



Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Review of the U.S. Department of Justice's Preparedness to Respond to Critical Incidents Under Emergency Support Function 13



Executive Summary

Review of the U.S. Department of Justice's Preparedness to Respond to Critical Incidents Under Emergency Support Function 13

Introduction

Each year the United States encounters numerous critical incidents that require a national-level response, including natural disasters and other catastrophic events such as acts of terrorism. In 2017, for example, the United States experienced four major hurricanes and other seasonal threats, including floods, tornadoes, and wildfires that caused an estimated \$306 billion in damage. The National Response Framework (NRF), part of the Federal Emergency Management Agency's (FEMA) National Preparedness System, is a self-described "guide to how the Nation responds to all types of disasters and emergencies." Established in 2008, the NRF contains Emergency Support Functions (ESF) that coordinate and organize federal departments and agencies to manage resources and deliver core capabilities needed during a response to a critical incident.

The NRF designates the U.S. Department of Justice (Department, DOJ) as the primary agency for Emergency Support Function 13 (ESF-13)—Public Safety and Security. According to the NRF's ESF-13 Annex, ESF-13's mission is to provide federal public safety and security assistance to state, local, tribal, territorial, and other governmental organizations overwhelmed by the results of an actual or anticipated natural or manmade disaster. In October 2008, the Department assigned the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as the lead coordinating agency for ESF-13.

ESF-13 functions include facility and resource security; security planning and technical resource assistance; public safety and security support; and support to access, traffic, and crowd control. As the ESF-13 lead coordinating agency, ATF coordinates the integration of federal resources across 10 FEMA regions to support a full range of incident management activities requiring a coordinated federal response.

The Office of the Inspector General conducted this review to assess the Department's and its components' ability to meet their responsibilities under ESF-13 and execute ESF-13 activities in response to "any natural or manmade incident, including terrorism." We also examined actions that the Department has taken in response to a recommendation we made in our 2010 *Review of the Department's Preparation to Respond to a [Weapons of Mass Destruction] Incident* as they related to ESF-13.

Results in Brief

We found that the Department made several improvements to the ESF-13 program since issuing its ESF-13 funding and staffing policy in 2012, including some made in response to our 2010 report. We also found the following areas in need of improvement: the development of policy and guidance regarding the role of the Senior Federal Law Enforcement Official (SFLEO) in ESF-13 activations, sustainable staffing and funding for the program, and knowledge and awareness of the program among the Department's partner agencies.

The Department Has Taken Steps to Improve Its Preparedness to Support Critical Incidents Under an ESF-13 Activation

ESF-13 has established a permanent headquarters within DOJ, staffed field positions, and developed a National Concept of Operations Plan (CONOPS Plan) to provide guidance to agencies supplying personnel and resources for ESF-13 activations. ESF-13 has also incorporated lessons learned from recent hurricane seasons. For example, ESF-13 personnel are working to develop closer relationships with other federal agencies managing related ESF activations. They are also deploying earlier, at the onset of natural disasters, and have provided deploying personnel with critical equipment needed to carry out their responsibilities.

The Department Must Clarify and Update Emergency Response and Sustainment Policies to Improve Efficiencies and Effectiveness in Responding to a Critical Incident Under an ESF-13 Activation

Although the ESF-13 program has matured over time, the Department lacks ESF-13 policies in several key areas. For example, we found that, while the NRF's ESF-13 Annex assigns the Attorney General the authority to appoint an SFLEO, there is no Department policy or guidance establishing the role of the SFLEO, its relationship to ESF-13, or the SFLEO's coordination with ESF-13 when both are activated. Although the Federal Bureau of Investigation (FBI) developed an SFLEO Deployment Plan originally to respond to the 2006 hurricane season, we found that the FBI's current SFLEO Deployment Plan duplicates the ESF-13 CONOPS Plan. In addition, we found that members of the FBI's SFLEO cadre lacked knowledge of the ESF-13 CONOPS Plan and that the FBI has not exercised the SFLEO position in FEMA National Level Exercises or in ESF-13 Table Top Exercises.

Hurricane Harvey in 2017 was the only critical incident for which the Department appointed an SFLEO during the scope of our review. ESF-13 officials considered the Hurricane Harvey response efforts an overall success,



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but they also told us that the Department's appointment of an SFLEO during the response resulted in initial confusion and duplication of effort. To avoid confusion and duplication of effort during future ESF-13 activations for which an SFLEO is appointed, we believe that the Department should develop policy or guidance to clarify the SFLEO's role, to enhance his or her effectiveness, and to prevent confusion and delay.

In addition, we identified concerns with the Department's policy for funding and staffing of the ESF-13 operation. For example, funding is based on fiscal year (FY) 2012 budget numbers, which has affected the program's ability to address equipment shortfalls, prepare for activations, and deploy rapidly to assist other federal partners.

ESF-13 is funded partially through contributions made by the other DOJ law enforcement components to ATF. During the scope of our review, the other components often did not deliver this funding until late in the fiscal year, affecting ESF-13 and ATF operations. Specifically, during the period between the beginning of a fiscal year and delivery of funds by the other components, the program's capacity to provide timely support to federal operations during critical incidents was reduced. In addition, ATF had to make up for the ESF-13 funding shortfall using funds appropriated for its own primary mission. This has resulted in operational impacts to ATF, including delayed personnel hires, reduced training, and delayed technological and equipment upgrades.

Finally, the Department's ESF-13 staffing policies are unclear and do not address potential competing priorities among DOJ's law enforcement components when responding to critical incidents. A continued lack of Department engagement on these policy issues could pose challenges to the ESF-13 program, potentially limiting the program's capacity to respond efficiently during critical incidents and its ability to meet future needs.

ESF-13 Must Increase Federal Law Enforcement Officers' Situational Awareness and Improve Support Agencies' Program Knowledge to Foster More Effective Operations During Critical Incidents

We found that law enforcement agencies supporting ESF-13 activations require more situational awareness to respond to critical incidents. Specifically, some agencies and deploying personnel lacked important

information about the environmental hazards they would encounter at the disaster area. Further, information packets provided to deploying Federal Law Enforcement Officers (FLEO) contained only basic information about equipment needs, resulting in some FLEOs arriving at a disaster site without proper resources to operate in disaster conditions.

We also found that deployed FLEOs need more information about the scope and application of their legal authorities. After Hurricane Katrina in 2005, and in response to a congressional report, the Department and ESF-13 implemented several improvements to increase FLEOs' knowledge of their legal authorities and to better prepare them to respond to a critical incident. We found that ESF-13 Quick Response Team personnel and ESF-13 support agency emergency management officials still wanted more information about the scope and application of the FLEOs' legal authorities, such as rules of engagement and how to respond to criminal activities.

Finally, we found that supporting agencies and FLEOs lacked knowledge of the ESF-13 program, potentially inhibiting their responses. Specifically, we found that deployed personnel had misconceptions about their roles as ESF-13 responders, believing that they would be performing search and rescue work rather than providing force protection for other federal emergency responders. In addition, we found anecdotally that some federal agencies deployed personnel for ESF-13 activities but assigned them tasks to support internal agency priorities that may have been outside of the ESF-13 command structure and mission assignment. Some deployed team leaders lacked knowledge of the FEMA Incident Command Structure concept, leading to miscommunications and misunderstandings about task and mission priorities during deployments.

Recommendations

We make seven recommendations to improve the Department's preparedness to respond to critical incidents under ESF-13 and to ensure the sustainment of the program. Our recommendations include creating policy and guidance for the SFLEO position, reviewing funding and staffing requirements to determine appropriate levels that meet current and future ESF-13 program needs, and developing methods to improve situational awareness and knowledge of ESF-13 support agencies and FLEOs supporting ESF-13 activations.

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INTRODUCTION

Background

Each year the United States encounters numerous critical incidents, such as “any natural disasters or manmade incident, including terrorism,” that require a national level response.¹ In 2017, for example, the United States experienced four major hurricanes and other seasonal threats such as flooding, tornadoes, and wildfires. According to the National Oceanic and Atmospheric Administration, the extreme weather events of 2017 caused an estimated \$306 billion in damage, making 2017 the most expensive year on record for natural disasters.

