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PEADs (Presidential Emergency Action Documents)

PEADS

PEADS Submission List

9/22/2004

PEAD	AGENCY	Update Status	To DOJ	Due	Notes
A-101	WH	Submitted	Yes		
A-102	WH	Submitted	Yes		
A-103*	WH	Submitted	Yes		
A-104*	WH	Not Submitted	No	UKN	Coordinated with DOJ on 8/3/04
A-201*	WH	Submitted	Yes		
A-202	WH	Submitted	Yes		
A-301	WH	Submitted	Yes		
A-302	WH	Submitted	Yes		
A-303	WH	Submitted	Yes		
B-101	WH	Submitted	Yes		
B-102	WH	Submitted	Yes		
B-103	WH	Submitted	Yes		
B-104	WH	Submitted	Yes		
B-105**	WH	Submitted	Yes		Developed by DOJ on 6/1/03
B-201	DOD (Lead-Primary)	Not Submitted	No	9/30/2004	USCG sent changes to DOD on 8/10/04 Delivered to DOJ on 9/22/04
	DHS	Not Submitted	No		
B-202	DOJ	Not Submitted	No	UKN	
C-101*	NARA	Submitted	Yes	7/30/2004	Delivered to DOJ on 7/2/2004
C-201	NARA	Not Submitted	No	UKN	Called NARA on 8/17/04 and left msg
D-101	WH	Submitted	Yes		
D-201	DOC	Not Submitted	No	9/17/2004	
D-202	DOD	Not Submitted	No	9/30/2004	
D-203	DHS	Submitted	Yes		Delivered to DOJ on 8/12/04
D-301	DHS (Lead-primary)	Not Submitted	No	UKN	DHS-FEMA will be lead primary for this PEAD
	USDA (Co-primary)				
	DOC (Co-primary)				
	DOT (Co-primary)				
	DOE (Co-primary)				
D-302	DOC	Not Submitted	No	9/17/2004	
D-303	DHS	Submitted	Yes		Delivered to DOJ on 8/12/04
D-401	DOE	Submitted	Yes		Delivered to DOJ on 8/12/04
D-402	DOE	Submitted	Yes		Delivered to DOJ on 8/12/05
D-403	DOE	Submitted	Yes		Delivered to DOJ on 8/12/06
D-404	DOE	Submitted	Yes		Delivered to DOJ on 8/12/07

Policy database whether need PEAD.

PEADS Submission List Continued

9/22/2004

D-501	Treas.	Submitted	Yes		Delivered to DOJ on 8/12/08
D-601*	OSTP	Not Submitted	No	9/30/2004	Coordinating with FCC
D-701	OPM	No Changes	NA		Memo forthcoming
E-101	DOS (Co-primary)	Submitted	Yes		Delivered to DOJ on 8/12/04
	Treas. (Co-primary)				
E-102	DOS (Co-primary)	Submitted	Yes		Delivered to DOJ on 8/12/04
	Treas. (Co-primary)				
E-103**	Treas. (Primary)	Submitted	Yes		Delivered to DOJ on 8/12/04
E-201	DOS (Co-primary)	Submitted	Yes	9/15/2004	Delivered to DOJ on 8/12/04
	DHS (Co-primary)			9/13/2004	Will be delivered to DOJ NLT 9/17/04
E-202	DOS (Co-primary)	Submitted	Yes	9/15/2004	Delivered to DOJ on 8/12/04
	DHS (Co-primary)			9/13/2004	Delivered to DOJ on 9/22/04
F-101	DOD (Co-primary)	Not Submitted	No	UNK	
	DHS (Co-primary)				
F-102*	DOD (Co-primary)	Not Submitted	No	9/30/2004	
	DOJ (Co-primary)				
F-103	DOD	Not Submitted	No	9/30/2004	
F-201	DOD (Co-primary)	Not Submitted	No	9/30/2004	
	DOJ (Co-primary)				
F-202*	DHS (Co-primary)	Submitted	Yes	9/30/2004	Delivered to DOJ on 9/22/04
	DOS (Co-primary)			7/30/2004	Delivered to DOJ on 8/12/04
G-101	DOD (Co-primary)	Submitted	Yes	UKN	Delivered to DOJ on 9/22/04
	DHS (Co-primary)				
G-102	DOD (Co-primary)	Not Submitted	No	9/30/2004	
	DOT (Co-primary)				
G-103	DOD (Co-primary)	Submitted	Yes		This PEAD in Dispute Delivered to DOJ on 9/22/04
	HHS (Co-primary)				
G-201	DOD (Co-primary)	Not Submitted	No	9/30/2004	DHS will coordinate with DOD
	DHS (Co-primary)				
G-202	DOD (Co-primary)	Not Submitted	No	9/30/2004	DHS will coordinate with DOD
	DHS (Co-primary)				
G-203	DOD (Co-primary)	Not Submitted	No	9/30/2004	DHS will coordinate with DOD
	DHS (Co-primary)				

