



FEMA

August 28, 2007

MEMORANDUM FOR: Under Secretary for Defense (Personnel and Readiness)
Deputy Secretary, U.S. Department of Energy
Deputy Secretary, U.S. Department of the Interior
Acting Deputy Secretary, U.S. Department of
Transportation
Deputy Administrator, U.S. General Services Administrator
Assistant Secretary for Cyber Security and
Communications, Department of Homeland Security

FROM: R. David Paulison 
Administrator

SUBJECT: Interim Guidance for the National Defense Executive
Reserve (NDER) Program

This memorandum transmits the policies and procedures manual for the NDER program authorized by the Defense Production Act of 1950, as amended, and provides interim guidance for the NDER program until a new federal regulation can be finalized. Except for updated references to underlying authorities, this manual remains unchanged from the manual transmitted previously by Federal Preparedness Circular (FPC) 24 and applies to Federal departments and agencies that sponsor or propose to sponsor NDER units.

The NDER is a Federal Government program that provides a reserve of highly-qualified individuals from industry, organized labor, professional groups, and the academic community to serve in executive positions in the Federal Government in time of national emergency. Specific authority for the NDER is provided in section 710(e) of the Defense Production Act of 1950, as amended, and section 601 of Executive Order 12919 of June 3, 1994, as amended.

For further information regarding this manual or issues involving the NDER Program, contact Carol Johnson at 202-646-3328 or carol.johnson@dhs.gov.

Attachment

**The National Defense Executive
Reserve (NDER)
Policies and Procedures Manual**



FEMA

June 20, 2007

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1. Introduction.

a. The Defense Production Act of 1950, as amended, section 710(e), authorizes the President to establish and train a nucleus Executive Reserve.

b. Executive Order 12919, dated June 3, 1994, as amended, provides for the establishment and administration of the National Defense Executive Reserve (NDER).

c. National Security Decision Directive Number 47, dated July 22, 1982, sets forth emergency mobilization preparedness policy that will ensure that government at all levels, in partnership with the private sector and the American people, can respond decisively and effectively to any major national emergency with defense of the United States as the first priority. The Directive sets forth general principles which apply to all emergency programs, while the division between national security and domestic emergency principles emphasizes that the respective and appropriate response for each category may differ. Taken together, these principles define a common ground upon which mobilization programs can be developed and used at the discretion of the President to prevent avoidable emergencies, to combat and reduce the effects of those that are unavoidable, and to mitigate the effects of those that do occur.

National Security Decision Directive Number 47 details principles on which emergency mobilization preparedness programs for national security emergencies are based. As a program for national security emergencies, the NDER program provides for a standby system for attracting executives to critical mobilization tasks, if necessary. The program facilitates the channeling of skilled workers toward the most critical mobilization needs. It provides for maximum reliance on voluntary mechanisms to allocate human resources to critical emergency mobilization tasks.

d. The NDER is a Federal Government program that provides a reserve of highly qualified individuals from industry, organized labor, professional groups, and the academic community to serve in executive positions in the Federal Government in time of national security emergency.

e. The NDER exemplifies the cooperation between the public and private sectors of our society. Reservists give part of their time on a voluntary basis preparing to serve the Nation in time of crisis. Their employers agree to the standby appointments and to their participation in the program.

f. This manual explains basic policies for the NDER and prescribes standards and procedures for administration of the program.

2. General Policy.

a. The Administrator of the Federal Emergency Management Agency (FEMA), hereinafter called the Administrator, is charged with developing policies and planning guidance for the NDER and overall coordination of the NDER program. Management of

the NDER shall be based on centralized policy development by FEMA and decentralized execution of NDER program plans by agencies sponsoring NDER units. FEMA's responsibilities include the provision of appropriate standards for staffing and training and monitoring of the activities of NDER units.

b. An Interagency NDER Committee, composed of representatives of the heads of departments and agencies that sponsor NDER units and chaired by FEMA, will advise the Administrator on matters concerning the NDER program.