The Federal Emergency Management Agency (FEMA), through the National Response Framework (NRF), the nation’s guide to responding to all types of disasters and emergencies, designates the U.S. Department of Justice (Department, DOJ) with primary responsibility for Emergency Support Function 13 (ESF-13)– Public Safety and Security.² According to the NRF, ESF-13 provides federal public safety and security assistance to state, local, tribal, territorial, and other governmental organizations overwhelmed by the results of an actual or anticipated natural or manmade disaster.³ In October 2008, the Department assigned the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as the lead coordinating agency for ESF-13. As the ESF-13 lead coordinating agency and when directed by FEMA, ATF coordinates the integration of federal public safety and security resources to support disaster area response activities.

The Office of the Inspector General (OIG) undertook this review to assess the Department’s ability to meet its responsibilities under the NRF and execute ESF-13 activities in response to emergency or disaster situations requiring the capabilities of the federal government. We assessed Department policies and guidance; planning, preparation, training, and execution processes; and coordination among DOJ law enforcement components and non-DOJ support agencies in support of ESF-13 activations from fiscal year (FY) 2008 through FY 2018.



ATF Special Agents provide force protection for an ESF-13 Federal Operational Support mission in Puerto Rico during Hurricane Maria support, 2017.

Source: ATF/ESF-13

¹ As of the issuance of this report, the Federal Emergency Management Agency has not activated ESF-13 for any mass shootings.

² ESF-13 is one of 14 ESFs designated under the NRF. See [below](#) for more information about the other ESFs and associated annexes.

³ First established in 2008, the NRF describes specific authorities and best practices under which “the Nation” responds to natural disasters, as well as other emergencies, including terrorist attacks. Under the NRF, the Secretary of Homeland Security and the Director of FEMA have the authority to activate various emergency support functions, including ESF-13.

Historical Perspective: Hurricane Katrina Response

In August 2005, Hurricane Katrina made landfall on the U.S. Gulf Coast, causing over \$125 billion in losses; damaging over 275,000 homes; and directly resulting in the deaths of over 1,300 people. In the aftermath of Hurricane Katrina, two congressional oversight reports and a White House report detailed the federal response and highlighted areas for improvement.⁴ Collectively, the reports emphasized several challenges that federal law enforcement faced during the response to Hurricane Katrina, including unclear roles and responsibilities; identification of dual lead agencies; and legal authorities, such as peace officer deputation for Federal Law Enforcement Officers (FLEO). The reports also criticized lack of planning by and inefficient command structure of the federal law enforcement response, including co-Senior Federal Law Enforcement Officials (SFLEO) from the U.S. Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and DOJ's Federal Bureau of Investigation (FBI), which led to confusion in the early stages of the federal response.⁵ In U.S. Senate testimony, the Director of DHS's Homeland Security Operations Center stated that, "In most cases in the National Response Plan (NRP), the FBI has got the lead because it's a terrorist-related action, and they have to do the criminal investigation. No one had thought about a natural disaster."⁶ While the reports covered the entire federal response to Hurricane Katrina, they featured key details and recommendations for the federal government's law enforcement role in response to critical incidents. For example, the White House report called for more effective coordination and communication between the SFLEO functions and ESF-13, recommended consolidating the ESF-13 federal law enforcement response under the leadership of DOJ, and gave the Attorney General the sole authority to designate an SFLEO.⁷ For further details on these reports and their recommendations, see [Appendix 2](#).

⁴ S. REP. NO. 109-322, [Hurricane Katrina: A Nation Still Unprepared](#) (August 2006), 440, www.congress.gov/109/crpt/srpt322/CRPT-109srpt322.pdf (accessed January 24, 2020).

H.R. REP. NO. 109-377, [A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina](#) (February 2006), www.nrc.gov/docs/ML1209/ML12093A081.pdf (accessed January 24, 2020).

Executive Office of the President, [The Federal Response to Hurricane Katrina: Lessons Learned](#) (February 2006), www.library.stmarytx.edu/acadlib/edocs/katrinawh.pdf (accessed January 24, 2020).

⁵ According to the 2004 National Response Plan (NRP), which was in effect during Hurricane Katrina, the SFLEO was responsible for directing law enforcement operations during a national incident. We further discuss the role of the SFLEO later in this report.

The NRF replaced the NRP in 2008. Unless otherwise specified, throughout our report we refer to the NRF, 3rd edition, published in 2016.

⁶ S. REP. NO. 109-322, 449.

⁷ At the time of Hurricane Katrina in 2005, the NRP assigned ESF-13 jointly to DHS and DOJ, making it the only ESF with dual leads. An updated version of the NRP, developed in 2006, assigned ESF-13 solely to DOJ. Subsequently, in 2008, DOJ formally designated ATF as the lead coordinating agency for ESF-13.

Federal and DOJ Policies Establishing a Response to Critical Incidents

Homeland Security Presidential Directive 5 (HSPD-5) and Presidential Policy Directive 8 (PPD-8) establish policy to prepare the nation against threats to the nation's security, including acts of terrorism, cyberattacks, pandemics, and catastrophic natural disasters. HSPD-5, issued in February 2003, directed the U.S. government to establish a single, comprehensive approach to domestic incident management, "to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies."⁸ PPD-8, issued in March 2011, directed the establishment of a National Preparedness Goal and a National Preparedness System to build on and improve capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from national security threats.⁹ For ESF-13, HSPD-5 and PPD-8 provide the foundation for the NRF and describe how federal, state, and local law authorities will ensure a safe and secure environment within a disaster area. See [Appendix 3](#) for information about legislation and directives related to critical incident responses.

The NRF and the ESF-13 Public Safety and Security Annex

In January 2008, the DHS Secretary replaced the NRP with the interagency-coordinated NRF, which guides the government's response to all types of disasters and emergencies.¹⁰ The NRF describes the principles, roles and responsibilities, and coordinating structures that deliver the core capabilities required to respond to an incident, as well as the manner in which response efforts integrate with those of the other mission areas.¹¹ The NRF defines ESF-13's core capabilities as facility and resource security; security planning and technical resource assistance; public safety and security support; and support to access, traffic, and crowd control. The NRF is supported by 14 ESF annexes, which group federal resources and capabilities into functional areas that are most frequently needed during a national response.¹² The NRF identifies a primary agency and coordinator for each ESF.

⁸ [Homeland Security Presidential Directive 5](#), Management of Domestic Incidents, February 28, 2003, www.dhs.gov/publication/homeland-security-presidential-directive-5 (accessed January 24, 2020).

⁹ [Presidential Policy Directive 8](#), National Preparedness, March 30, 2011, www.dhs.gov/presidential-policy-directive-8-national-preparedness#wcm-survey-target-id (accessed January 24, 2020).

¹⁰ The NRF is a subset of the National Incident Management System (NIMS), which guides all levels of government, nongovernmental organizations, and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from natural or manmade critical incidents. NIMS provides shared vocabulary, systems, and processes to successfully deliver the capabilities described in the National Preparedness System. See [Appendix 3](#) for a further discussion of PPD-8's National Preparedness System.

¹¹ The Response mission area is one of five National Planning Frameworks as directed by PPD-8. The other four mission areas include Prevention, Protection, Mitigation, and Recovery.

¹² For more information about the 14 Emergency Support Function Annexes, see FEMA, "[Emergency Support Function Annexes](#)," www.fema.gov/media-library/assets/documents/25512 (accessed January 24, 2020).

The ESF-13–Public Safety and Security Annex (ESF-13 Annex) identifies DOJ and ATF as the primary agency and lead ESF coordinator for public safety and security. The ESF-13 Annex also defines ESF-13’s purpose to “provide federal public safety and security assistance to local, state, tribal, territorial, and federal organizations overwhelmed by the results of an actual or anticipated natural/manmade disaster or an act of terrorism.”¹³ In addition to the Department’s law enforcement components—including ATF; the Drug Enforcement Administration (DEA); the FBI; the Federal Bureau of Prisons (BOP); and the U.S. Marshals Service (USMS)—the ESF-13 Annex also identifies several ESF-13 support agencies that assist the Department in fulfilling ESF-13’s roles and missions. These ESF-13 support agencies include the U.S. Departments of Defense, Homeland Security, State, Interior, and Treasury and the National Guard Bureau.¹⁴ The ESF-13 Annex also states that the Attorney General may appoint an SFLEO during an incident requiring additional coordination of all federal law enforcement assets. The Attorney General, through the FBI, maintains a cadre of trained individuals to serve as the SFLEO, as appropriate. We further discuss the SFLEO’s appointment, purpose, and functions below in the [Results of the Review](#).