PEADS Submission List Continued

9/22/2004

G-204	DOD (Co-primary)	Not Submitted	No	9/30/2004	DHS will coordinate with DOD
	DHS (Co-primary)				
G-205	DOD (Co-primary)	Not Submitted	No	9/30/2004	DHS will coordinate with DOD
	DHS (Co-primary)				
* = Core PEADS					9/22/2004
** = Newly Developed PEADS					9/22/2004

OSTP NS/EP Wartime Authorities Under 47 U.S.C. Section 706 and E.O. 12472(a)(2)
NSC Provides Policy Direction

Section 706 Subsection	State of Emergency	Triggers	Action
<p>Subsection (a) -- Priority service</p> <p><i>App. to interstate carriers beyond lang. of statute, inc. by FCC, FCC has broad powers both intrastate & interstate</i></p> <p><i>[Also, ? says also applies to non-carriers -- this is beyond statute lang.]</i></p>	<p>During the <u>continuance of a war</u> in which the U.S. is engaged</p>	<p>During the continuance of a war and:</p> <ol style="list-style-type: none"> 1. It is necessary for the national defense <u>and</u> security, and 2. Certain communications may be essential to the national defense <u>and</u> security. 	<p>Direct that such communications shall have <u>preference or priority</u> with <u>any carrier</u> subject to the Act.</p> <p>He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose <u>he is authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission.</u></p>
<p>Subsection (c) -- Radio/wireless communications</p>	<p>Existence of a <u>war</u> or <u>threat of war</u> or a <u>state of public peril</u> or <u>disaster</u> or other <u>national emergency</u>.</p>	<p>Issuance of a Presidential Proclamation that:</p> <ol style="list-style-type: none"> 1a. Such a state exists, <i>or</i> 1b. It is necessary to preserve the neutrality of the U.S., and 2. It is necessary in the interest of national security <u>or</u> defense. 	<ol style="list-style-type: none"> 1. <u>Suspend or amend</u>, for such time as he may see fit, <u>the rules and regulations</u> applicable to any or all stations or devices capable of emitting electromagnetic radiations, and 2. <u>Cause the closing of any station</u> for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles -- and the removal therefrom of its apparatus and equipment, or 3. <u>Authorize the use or control</u> of any such station or device and/or apparatus and equipment by any department of Government under such regulations as he may prescribe
<p>706 Subsection (d) -- Wireline communications</p> <p><i>(broader than common carriers in FCC juris)</i></p>	<p>Existence of a <u>war</u> or <u>threat of war</u> involving the U.S.</p>	<p>Issuance of a Presidential Proclamation that such a state exists,</p> <ul style="list-style-type: none"> o if he deems it necessary in the interest of the national security <u>and</u> defense. 	<ol style="list-style-type: none"> 1. <u>Suspend or amend the rules and regulations</u> applicable to any or all facilities or stations for wire communications, or 2. <u>Cause the closing of any facility or station</u> for wire communication, and the removal therefrom of its apparatus and equipment, or 3. <u>Authorize the use or control</u> of any such station or device and/or apparatus and equipment by any department of Government under such regulations as he may prescribe

Section 706 Subsection	State of Emergency	Triggers	Action
Subsection (e) -- Compensation	Subsection (c) or (d) status	When Subsection (c) or (d) invoked.	Determine just compensation for actions taken and submit to Congress.

Subsection (b) -- Use of armed forces <i>President retains sole authority</i>	During any war in which the U.S. is engaged	Whenever in the President's judgement the public interest requires.	Employ the armed forces of the US to prevent obstruction or retardation of communication (interstate or foreign radio or wire communication).
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PEADS

Questions for Section 706 PEAD Review

General Questions

- What language updating of “summary” cover memo and/or background “comments” memo needs updating?
 - What does Section 706 encompass that FCC regulations don't?
 - When/Why would you invoke Section 706?
 - Can President sign PEAD and OSTP Director not invoke powers?
 - What is the effect of signing?
- What language of the PEAD needs updating?
 - Is it desirable to have different PEADs prepared for different situations?
 - Distinction between national “defense” and national “security”?
 - Distinction between the various triggering states?

Subsection (a) – Priority Telecommunications

- What is scope of “any carrier subject to this Act”?
- What are provision's limitations?
- Proclamation still necessary under National Emergencies Act?

Subsection (c) – Radio

- What does this cover?
- What are its limitations?

Subsection (d) – Wire

- What does this cover?
- What are its limitations?

PEADS

Communications Act Section 706
47 USC § 606

(a) Priority communications

During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this chapter. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

*This is ltr
was focused
on common
carriers who
had resp.*

(b) Obstruction of interstate or foreign communications

It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: Provided, That nothing in this section shall be construed to repeal, modify, or affect either section 17 of title 15 or section 52 of title 29.