3. General Membership Conditions. Members of the NDER accept the following conditions:

a. They will maintain active participation with the Federal agency to which they are assigned and attend scheduled training meetings and exercises.

b. They will report without delay for full-time government employment within the assigned agency upon being activated in the event of a national emergency.

c. They will serve as a member of the Reserve without compensation, except for reimbursement for expenses incurred while training.

d. They agree to serve for a period of 3 years, with a possible extension for additional 3-year terms.

e. They will inform the agency to which they are assigned if they become unavailable for full-time government employment.

f. They will secure concurrence from their employers for their commitment to the NDER.

4. Administration of the NDER Program.

a. The head of any Federal agency with emergency preparedness responsibilities under Executive Order 12656, hereinafter "agency," may establish a unit of the Executive Reserve after receiving concurrence from the Administrator.

b. The following criteria shall apply in the establishment and maintenance of NDER units:

(1) An NDER unit shall be established for the purpose of augmenting the agency with trained personnel in a time of national emergency. Augmentation requirements shall be defined by the agency head.

(2) National Defense Executive Reservists may be used in an emergency to augment executive functions as required by the emergency. The intent of the NDER program is to establish and train a nucleus Executive Reserve to serve in executive positions in the Federal Government in times of national emergency.

(3) The augmentation functions of members of an NDER unit shall be described by an emergency organizational chart, position descriptions, and staffing tables related to agency organization and augmentation plans. These documents must be approved by the head of the agency. In preparing them, agencies should follow the principle that Reservists will not be assigned to positions filled by regular employees.

(4) Each NDER unit shall be directed by an agency official designated to be responsible for it by the head of the agency. The name of the designated official shall be furnished to FEMA.

c. Administration of NDER units is the responsibility of the agency sponsoring the unit. Recruitment, security clearance, training, travel, pay, personnel records, and other administrative matters shall be accomplished by the agency in accordance with the provisions of this manual and Federal standard operating procedures.

d. Funds for the training, travel, and administrative support of NDER personnel shall be the funding responsibility of the sponsoring agencies.

e. NDER units may be disestablished by an agency head concerned. This action shall be reported to the Administrator.

f. Information, data, reports, and copies of documents required to be sent to FEMA shall be addressed to the Administrator, FEMA, Attn: NDER Program.

5. **Membership Requirements.** The following standards apply to selection and designation of Reservists:

a. Candidates shall be U.S. citizens.

b. There shall be no discrimination in selecting members because of race, color, religion, sex, age, national origin, or against qualified handicapped individuals. Positive steps shall be taken to ensure the realization of this policy as an extension of the government's equal employment opportunity program.

c. Members of the Ready Reserve (including the National Guard), retired military personnel with mobilization orders, active Federal employees, and State and local government employees with emergency assignments are not eligible for NDER membership. People campaigning for or elected to public office are not to be considered or appointed in the NDER because of the obligation they have (or would have if elected) to their constituencies.

d. Prospective members must possess the qualifications required to perform their planned emergency assignments. Qualifications for Federal positions are described in the Office of Personnel Management (OPM) Manual X-118.

6. Procedures for Designating Members. The following steps shall be taken in designating members of the NDER:

a. The sponsoring department or agency shall ask the candidate to complete the application for the NDER program. The sponsoring agency shall review the data to assure that the applicant meets all basic membership qualifications.

b. The sponsoring agency shall review the data and/or supporting materials to assure that both the candidate and the candidate's employer are in agreement that the candidate may participate in the NDER program.

c. The sponsoring department or agency shall then complete a security name check on each candidate. When the candidate returns the completed forms, the sponsoring agency shall conduct a security investigation of the candidate in accordance with its current security regulations. All members of the NDER shall be cleared for access to at least SECRET information.

d. Upon completing the security name check, the sponsoring agency shall send a copy of the completed application for the NDER program to the Administrator. Copies of the completed application for membership in the NDER shall be available for the agency sponsoring the NDER unit to which an applicant is being assigned; the requesting official; the Administrator, FEMA; and the NDER applicant. FEMA will enter the data from the form into the NDER Central Register. The Secretary of a department or head of an agency shall submit the name of the prospective designee to the Administrator, FEMA, for approval. Upon approval of the prospective designee by the Administrator, FEMA, the Secretary concerned may designate the individual as a member of the Executive Reserve unit of his/her department or agency.