Collectively, the NRF and the ESF-13 Annex generally define ESF-13’s critical tasks and mission categories (see the text box). Personnel deployed in support of ESF-13 (FLEOs) form Quick Response Teams (QRT) when activated to support a disaster response. According to the ESF-13 Annex, FLEOs activated to support a Direct Federal Assistance mission must have express statutory authority, including arrest authority, to enforce local, state, tribal, and territorial laws.

DOJ ESF-13–Public Safety and Security, Program Funding, and Staffing Policy Memoranda

The Department delineated policies regarding ESF-13 response in a succession of memoranda. In an October 16, 2008 memorandum, then Deputy Attorney General Mark Filip reaffirmed the Department’s acceptance as the ESF-13 primary agency and formalized ATF as DOJ’s ESF-13 lead coordinating

ESF-13 Critical Tasks and Mission Categories

Critical Tasks

- Establish a safe and secure environment.
- Provide and maintain on-scene security; meet the protection needs of the affected population while eliminating or mitigating the risk of further damage to persons, property, and environment.

Mission Categories

- Federal Operational Support: ESF-13 resources provide direct support to other federal departments and agencies.
- Direct Federal Assistance: ESF-13 resources support state or local law enforcement departments or agencies.

Sources: NRF, 3rd edition, and ESF-13 Annex

¹³ Emergency Support Function 13–Public Safety and Security Annex, June 2016.

¹⁴ The ESF-13 Annex also designates departments with FLEOs, in addition to those listed above, as ESF-13 support agencies. The Department of Defense and the National Guard Bureau perform liaison roles during an ESF-13 response.

agency.¹⁵ On May 12, 2012, then Deputy Attorney General James M. Cole issued a memorandum stating that, as the ESF-13 primary agency, DOJ is responsible for organizing law enforcement, public safety, and security capabilities and resources during incidents requiring a coordinated federal response.¹⁶ Additionally, the memorandum directed the DOJ law enforcement components that have a role during an ESF-13 activation to share responsibility for the Department's ESF-13 program, with ATF providing "the bulk" of the financial and staffing requirements for the ESF-13 program.¹⁷ For FYs 2012 and 2013, the memorandum directed the DEA, FBI, BOP, and USMS each to provide \$360,000 in annual funding and two detailees to support the Department's ESF-13 program. The memorandum stated that the Department would reevaluate the funding and staffing requirements at the end of FY 2013.

As a follow-up to Deputy Attorney General Cole's memorandum, Assistant Attorney General for Administration Lee Loftus issued a memorandum on May 21, 2012, that restated the annual funding requirement and established permanent staffing for the Department's ESF-13 program.¹⁸ Specifically, the memorandum established a staff ceiling of 33 personnel, with ATF providing 13 permanent staff and 12 contracted support staff and the other law enforcement components providing the remaining 8 permanent staff. According to the memorandum, the DEA, FBI, BOP, and USMS would each provide ATF two detailees on a non-reimbursable, full-time basis for 2 years. The memorandum directed that the components fill these positions by the end of FY 2012.

In correspondence during August 2012, the Justice Management Division (JMD) advised the DEA, FBI, BOP, and USMS that the Attorney General had directed them to continue their funding and staffing requirements, as stated in the two 2012 memoranda, for FY 2014 and beyond.¹⁹

¹⁵ Mark Filip, Deputy Attorney General, U.S. Department of Justice, memorandum for Bureau of Alcohol, Tobacco, Firearms and Explosives; Bureau of Prisons; Drug Enforcement Administration; Federal Bureau of Investigation; U.S. Marshals Service, Emergency Support Function-13 (ESF-13), Public Safety and Security, October 16, 2008.

¹⁶ James M. Cole, Deputy Attorney General, U.S. Department of Justice, memorandum for Heads of Law Enforcement Components, ESF #13 Staffing and Funding, May 12, 2012.

¹⁷ Cole, memorandum for Heads of Law Enforcement Components.

¹⁸ Lee Loftus, Assistant Attorney General for Administration, memorandum for Chief Financial Officers of Law Enforcement Components, ESF #13 Staffing and Funding, May 21, 2012.

¹⁹ We reviewed four emails from JMD budget staff directing each component to continue its funding and staffing requirements. We did not receive any additional formal DOJ directives affecting this action in response to our data and document requests. JMD, email to ATF, FY 2014 AG Final Decisions, August 23, 2012; JMD, emails to BOP and USMS, FY 2014 AG Final Decisions–ESF #13, August 23, 2012; JMD, email to DEA, FY 2014 AG Final Decisions–DEA, August 23, 2012; and JMD, email to FBI, FY 2014 AG Final Decisions–ESF #13, August 23, 2012.

ESF-13 Organizational Structure and Plan

ESF-13 Structure and Activations

In 2012, ATF established a National Coordination Center (NCC) Branch within its Special Operations Division, Office of Field Operations at ATF headquarters in Washington, D.C. A National Coordinator leads the NCC, which, in addition to a national headquarters, consists of 10 field sites co-located with FEMA regional headquarters. The ESF-13 NCC operates in two modes: steady state operations and activations.²⁰ During steady state operations, the ESF-13 national headquarters and field staff prepare for potential ESF-13 activations. These preparations include planning and conducting training exercises with FEMA during National Level Exercises, as well as ESF-13 Table Top Exercises and information briefings with the ESF-13 support agencies.²¹ Steady state operations also include liaising with ESF-13 support agencies, as well as with FEMA and state emergency management offices. The ESF-13 NCC also holds After Action Reviews and annual meetings with ESF-13 support agencies. When FEMA activates ESF-13, the NCC provides functional support and assistance to ESF-13's Forward Support Team, as well as its QRTs. ESF-13 was activated 45 times during calendar years 2008 through 2018. Since the establishment of the NCC in 2012, ESF-13 has deployed over 4,700 FLEOs, ESF-13 staff, and support personnel in support of 34 activations.²² See [Appendix 4](#) for information about the NCC organizational structure and field site locations. See [Appendix 5](#) for a description of ESF-13 activations and process.

ESF-13 National Concept of Operations Plan

The ESF-13 National Concept of Operations Plan (CONOPS Plan) reiterates the official designation of ATF as the Department's ESF-13 lead coordinating agency and provides a framework for the Department, through ATF, to fulfill its obligations as the primary agency for ESF-13—Public Safety and Security. The CONOPS Plan memorializes standard operating procedures that guide ESF-13 national, field, and

²⁰ Steady state occurs when ESF-13 is not activated via the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1987, as amended (Stafford Act) or other activations from FEMA. For information on the Stafford Act, see [Appendix 3](#).

²¹ National Level Exercises, part of FEMA's National Exercise Program, are a 2-year cycle of exercises across the nation that examine and validate the ability of government, private industry, and nongovernmental organizations to protect against, respond to, and recover from a major disaster.

A Table Top Exercise facilitates understanding of concepts, identifies strengths and shortfalls, and stimulates discussion of issues resulting from a hypothetical situation. Applications include assessing plans, policies, and procedures or types of systems needed to guide the prevention of, response to, or recovery from a defined incident. Participants discuss issues in depth and develop decisions through slow-paced problem solving rather than the rapid, spontaneous decision-making that occurs under actual or simulated emergency conditions.

Since FY 2014, ESF-13 has participated in five FEMA National Level Exercises and conducted nine internal Table Top Exercises.

