. Since the responsibility for emergency planning functions regarding the utilization of the national resources is now vested in the Director of OEP, it may be appropriate for that official to act as the Emergency Designee. On the other hand, the committee may wish to consider whether the President should be accorded greater latitude in that regard. This might be accomplished by providing that the President shall select an Emergency Designee in advance but that if he does not the Director of OEP shall act as such until the President appoints a Director.

D. The President has asked whether the delegations and directives prepared by the Office of Emergency Planning are adequate, and where appropriate, whether their subject matter should be included in one or more of the PRADS. As to adequacy, it appears that the delegations and directives (prior to their present revision in minor respects) were submitted for comment to each of the agencies involved and were deemed to be satisfactory. The Department of Defense states in connection with

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the present review that the limited time frame available has not permitted a thorough and valid review of PEAD A1-16 and the resulting ODR Actions. This further review will be permitted if additional time is made available for submission of the recommendations and report to the President.

It may be that the significant problem in connection with the question whether the subject matter of the delegations should be included in the PEADS themselves, presumably in A1-16, concerns the matter of communication. The ODR Action documents cannot be issued until A1-16 is issued. Accordingly, if the assumption is made that circumstances might exist in which notification of A1-16's issuance could not be communicated to the Director of OEP, the action necessary to implement A1-16 would not be taken. It would seem, however, that the problem may only be theoretical. A1-16 would not have any practical effect unless the fact that it has been issued had been communicated to the interested agencies, including OEP. It must be assumed as a basic premise to the operation of A1-16 that such communication will in fact occur. Moreover, it appears to be understood among all agencies involved

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that immediately upon notification that A1-16 has been issued they are to assume that the ODR Action documents have been issued without awaiting a formal notification thereof. This concept should be embodied in the Revised Plan D.

It has also been noted that Section 202(b) of A1-16 directly vests in the Secretary of Defense the authority to take certain steps "to insure the prompt implementation of urgent civil defense plans prepared pursuant to Section 1 of Executive Order No. 10952," and that Section 202(b) provides that the exercise of such authority is subject to the direction and control of the Director of ODR and shall cease at such time as the Director delegates to the Secretary of Defense such civil defense functions as he deems necessary. Apparently, the provision for direct vesting of authority in Defense was included in A1-16 merely to accommodate that Department.

It has been further noted that in the letter from the General Counsel of the Bureau of the Budget to the Attorney General dated August 26, 1965, transmitting the revised version of A1-16, the Departments of Agriculture and Health, Education, and Welfare requested direct delegations of

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authority to all agencies concerned in AI-16. The letter pointed out that "the possibility of direct delegations to agencies has been carefully considered, and rejected, by the Emergency Planning Committee, except for the temporary direct delegation to the Secretary of Defense" and that direct delegation "is contrary to the ODR concept approved by the President." BOB now states that although it has some apprehension regarding the vesting of centralized authority and influence in the Director of ODR, it has no recommendation at this time for an alternative and therefore recommends no change in the concept or scope at the present time. This question requires further consideration.

#### ODR ACTION 1

Further consideration is required regarding the suggestion that the signature lines of ODR Action 1 and the other ODR Action documents should be revised so as to avoid any implication that they will be issued by the Director of the Office of Emergency Planning.

It appears to be desirable to accept the Bureau of the Budget recommendation that this document be revised so as

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to make the general freeze effective as of the date of the issuance of the document rather than the date of the nuclear attack.

ODR ACTION 8

The question has been raised whether the Director, National Communications System, and military communications are included in the coverage of this document. The answer appears to be in the affirmative. The President's Memorandum of August 21, 1963, entitled "Establishment of National Communications System," referred to in Section 2f of the document, covers these points.

ODR ACTION 9

Regarding ODR Action 9, it seems desirable to accept the Defense recommendation that priorities and allocation authority with respect to transportation by water should be clarified. The document should be appropriately revised. It is also desirable to accept the Defense recommendations regarding priorities and allocations with respect to military transportation systems controlled by Defense and materials in

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the supply systems of Defense and the Atomic Energy Commission.

ODR ACTION 10

With respect to ODR Action 10, Defense suggests that the proliferation of requisitioning authority in various agencies could conflict with the requisitioning authority vested in the Secretary of Defense under Section 202(b) of A1-16 with respect to civil defense. This problem should be studied in connection with the general further review of the ODR plan.

It appears to be appropriate under this ODR document for the Secretary of Defense to be vested with authority to requisition real estate. The recommendation of Defense regarding Section 1.a(9) is acceptable.

ODR ACTION 12

There is merit in the recommendation of the Department of Defense that this document be revised to make clear that military medical personnel assigned to civilian use will

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remain under military jurisdiction and control. It should also be revised to show that Defense will be responsible for providing health services to civilians on military installations.

ODR ACTION 20

As recommended by State, ODR Action 20 (control of exports and imports) should be revised expressly to preserve State Department munitions control, Atomic Energy Commission controls, and Treasury Department controls over gold and narcotics.

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