(c) Suspension or amendment of rules and regulations applicable to certain emission stations or devices

Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and equipment, by any department of the Government under such regulations as he may prescribe upon just compensation to the owners. The authority granted to the President, under this subsection, to cause the closing of any station or device and the removal therefrom of its apparatus and equipment, or to authorize the use or control of any station or device and/or its apparatus and equipment, may be exercised in the Canal Zone.

(d) Suspension or amendment of rules and regulations applicable to wire communications; closing of facilities; Government use of facilities

Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and

defense, may, during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

Very broad

(e) Compensation

The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control.

Such suit shall be brought in the manner provided by section 1346 or section 1491 of title 28.

(f) Affect on State laws and powers

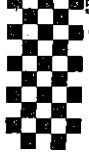
Nothing in subsection (c) or (d) of this section shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by any communication system or systems.

(g) Limitations upon Presidential power

Nothing in subsection (c) or (d) of this section shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make; and nothing in subsection (d) of this section shall be construed to authorize the President to take any action the force and effect of which shall continue beyond the date after which taking of such action would not have been authorized.

(h) Penalties

Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than \$5,000, except that any person who commits such an offense with intent to injure the United States, or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.



OPE ADS
~~Holly~~

THE WHITE HOUSE
WASHINGTON

OFFICE OF THE COUNSEL TO THE PRESIDENT

FACSIMILE COVER SHEET

DATE: May 27, 2004

TO: John Bellinger
456-9110

FROM: David G. Leitch

PHONE: (202) 456-2632 FAX: (202) 456-6279

NUMBER OF PAGES (INCLUDING COVER SHEET): 7

Comments:

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THE WHITE HOUSE
WASHINGTON

May 27, 2004

MEMORANDUM FOR AGENCY GENERAL COUNSELS ON ATTACHED
DISTRIBUTION LIST

FROM: DAVID G. LEITCH 
DEPUTY ASSISTANT TO THE PRESIDENT
AND DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: (1) PRESIDENTIAL EMERGENCY ACTION DOCUMENTS (PEADs)
(2) DEPARTMENT & AGENCY EMERGENCY AUTHORITIES

This memorandum will update you on two projects that were raised at the Deputies Committee meeting on May 6, and advise you concerning items for your attention. The first project involves the update of Presidential Emergency Action Documents (PEADs), and the second involves a parallel compilation of emergency authorities at the Secretarial level.

1. Update of PEADs

As you are no doubt aware, the Department of Homeland Security is presently coordinating the review of PEADs throughout the Executive Branch in compliance with Presidential Decision Directive (PDD) 67. The Federal Emergency Management Agency (FEMA) will continue to lead that process, and the Office of Legal Counsel (OLC) at the Department of Justice will continue in its role as reviewer for legal sufficiency.

The review and update of PEADs is an urgent and compelling security effort, especially in light of ongoing threats. In addition, it is likely that new PEADs addressing new issues will need to be developed and reviewed by some departments and agencies. You should anticipate receiving new guidance on the completion schedule in the near future.

Attached for your reference is a copy of FEMA's current list of agency points of contact on the PEADs project. Each of these individuals should be able to provide information concerning the status and the estimated completion of pending PEADs assigned to your department or agency. By this memorandum, we ask that you also identify a point of contact in your General Counsel's office who will work with FEMA, OLC, and the Homeland Security Council in this effort. Please provide that information to the EOP point of contact for these issues, Ryan Stiles (Deputy Counsel for the Homeland Security Council, 202-456-2607, or by email at rstyles@who.eop.gov).

2. Compilation and Update of Department and Agency Emergency Authorities

Each Principal of an executive branch department or agency also possesses certain legal authorities that they may execute in the course of responding to an emergency or domestic incident. It is my understanding that most of your offices already have compiled departmental emergency materials in a readily useable form. Your individual departmental binders should be compiled or updated at this time, with copies provided to FEMA, OLC, and the White House.

These are important initiatives that are vital to our national security. To ensure a shared understanding, format, and timetable, and to address any questions, we ask that you please designate to Ryan Stiles a representative from your office to participate in a meeting on these efforts at 3:00 p.m. on Thursday, June 3, 2004 in Room 472 of the Eisenhower Executive Office Building.

Thank you in advance for your cooperation. We look forward to working with you as we see these projects through to completion.

Attachment

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cc: Edward McNally, Homeland Security Council
John B. Bellinger, III, National Security Council
Col. Mike Murphy, White House Military Office
Shana L. Dale, Office of Science and Technology Policy

Presidential Emergency Action Documents (PEADs) Update
Points of Contact
(05/26/04)

	<u>POC</u>	<u>Alternate</u>
White House	(Rosemary Hart, DOJ working with WH OGC)	
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