²² ESF-13's data metrics for the number of deployed personnel began with Hurricane Sandy support in 2012.

steady state operations and coordination. The CONOPS Plan addresses mission authorities and policies; execution, including activation, coordination, deployment protocols, and transition from response to recovery operations; and administrative and command functions. The CONOPS Plan groups standard operating procedures into several annexes that cover National and Field Operations and Coordination, Advisory Board/Stakeholder Committee, Legal Authorities, Training Plan, Deployment Staffing procedures, and Regional Plans. The ESF-13 staff updates the CONOPS Plan and standard operating procedures based on past crises and lessons learned so that creative or nontraditional solutions may be brought to bear to address challenges presented by future disaster response.



ESF-13 QRT personnel provide force protection for an Urban Search and Rescue mission during Hurricane Michael support, 2018.

Source: ATF/ESF-13

FBI SFLEO Deployment Plan

According to an FBI internal issues paper, in 2006 the FBI initially drafted a hurricane response plan and developed training to assist and prepare its senior executives to serve as an SFLEO.²³ In 2012, the FBI's hurricane response plan evolved into an FBI all-hazards response plan, called the SFLEO Deployment Plan, to support the appointment of an SFLEO. The SFLEO Deployment Plan describes the SFLEO's responsibilities and the SFLEO staff's organizational structure and identifies FBI support assets to assist the SFLEO and staff in their mission. The primary role of the SFLEO is "coordinating federal law enforcement resources with other incoming resources in an effort to reconstitute local and state law enforcement and public safety operations as soon as possible and to maintain or restore civil order so that disaster relief resources can operate without interference and in the most effective and efficient manner possible."²⁴ The SFLEO Deployment Plan also states that the SFLEO oversees public safety operations and will provide "strategic guidance" to ESF-13 regarding the deployment and prioritization of law enforcement resources. See [Appendix 6](#) for the SFLEO organizational structure.

Previous OIG Review of the Department's Preparedness to Respond to Disaster

In May 2010, the OIG reviewed the Department's preparation to respond to a weapons of mass destruction (WMD) incident.²⁵ The OIG concluded that the

²³ FBI issues paper, Senior Federal Law Enforcement Official (SFLEO) and Emergency Support Function 13—Public Safety and Security (ESF 13) Issues Currently Under Review by DOJ, June 4, 2012.

²⁴ FBI SFLEO Deployment Plan, June 2016.

²⁵ See DOJ OIG, [Review of the Department's Preparation to Respond to a WMD Incident](#), Evaluation and Inspections Report I-2010-004 (May 2010), www.oig.justice.gov/reports/plus/e1004.pdf (accessed January 24, 2020).

Department was not adequately prepared to coordinate federal law enforcement activities if called upon to ensure public safety and security in accordance with the NRF, including during an ESF-13 activation. Specifically, the OIG found a lack of awareness regarding the Department's ESF-13 responsibilities and ATF's authority to serve as the lead coordinating agency for those activities. Additionally, ATF had not assigned adequate staff to ensure that required ESF-13 planning and coordination activities occurred, did not provide adequate ESF-13 training to its own staff or personnel from ESF-13 support agencies, and lacked comprehensive information on law enforcement resources that agencies could deploy during an incident.

Scope and Methodology of the OIG's Review

This review assessed the Department's and its components' ability to meet their responsibilities under the NRF and execute ESF-13 activities in response to emergency or disaster situations requiring the capabilities of the federal government. Our fieldwork occurred from April 2018 through May 2019 and consisted of policy and document reviews, data analysis, interviews, and a site visit to the ESF-13 NCC to observe activities during Hurricane Lane in 2018. In order to assess and evaluate the Department's ability to respond to ESF-13 activations, our data analysis covered FY 2008 through the end of the 2018 hurricane season, November 30, 2018. We interviewed the Office of the Deputy Attorney's Emergency Preparedness and Crisis Response Coordinator; ESF-13 staff, including the National Coordinator and 5 of the 10 ESF-13 Regional Law Enforcement Coordinators; as well as deployed FLEOs who supported ESF-13 activations during the 2017 and 2018 hurricane seasons. We also interviewed emergency management officials within DOJ, including those employed by the DEA, FBI, BOP, and USMS, as well as non-DOJ ESF-13 support agencies that contribute personnel and resources during an ESF-13 activation. We also interviewed the program managers for ESF-8 and ESF-9 to assess ESF-13's support to these federal entities.²⁶ For more details about our scope and methodology, see [Appendix 1](#).

²⁶ ESF-8 is Public Health and Medical Services; ESF-9 is Search and Rescue.

RESULTS OF THE REVIEW

The Department Has Taken Steps to Improve Its Preparedness to Support Critical Incidents Under an ESF-13 Activation

As noted in the [Introduction](#), the OIG concluded in its May 2010 report that the Department was not adequately prepared to coordinate federal law enforcement activities if called upon to ensure public safety and security in accordance with the National Response Framework (NRF), including ESF-13.²⁷ Specifically, the OIG found a lack of awareness regarding the Department's ESF-13 responsibilities and ATF's authority to serve as the lead coordinator for those activities. In addition, ATF had not assigned adequate staff to ensure that the required ESF-13 planning and coordination activities occurred and did not provide adequate ESF-13 training to its own staff or personnel from ESF-13 support agencies. The report further found that ATF lacked comprehensive information on law enforcement resources that agencies could deploy in response to a critical incident.²⁸

One of the OIG's recommendations in its 2010 report was that the Department ensure that it is prepared to fulfill its emergency support function responsibilities under the NRF. The recommendation included reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a National Concept of Operations Plan (CONOPS Plan), and staffing national and regional coordinator positions.²⁹ The Department took several actions in response to this recommendation that, together, improved the ESF-13 program. In 2012, ATF created an ESF-13 National Coordination Center (NCC) Branch within its Office of Field Operations. The Department, through the ESF-13 staff, created the CONOPS Plan and associated annexes. The CONOPS Plan serves to guide ESF-13's functions during activations and provides guidance to ESF-13 support agencies that support ESF-13 activations with Federal Law Enforcement Officers (FLEO) and equipment.

Throughout our fieldwork, we identified other steps that the Department has taken since our 2010 report that have improved its ESF-13 program, particularly in the area of coordination with and outreach to other agencies. For example, ESF-13 staff increased outreach and coordination with the Federal Emergency Management Agency's (FEMA) national response coordinators, ESF-13 support agency emergency management offices, and program managers and liaisons responsible

²⁷ See DOJ OIG, [Review of the Department's Preparation to Respond to a WMD Incident](#), Evaluation and Inspections Report I-2010-004 (May 2010), www.oig.justice.gov/reports/plus/e1004.pdf (accessed January 24, 2020). The OIG closed all recommendations related to this report after receiving evidence that the Department had taken actions that the OIG deemed sufficient to implement each recommendation.

²⁸ According to ESF-13's National Coordinator, at the time of this review the development of a law enforcement resources capabilities handbook was not complete.

²⁹ See DOJ OIG, *The Department's Preparation to Respond to a WMD Incident*, 42.

for ESF-8 and ESF-9 operations.³⁰ Also, ESF-13 Regional Law Enforcement Coordinators (RLEC) and Field Coordinators now maintain active liaisons within their respective regions, including the FEMA Regional Administrators and State Emergency Operations Center (SEOC) staffs. A senior official from FEMA's National Response Coordination Center told us that the management and coordination of ESF-13 functions has greatly improved over the years.

We also found additional areas in need of improvement to help ensure that the Department is fully prepared to fulfill its ESF-13 responsibilities under the NRF. In the following sections, we discuss the need for clearly defined and updated ESF-13 response and sustainment policies, as well as additional ESF-13 programmatic knowledge within the Department and its ESF-13 support agencies.



Mobile Command Center vans from the DEA, USMS, and FBI provide vital communications during Hurricane Harvey support, 2017.