e. When the sponsoring agency has fully approved the candidate, the head of that agency shall issue a Certificate of Membership in that agency's Executive Reserve unit and a letter to the candidate informing him or her of the designation. The head of that agency shall notify FEMA's Administrator for updating of the NDER Central Register by sending a copy of the letter of designation and a copy of the designee's (Reservist's) application for the NDER program to FEMA.

f. Appointments of members shall not exceed 3 years. Procedures for redesignating members for additional terms of service are given in paragraph 11 of this manual.

g. Reservists shall be assigned to specific emergency positions included in staffing tables and position descriptions that are approved by the head of the sponsoring agency or his/her designees.

7. Conflict of Interest Provisions.

a. Provided they do not act or advise on any matter pending before any Federal department or agency, Reservists are not subject to any conflict of interest provisions of law during training periods. They are not considered officers or employees of the Federal Government during those times in which they merely receive training for mobilization assignments under the Reserve program. If, on the other hand, an agency is retaining or using Reservists as "special government employees" in nonemergency periods, these individuals would be subject to the prohibitions referred to below.

b. It is anticipated that under most of the many possible emergency situations, Reservists could be appointed or employed as a "special government employee" within the meaning of that term as defined in Section 1(a) of Public Law 97-849, as amended (18 U.S.C. 202(a)). As so defined, the term includes, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days on a full-time or intermittent basis.

c. When Reservists are called to Federal employment, sponsoring departments and agencies shall inform their Reservists of the provisions of the following: Bribery, Graft, and Conflict of Interest Statutes (18 U.S.C. Chapter 11), the Ethics in Government Act of 1978, Executive Order 12674, the Office of Personnel Management Post Employment Conflict of Interest regulations, and the sponsoring department or agency Conflict of Interest regulations. If sponsoring departments or agencies know of specific legislation concerning the financial interest of their employees, they should also inform their Reservists of these provisions.

d. As special government employees, activated Reservists will not be restricted to as great an extent as regular employees. For special employees there is no bar against continuing to receive compensation from his or her private employer during the period when he or she is performing services for the government. Also, the restrictions in 18 U.S.C. 203 and 205 against representing anyone else (with or without pay) except in the discharge of his or her official duties, before a court or government agency in a matter in which the United States is a party or has an interest, apply only to those matters in which the special employee has at anytime participated personally and substantially for the government, or which is pending in the department or agency in which he or she is serving.

e. Inquiries about conflict of interest and the Ethics in Government Act should initially be referred to the sponsoring department or agency's Ethics Counselor. The Counselor may wish to contact the Office of Government Ethics, Office of Personnel Management, Room 4366H, 1900 E Street, N.W., Washington, D.C. 20415, for consultation with regard to the application of Federal restrictions in specific cases.

8. Orientation and Training.

a. Sponsoring agency NDER program officials shall give each newly designated Reservist a thorough orientation covering the overall NDER program, the emergency operations of the sponsoring agency, and his or her specific assignment. However, it is recognized that actual mobilization conditions may require modification or shifting of Reservists' assignments.

b. Reservists shall be kept abreast of their expected duties and, of new developments in the agency preparedness programs by attendance at formal training programs at least annually.

c. NDER program officials shall design orientation and training for Reservists so as to foster mutual understanding and support of emergency mobilization preparedness activities and to maintain relations with appropriate nongovernmental sectors. NDER training policies and program guidance will be published separately.

9. Activating Reservists.

a. In the event of a situation which would make it advantageous to have the services of NDER personnel, the Administrator, FEMA, will recommend to the President that he declare a national emergency for the purpose of providing general authority to activate the NDER. Agencies hosting NDER units may request the Administrator, FEMA, to take such action. When the President declares a national emergency, pursuant to the authority vested in him by the Constitution and the laws of the United States including the National Emergencies Act, 50 U.S.C. 1601 et seq., he may include reference to the authority vested in him as President by the Defense Production Act, 50 U.S.C. App. 2160(e) and may delegate general authority to agency heads to activate members of the NDER either by unit, as individuals, or both.

b. Once general authority to activate NDER personnel has been established, sponsoring agencies may activate their own NDER personnel as they deem appropriate.