Source: FBI

The Department Must Clarify and Update Emergency Response and Sustainment Policies to Improve Efficiencies and Effectiveness in Responding to Critical Incidents Under an ESF-13 Activation

We found that unclear and incomplete Department policies and guidance have led to overlapping critical incident response roles and responsibilities between the ESF-13 program and the Federal Bureau of Investigation's (FBI) Senior Federal Law Enforcement Official (SFLEO). This overlap created delays, confusion, and mission duplication during the 2017 Hurricane Harvey response, which was the only appointment of an SFLEO since Hurricane Katrina in 2005.³¹ We also found that Department policies establishing ESF-13 funding and staffing requirements pose challenges for the program's sustainability and continued improvement. We believe

³⁰ ESF-8 and ESF-9 are federal entities for which ESF-13 provides the most direct support during a disaster declaration. The U.S. Department of Health and Human Services manages ESF-8—Public Health and Medical Services. ESF-13 Quick Response Teams (QRT) provide force protection to ESF-8's Federal Medical Response Teams. The U.S. Department of Homeland Security (DHS), through FEMA, manages ESF-9—Search and Rescue. ESF-13 QRTs provide force protection to Urban Search and Rescue Task Forces. For more information on entities that may be deployed during a federal response, see FEMA, "[Emergency Support Function Annexes](#)," www.fema.gov/media-library/assets/documents/25512 (accessed January 24, 2020).

³¹ During the response to Hurricane Katrina, DHS and DOJ performed as co-SFLEOs. See the [Introduction](#) for more details.

that the Department's ability to efficiently and effectively respond to future critical incidents requiring an ESF-13 activation could be limited if Department policies and guidance are not updated.

Department Policy Does Not Establish the Mission, Role, and Functions of the SFLEO, Which Could Create Delays and Confusion During DOJ Responses to Critical Incidents

According to the NRF, the Attorney General may appoint an SFLEO during a critical incident requiring additional coordination of all federal law enforcement, public safety, and security operations with intelligence or investigative law enforcement operations directly related to the incident.³² However, we found that the Department does not have policies and guidance that establish the SFLEO position, mission, or coordination with the Department's ESF-13 program when both are activated in response to a critical incident. We also found that the FBI maintains an SFLEO cadre, but that the cadre does not train or exercise during FEMA National Level Exercises or ESF-13 Table Top Exercises.³³ In addition, the FBI did not coordinate the development of its SFLEO Deployment Plan with ESF-13. We believe that the Department's lack of policy and guidance regarding the appointment and role of an SFLEO, as well as the lack of training or joint participation in exercises between the FBI's SFLEO cadre and ESF-13 staff, could create delays, cause confusion, or result in duplicative efforts during a DOJ response to a critical incident. We further found that those consequences were experienced during the DOJ response to Hurricane Harvey in 2017.

The Department Has Not Defined the SFLEO Position or Mission in Policy

Following Hurricane Katrina in 2005, the U.S. Congress found that the National Response Plan (NRP), predecessor to the current NRF, offered no insight into how an SFLEO should interact with ESF-13. Congress also found that there was confusion as to whether DOJ or the U.S. Department of Homeland Security (DHS) would lead the law enforcement response during a natural disaster.³⁴ As a result, Congress recommended that the NRP clarify the relationship between an

³² NRF, Public Safety and Security Annex (ESF-13 Annex).

³³ The SFLEO cadre consists of FBI senior executives that have been designated by the Attorney General to fill the position of SFLEO in response to a domestic emergency or major disaster.

³⁴ Congress further noted that the ambiguity of the SFLEO role contributed to the untimeliness of the federal public safety and security response and impeded strategic coordination of incoming law enforcement resources. S. REP. No. 109-322, [Hurricane Katrina: A Nation Still Unprepared](#) (August 2006), 440, www.congress.gov/109/crpt/srpt322/CRPT-109srpt322.pdf (accessed January 24, 2020), 454.

In hearings following Hurricane Katrina, the Senate Homeland Security and Governmental Affairs Committee expressed concerns about the lack of clarity regarding which agency would lead the federal law enforcement response to a natural disaster. [Hurricane Katrina: Managing Law Enforcement and Communications in a Catastrophe](#), Hearing Before the S. Comm. on Homeland Security and Governmental Affairs, 109th Cong. (2006), 18–19, www.govinfo.gov/content/pkg/CHRG-109shrg27025/pdf/CHRG-109shrg27025.pdf (accessed January 24, 2020).

SFLEO and ESF-13.³⁵ Beginning with the January 2008 NRF edition, DHS assigned both the SFLEO and ESF-13 functions to DOJ. As discussed in the [Introduction](#), in a 2008 Deputy Attorney General memorandum the Department reaffirmed ATF's role as DOJ's ESF-13 lead coordinating agency.³⁶ During this review, we found that between 2012 and 2014 the Office of the Deputy Attorney General (ODAG) and the FBI had considered which component would perform the SFLEO functions, the SFLEO's role and relationship to ESF-13, and required training for an SFLEO. However, at the conclusion of our fieldwork, the Department still did not have SFLEO policies addressing these issues. The ODAG's Emergency Preparedness and Crisis Response Coordinator acknowledged the continued lack of DOJ policy related to the SFLEO position but said that he envisioned that the SFLEO's role could be larger than merely coordinating law enforcement activities and could expand beyond the response efforts to include recovery efforts. Several other DOJ officials we spoke to, including members of the FBI's SFLEO cadre, the FBI's Crisis Management Unit Chief, and ESF-13's National Coordinator, all agreed that DOJ policy further defining the SFLEO position would be helpful.

We found that during the 2017 hurricane season ESF-13 officials questioned the appointment of an FBI Special Agent in Charge (SAC) as SFLEO, rather than an official from another agency more familiar with ESF-13. The NRF's Terrorism Incident Law Enforcement and Investigation Annex states that, since the FBI is the lead agency for terrorism investigations, an FBI SAC would normally serve as the SFLEO during an act of terrorism.³⁷ However, the NRF does not address an SFLEO appointment for a natural disaster such as a hurricane. An ESF-13 Senior Emergency Management Specialist told us that a response to a natural disaster would not have an investigative aspect and thus would not require an FBI SAC to serve as the SFLEO; rather, the Department could draw from any of its law enforcement components. The ODAG Emergency Preparedness and Crisis Response Coordinator agreed that officials from other agencies, such as the U.S. Marshals Service (USMS) or the Drug Enforcement Administration (DEA), could serve as an SFLEO.

³⁵ S. REP. 109-322, 617.

DHS developed updated versions of the NRP and its associated Public Safety and Security Annex to assign both ESF-13 and the SFLEO to DOJ, identifying the Attorney General as the authority to appoint an SFLEO. The current NRF does not provide details about the relationship between an SFLEO and ESF-13. DHS, National Response Framework, June 2016.

³⁶ Mark Filip, Deputy Attorney General, U.S. Department of Justice, memorandum for Bureau of Alcohol, Tobacco, Firearms and Explosives; Bureau of Prisons; Drug Enforcement Administration; Federal Bureau of Investigation; U.S. Marshals Service, Emergency Support Function-13 (ESF-13), Public Safety and Security, October 16, 2008.

³⁷ The annex states, "When a terrorism incident is designated an Incident of National Significance by the Secretary of Homeland Security in coordination with the Attorney General, an FBI SAC will become the SFLEO."

The current NRF does not contain language about the SFLEO; however, the ESF-13 Annex to the NRF states that the Attorney General may appoint an SFLEO during an incident "requiring additional coordination of all federal law enforcement, public safety, and security operations with intelligence or investigative law enforcement operations directly related to the incident."

In addition to confusion about which DOJ component would provide the SFLEO, ESF-13 NCC staff told us that they did not know the scope of the SFLEO's mission, role, or functions or the relationship of the SFLEO to the ESF-13 framework. The ESF-13 NCC cited Hurricane Harvey as an example, in view of the fact that ESF-13 had already been activated and deployed personnel were conducting response operations within the disaster area at the time of the SFLEO appointment. Further, the SFLEO appointment in response to Hurricane Harvey did not include input from ESF-13's National Coordinator. He told us that while ESF-13 should not be part of the process of selecting the specific person who would serve as SFLEO, the Department should consult with the ESF-13 NCC to obtain situational awareness to evaluate the need for an SFLEO during a critical incident. The SFLEO for Hurricane Harvey also told us that he received no communication or guidance from the Department regarding his mission or role when he was appointed. He said that he initiated operations based on the FBI's SFLEO Deployment Plan, which caused confusion on the part of the ESF-13 personnel. We further discuss the FBI's SFLEO Deployment Plan, as well as the initial delays and confusion created by a lack of SFLEO policies during DOJ's response to Hurricane Harvey [below](#).

Finally, we found internal confusion in the FBI's SFLEO cadre about the SFLEO's role during an activation. Some believed that the SFLEO would make decisions about the allocation of law enforcement resources, while others viewed the SFLEO as a liaison role. SFLEO cadre and ESF-13's NCC staff also told us that the SFLEO cadre does not participate in FEMA National Level Exercises or train with the ESF-13 staff. The ESF-13 National Coordinator believed that his role was to provide pre-activation training to the SFLEO cadre on the role and functions of ESF-13 and define the type of intelligence and information that would flow from the ESF-13 staff to the SFLEO during an activation. He further stated that, by establishing a baseline of familiarity of the ESF-13 program, the Department could create a "bench" of individuals from which the Attorney General could select an SFLEO. This would include an FBI SAC for a response to an act of terrorism, as well as senior law enforcement agents from the other DOJ law enforcement components for other critical incidents. Highlighting the importance of pre-training the SFLEO cadre, the ESF-13 National Coordinator emphasized that ESF-13 should not be attempting to educate an SFLEO during a critical incident. Both the FBI's SFLEO cadre and ESF-13's National Coordinator recognized that mutual training would be beneficial. However, as of the end of our fieldwork, neither the Department nor the ESF-13 program managers had taken any actions in this regard.

The FBI's SFLEO Deployment Plan Duplicates the Department's ESF-13 CONOPS Plan

We found that the FBI has an SFLEO Deployment Plan to support the deployment of the FBI senior executive designated by the Attorney General to fill the position of SFLEO in response to a critical incident. According to ESF-13 staff, the FBI did not coordinate its current SFLEO Deployment Plan, which was updated in 2016, with ESF-13. We reviewed the FBI's SFLEO Deployment Plan and found that it duplicates several of the responsibilities established in the ESF-13 CONOPS Plan. For example, the FBI's SFLEO Deployment Plan directs the SFLEO to:

- develop the potential deployment package of federal law enforcement assets,
- determine the number and type of committed law enforcement resources,
- identify gaps and implement actions to fill the gaps with appropriate resources,
- assess the state of law enforcement in the affected region,
- coordinate with FEMA, and
- coordinate with state and local law enforcement.

Based on our review of the ESF-13 CONOPS Plan, we found that each of the FBI SFLEO Deployment Plan responsibilities listed above duplicates the ESF-13 CONOPS Plan and the functions of the ESF-13 staff. (See [Appendix 4](#) for ESF-13's organizational structure during steady state and activation and [Appendix 7](#) for a functional comparison of ESF-13 and SFLEO functions.)

In addition to the duplicative plans, we found that the FBI's SFLEO cadre lacked familiarity with the ESF-13 CONOPS Plan and has not participated in training with the ESF-13 staff. While FBI executives assigned to the SFLEO cadre receive crisis management training throughout their careers and are generally aware that an ESF-13 program exists, SFLEO cadre members that we interviewed were largely unfamiliar with ESF-13's capabilities and the CONOPS Plan, which outlines the functions of the ESF-13 NCC and field assets. Specifically, SFLEO cadre members were not familiar with the roles and responsibilities of ESF-13 RLECs; Field Coordinators; or, when activated, ESF-13's Field Coordination Center (FCC). SFLEO cadre members told us that during a critical incident they would be working with local law enforcement, such as county or city authorities, to develop law enforcement requirements for federal asset assistance. However, ESF-13 field staff told us that during an activation the ESF-13 Field Coordinator facilitates public safety and security coordination with local law enforcement authorities at the state level and through the SEOC. Therefore, if an SFLEO was not aware of ESF-13's functions, the SFLEO could inadvertently bypass established processes whereby states request federal law enforcement support. Doing so could duplicate or commit additional ESF-13 assets to already filled gaps.

The Department's Response to Hurricane Harvey Encountered Initial Delays and Confusion

On August 30, 2017, for the first time since Hurricane Katrina in 2005, the Attorney General appointed an SFLEO to assist in the response to Hurricane Harvey. Although ESF-13 field staff acknowledged the professionalism and experience that the SFLEO brought to the response efforts, several also believed that the SFLEO appointment was not necessary. Specifically, the ESF-13 NCC staff told us that by the time the SFLEO and staff arrived in Houston and began to coordinate with local authorities, ESF-13 had been activated and Quick Response Teams (QRT) had deployed to implement ESF-13's Direct Federal Assistance mission to fill state and local law enforcement gaps. We found that the SFLEO staff did not arrive in Houston until 6 days after the ESF-13 activation (see the text

box).³⁸ According to ESF-13 field staff and the SFLEO, there was an initial period of confusion and delay, lasting about 1 day, which resulted from a lack of knowledge about each other's response functions and the relationship between the SFLEO and ESF-13. To mitigate the initial confusion and lack of understanding, ESF-13 assigned a liaison who educated the SFLEO and his staff on the ESF-13 program. According to the liaison, once the SFLEO understood the extent of ESF-13's capabilities and mission, he was able to work more effectively within the ESF-13 framework.

We also found that while the SFLEO's presence and actions may have expedited requests for federal assistance, in doing so it may have duplicated ESF-13's efforts. The SFLEO told us that his mission focused primarily on the City of Houston and Harris County, Texas, where he worked directly with the local authorities in identifying law enforcement requirements for federal assistance. According to ESF-13 field staff, local authorities were to use the State of Texas Assistance Request (STAR) system for requesting law enforcement aid; however, they also told us that the Houston law enforcement officials were unfamiliar with the STAR system.³⁹ Instead of submitting their law enforcement requirements through STAR, the Houston officials used the SFLEO as a conduit. The SFLEO told us that he frequently communicated with local authorities to assess their needs and sought ways to expedite the federal assistance process by communicating federal assistance requirements directly to the ESF-13 FCC prior to the submission of the requests through STAR.

According to ESF-13 field staff, the RLECs and Field Coordinators, as part of their normal functions, coordinate with emergency management authorities at FEMA's Regional Response Coordination Center (RRCC) and state law enforcement at the SEOC. The SEOC personnel are responsible for identifying law enforcement gaps and requesting federal assistance. Additionally, the ESF-13 RLECs and Field

Hurricane Harvey Timeline

August 25, 2017

- Hurricane Harvey makes landfall in Texas.
- FEMA activates ESF-13.

August 28

- FEMA issues the first Direct Federal Assistance Mission Assignment to ESF-13.

August 30

- The Attorney General appoints the SFLEO, an FBI SAC from San Antonio.

August 31–September 2

- The SFLEO and staff arrive in Houston, Texas.

September 9

- ESF-13 response operations end.

Sources: 2017 ESF-13 After Action Report (AAR), 2017 FBI AAR, ESF-13 FEMA Mission Assignment, OIG interviews with the SFLEO

³⁸ To support the SFLEO, the FBI deployed its own support staff and resources, including approximately 40 personnel, an FBI health and safety unit, and the FBI's mobile command vehicles. The cost of the SFLEO and staff deployment was approximately \$1.5 million, according to the FEMA Mission Assignment for the SFLEO. In comparison, a deployment of 200 ESF-13 QRT personnel was \$2.5 million, according to a 2017 FEMA Mission Assignment for ESF-13.

³⁹ The STAR system allows Texas local jurisdictions to request additional assistance from the state when their resources have been depleted or a gap has been identified. When the state cannot fulfill requirements with internal state assets, the state may request assistance from the federal government.

Coordinators told us that a state's emergency management office directs its local authorities to identify and request additional law enforcement assistance through the SEOC, rather than directly to the federal government. If local requests for law enforcement assistance do not go through the SEOC, the state may not have the opportunity to utilize other state and local law enforcement resources prior to requesting federal assistance. Although the circumstances surrounding Hurricane Harvey allowed for the SFLEO to assist in expediting federal assistance requirements, the roles and functions of requesting federal assistance rest with the affected state, FEMA, and ESF-13 working in coordination.