Authority for appointing Reservists to positions after they have been activated by the President in a national emergency may be found in Federal Personnel Manual, Part 910-9. Appointments in the event of an attack on the United States are addressed in the Federal Personnel Manual Supplement 990-3, Part M-33.

10. Nonemergency Employment of Reservists. Departments and agencies wishing to appoint individual Reservists as Federal employees or consultants at any time other than a national emergency must follow established Office of Personnel Management procedures applying to all prospective Federal employees.

11. Redesignation, Transfer, and Termination.

a. Only Reservists who have attended at least one training session annually during a 3-year term that is ending or have otherwise participated in approved training may be redesignated for an additional term. However, sponsoring agency officials who are responsible for the respective NDER units, in the exercise of their best judgment, may authorize Reservist redesignation based on consideration of special circumstances and conditions on a case-by-case basis.

b. Sponsoring agencies wishing to redesignate a Reservist shall furnish the Administrator the date of redesignation and any address changes, home or business.

c. If the Reservist has changed employers since the previous designation, the sponsoring agency must obtain a current application for the NDER program completed by the Reservist and the new employer.

d. Agencies wishing to transfer a Reservist from one unit to another must obtain advance concurrence from the releasing agency, the Reservist, and the Reservist's employer. The receiving agency shall notify the Administrator in writing of this transfer.

e. Reservists may resign at any time. Agencies may terminate an individual's membership when it is determined that the Reservist's services are no longer required. Membership terminates automatically when a term expires without redesignation or when the Reservist fails to meet any of the basic membership requirements. A copy of any letter of resignation or termination shall be sent to the Administrator. FEMA will be notified of all terminations and appointments.

f. A Reservist who has served with distinction and who is not redesignated for any reason may be placed in Reservist Emeritus Status. These Reservists may participate in training programs or other activities by which units benefit from their knowledge and experience. However, Emeritus Reservists will not be given emergency assignments and will not be called to duty in a national emergency without their consent. Agencies shall inform the Administrator when Reservists are placed in this category.

12. Reports. Departments and agencies sponsoring units shall submit the following reports to the Administrator, who is required to report annually to the President on the NDER program:

a. Quarterly Reports. Within 10 workdays after the close of each quarter, agencies shall inform the NDER program in FEMA, in writing of:

(1) The number of active and emeritus members in each unit at the end of that quarter; and

(2) Training activity in the last quarter and training plans for the coming quarter, including a description of the program; its location; the number of Reserve,

Federal, State, local, and guest participants; and the dates. FEMA will give all participating agencies quarterly summaries of these reports.

b. Annual Report. By the last workday of October, sponsoring departments and agencies shall give FEMA a written evaluation of their NDER activities during the past fiscal year. FEMA will issue instructions on preparing this report by September 15 of the year to be covered in the report.

13. Records.

a. The Administrator shall maintain a central register of all NDER members and candidates. The register will be used to compile periodic and special reports and prevent duplication in NDER recruiting. If a candidate is removed from consideration, the Administrator will be notified promptly.

b. Agencies sponsoring NDER units shall keep records that will enable them to report quarterly the following types of information:

(1) Agency professional and clerical staff years and costs directly and indirectly chargeable to NDER activities;

(2) Other agency costs directly chargeable to NDER activities, including specific costs for staff travel, member travel, printing, and security investigations;

(3) Nonappropriated funds collected and disbursed by Reservists in support of their training sessions;

(4) Numbers of active members falling into the following categories: female active members, minority active members, emeritus members, new members added in the past year, members terminated in the past year, candidates under consideration, members redesignated in the past year, and redesignations pending;

(5) Numbers of active members falling into the following categories: businesses with more than 500 employees, businesses with fewer than 500 employees, Federal Government, State and local government, organized labor, academic community, self-employed, retired, and other;

(6) Specific emergency assignments of members;

(7) Number of NDER participants in training programs;

(8) The purpose, highlights, and accomplishments of training programs;

(9) The qualifications of individual members.