According to ESF-13 staff, while the law enforcement response to Hurricane Harvey accomplished its mission, and despite the Department's deployment of an SFLEO experienced in crisis management, the response faced initial challenges in ensuring that the SFLEO and ESF-13 functioned together effectively. We believe that the Department must establish policy identifying the mission, role, and functions of the SFLEO, as well as clarify and update its emergency response policy and guidance to address critical roles and responsibilities overlapping between ESF-13 and an SFLEO. This clarification, as well as mutual training, would help to avoid initial confusion, delays, and mission duplication during future disaster responses and enable the Department to create a cadre of individuals, familiar with ESF-13, from which the Attorney General could select an SFLEO. When we asked the ODAG's Emergency Preparedness and Crisis Response Coordinator about the lack of clear, updated DOJ policies pertaining to the SFLEO, he told us that the ODAG plans to bring together relevant DOJ components to develop Department-level guidance for the SFLEO position and its relationship with ESF-13.



FBI Special Agent provides force protection for a waterborne Search and Rescue mission during Hurricane Harvey support, 2017.

Source: FBI

ESF-13 Funding and Staffing Policies Limit the Program's Growth in Preparing for and Responding to Critical Incidents

As discussed in the [Introduction](#), in a May 2012 memorandum the Deputy Attorney General established funding reimbursement and staffing requirements to support the Department's ESF-13 program for FY 2012 and FY 2013.⁴⁰ We found that a lack of dedicated funding and periodic capital improvements has hindered ESF-13's effectiveness and timeliness of support during an activation. Specifically, reimbursements from the DEA, FBI, Federal Bureau of Prisons (BOP), and USMS to ATF have remained static, at 2012–2013 levels. Also, the 2012 memorandum does not specify when the DOJ law enforcement components must reimburse ATF for ESF-13 operations. As a result, insufficient and untimely reimbursement of funds

⁴⁰ James M. Cole, Deputy Attorney General, U.S. Department of Justice, memorandum for Heads of Law Enforcement Components, ESF #13 Staffing and Funding, May 12, 2012.

requires ATF to utilize its own direct funding to address ESF-13's equipment shortfalls, pre-activation preparation requirements, and other systemic issues to maintain and improve the program. Finally, we found that ESF-13 staffing policies do not address competing priorities among DOJ's law enforcement missions when the components are simultaneously supporting ESF-13 response operations.

ESF-13's Funding Structure Places Most of the Burden on ATF and Has Not Kept Pace with Program Requirements

We found that the Department has not adjusted ESF-13 program funding levels since FY 2012. While the Deputy Attorney General's 2012 memorandum stated, "ATF will provide the bulk of the financial and staffing support," it also directed DOJ's other law enforcement components to support ESF-13.⁴¹ For FY 2012 and FY 2013, the Department directed ATF to contribute \$2,250,000 and \$3,394,000, respectively, and the DEA, FBI, BOP, and USMS to each provide \$360,000 for each fiscal year. See the text box for ATF's actual cost share for FY 2012 and FY 2013. In

August 2012, the Department directed the DEA, FBI, BOP, and USMS to continue their annual contributions into FY 2014 and beyond.⁴² The ODAG's Emergency Preparedness and Crisis Response Coordinator told us that the Department continually reevaluates ESF-13's funding; however, in the 7 years since the Deputy Attorney General issued the 2012 memorandum, the Department has not adjusted the funding levels despite changes in program requirements to prepare for and execute ESF-13 operations. Since the Department assigned ESF-13 to ATF, ATF is responsible for the majority of the program's funding and any subsequent reprogramming of its budget to meet ESF-13 needs and requirements.

We analyzed ATF's ESF-13 budget data from FY 2012 through FY 2018 and found that the ESF-13 program averaged \$3.6 million in annual steady state operational costs. Of those costs, ATF contributed \$1.7 million (47.4 percent), on average, each fiscal year. Collectively, the DEA, FBI, BOP, and USMS reimbursed ATF \$1.4 million (40.2 percent) each fiscal year. In addition, from FY 2012 through FY 2016, the Department funded \$3.1 million (12.4 percent) of ESF-13 steady state operations through its Working Capital Fund/Unobligated Balance Transfers

FY 2012 and FY 2013 ESF-13 Program Costs

For FY 2012 and FY 2013, ESF-13 steady state expenses totaled \$3.06 million and \$3.82 million, respectively.

Working Capital Fund transfers and reimbursements to ATF from DOJ's other law enforcement components for FYs 2012 and 2013 resulted in ATF's final cost share of \$0.55 million in FY 2012 and \$2.25 million in FY 2013.

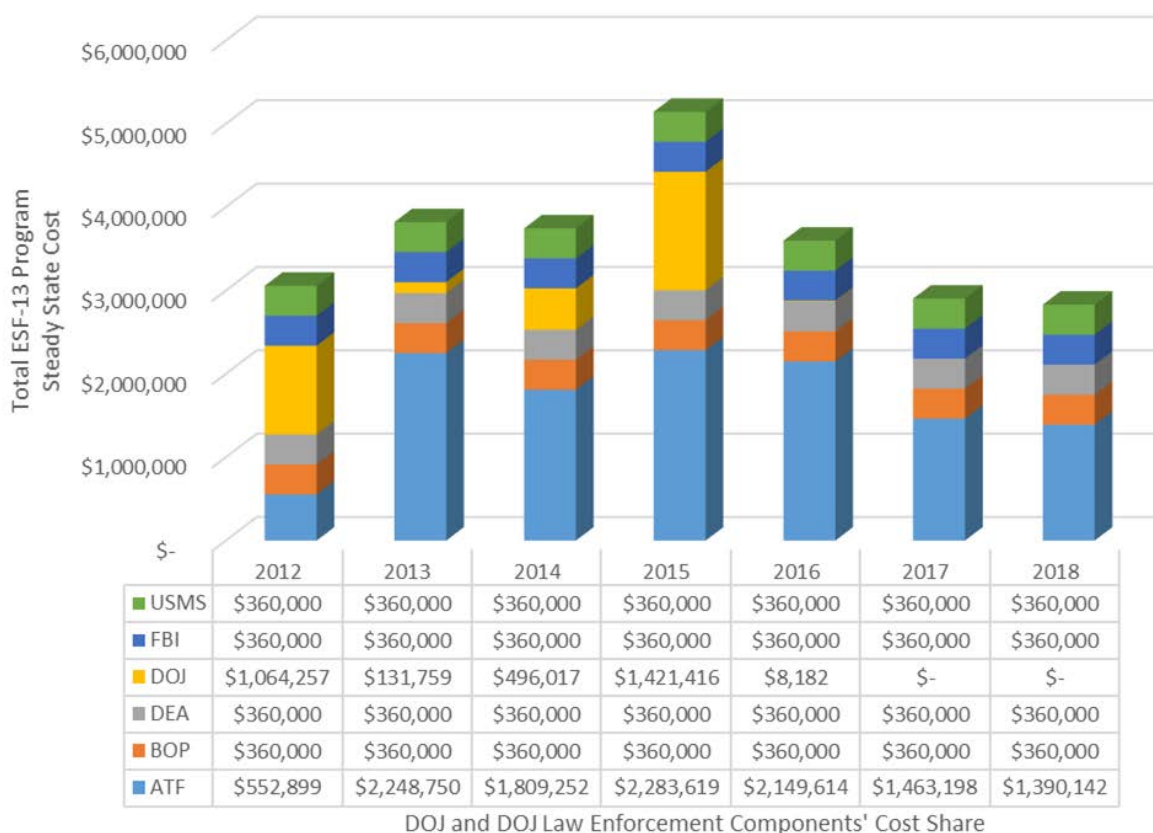
Source: ATF Financial Management Division

⁴¹ Cole, memorandum for Heads of Law Enforcement Components.

⁴² Justice Management Division (JMD), email to DEA, FY 2014 AG Final Decisions—DEA, August 23, 2012; JMD, email to FBI, FY 2014 AG Final Decisions—ESF-13, August 23, 2012; JMD, email to BOP and USMS, FY 2014 AG Final Decisions—ESF-13, August 23, 2012.

(WCF/UBT).⁴³ We found that DOJ's WCF/UBT funded the initial purchase of government vehicles, office alterations and furnishings, and startup funding for ESF-13 program contracts and services. See Figure 1 for the Department's and its law enforcement components' annual cost shares in supporting ESF-13's steady state operations for the 7-year period we examined.

Figure 1
DOJ ESF-13 Steady State Annual Cost Shares, FY 2012–FY 2018



Source: ATF Financial Management Division

Overall, we found that steady state costs decreased 45 percent, from \$5.15 million in FY 2015 to \$2.83 million in FY 2018, due primarily to reduced contract, service, and infrastructure costs beginning in FY 2016 as the program completed its initial buildup.⁴⁴ Beginning in FY 2017, the Department no longer

⁴³ DOJ's WCF is a revolving fund authorized by law to finance a cycle of operations. The WCF provides centralized performance of common administrative services, such as computer services, telecommunications, and financial services. Any DOJ component can request WCF services. DOJ JMD, "[Department of Justice Working Capital Fund \(WCF\)](http://www.justice.gov/jmd/page/file/955471/download)," www.justice.gov/jmd/page/file/955471/download (accessed January 24, 2020).

⁴⁴ Costs associated with contracts and services include 12 contracted positions (2 located at ESF-13 headquarters and 10 in field locations), as well as information technology services. Infrastructure expenses include General Services Administration and commercial rent and alterations;

(Cont'd)

provided ATF with WCF/UBTs and reimbursements to ATF for ESF-13 steady state expenses included only funds from the DEA, FBI, BOP, and USMS.

ESF-13 Funding Streams Impact Current Readiness and Hinder Future Improvements

While the total costs for ESF-13 steady state operations have decreased, we found that ESF-13's indirect funding limits its ability to purchase basic deployment gear and personal protective equipment (PPE) for deploying ESF-13 personnel.⁴⁵ According to the ESF-13 CONOPS Plan and Deployment Orders, personnel deploying in support of ESF-13 "are required to bring appropriate clothing, gear, and subsistence items to ensure they are self-sustaining for 72 hours" and must be "equipped with protective clothing necessary for the disaster environment."⁴⁶ However, we found that during the 2017 hurricane season ESF-13 QRT personnel deployed to disaster areas without basic gear such as sleeping bags or cots. We also found that QRT personnel deployed without PPE, including personal flotation devices and waders, which placed them at risk of drowning and resulted in some of them wading without protection in hazardous environments such as sewage and chemicals. To address ESF-13 resource shortfalls, DEA and FBI officials told us that they utilized their direct funding to purchase gear for their deploying personnel. Several emergency managers expressed a need for additional funding to purchase ESF-13 equipment in advance of a critical incident, but they also had concerns as to who should pay for the equipment.



BOP logistics personnel unload Gator Boxes containing ESF-13 equipment and supplies during Hurricane Michael support, 2018.

Source: ATF/ESF-13

motor vehicles, including supplies and maintenance costs; and investigative equipment. By FY 2016 and beyond, infrastructure costs were primarily General Services Administration rent and vehicle supplies and maintenance.

⁴⁵ PPE means clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection. For ESF-13 deployments, PPE could include hip/chest waders, personal flotation devices, immersion suits, and bump helmets. In poor air quality environments, PPE could also include facemasks or air respirators.

⁴⁶ ESF-13 National CONOPS Plan, May 2016, Annex B, Field Operations and Coordination. Sample ESF-13 Mission Briefing Package used during Hurricane Maria, September 27, 2017.

During Hurricane Sandy, ESF-13 developed Mission Briefing Packets to provide information to ESF-13 support agencies and their deploying QRTs. Beginning with the 2018 hurricane season, ESF-13 changed the name from Mission Briefing Packets to Deployment Orders. Throughout this report, we use the term Deployment Orders. Each deploying QRT will receive its own Deployment Order.

In addition to limiting its ability to purchase deployment gear and PPE, we found that ESF-13's indirect funding also limits its ability to provide timely force protection responses to other federal critical incident response entities, such as ESF-8 and ESF-9. As described [above](#), ESF-8, which is managed by HHS, supports Federal Medical Response Teams; DHS, through FEMA, manages ESF-9, which provides the Search and Rescue function. Both ESF-8 and ESF-9 have direct funding from their respective departments that allows them to pre-deploy their task forces ahead of a disaster declaration. ESF-8 staff told us that they require force protection before they begin response support operations. For example, ESF-8 deploys its support teams 3–4 days ahead of the projected landfall of a hurricane to provide medical support as soon as possible. Unlike ESF-8 and ESF-9, the ESF-13 program does not have direct funding to pre-deploy assets or to purchase basic deployment gear and PPE without a FEMA Mission Assignment and associated funding authorization. Based on our interviews with ESF-13 staff, we found that ESF-13 has worked with FEMA to mitigate these issues. Specifically, ESF-13 staff worked with FEMA Regional Administrators to obtain "surge funding," which in some instances allows the ESF-13 to conduct a limited pre-deployment of assets when the declaration of an emergency is imminent.⁴⁷ However, surge funding may not always be available. As a result, ESF-13 staff requested and obtained funding assistance from ATF's Office of Field Operations to pre-deploy command and control personnel in advance of arriving QRT personnel.⁴⁸ We further discuss the ESF-13 funding limitations below.

We also found that, although FEMA Mission Assignments authorized ESF-13 staff and QRT personnel to purchase basic deployment and PPE to support ESF-9 missions, these efforts did not result in deployed ESF-13 QRT personnel receiving PPE prior to deploying in support of the 2018 hurricane season. For example, according to ATF's Special Operations Division Chief, approximately 80 percent of the QRT personnel deployed to support Hurricane Florence did not have immersion suits. ESF-13 staff told us of delays between receiving procurement authorizations and the actual receipt of the items; without a previously approved FEMA Mission Assignment or funding, ESF-13 staff cannot purchase basic deployment and PPE, which places deployed QRT personnel in an unsafe position.

In addition to limitations resulting from ESF-13's indirect funding, we found that ESF-13 lacks a capital improvement plan to address systemic issues during critical incident responses. We reviewed ESF-13 After Action Reports (AAR) dating back to Hurricane Sandy in 2012 and found that communication and lodging

⁴⁷ According to FEMA Directive 125-2, Disaster Relief Fund (DRF) Pre-Disaster Declaration (Surge) Funding, May 6, 2015, prior to an emergency or major disaster declaration, FEMA may issue Federal Operational Support Mission Assignments for federal activities required to prepare for a reasonably likely and imminent declaration. FEMA may not issue Direct Federal Assistance Mission Assignments prior to an emergency or major disaster declaration.

⁴⁸ According to ESF-13's National Coordinator, ATF's Special Operations Division would front available funding to ESF-13 to allow for the pre-deployment of command and control staff so they could prepare for the arrival of ESF-13 QRT personnel as long as there was a "good indication" that FEMA would make a disaster declaration.

concerns have consistently plagued the ESF-13 program. According to QRT personnel supporting ESF-13's 2017 and 2018 hurricane responses, communication was a significant issue and public communications in particular were "extremely limited." In September 2018, ATF's Special Operations Division Chief drafted for ATF's Director of Field Operations a memorandum outlining ESF-13's funding profile. The Division Chief also provided the Director of Field Operations with a draft copy of a capital investment plan as an option to address legacy issues, such as communications and lodging.⁴⁹ ATF proposed purchasing personal portable radios and mobile broadband kits to address incompatible communication systems among its law enforcement partners, as well as personal global positioning systems to maintain accountability of deployed QRT personnel and teams. ATF also proposed the purchase of portable housing for its ESF-13 deployed personnel, as well as incremental purchases of PPE and an inventory tracking system to account for property during disaster activations. According to ATF officials, the ATF Deputy Director briefed the Deputy Attorney General on these proposals on two occasions, once in October 2018 and again in December 2018. However, we found no changes in ESF-13 funding as a result of these efforts.

Finally, we reviewed similar ESF programs with steady state functions comparable to that of ESF-13 and found that these programs receive dedicated funding either through congressional appropriations or from their respective department. This dedicated funding provides training and support during steady state operations and funding for pre-positioning of support teams to a disaster area prior to a formal Stafford Act disaster declaration (See [Appendix 3](#) for more information on the Stafford Act). We found that the Department has unsuccessfully attempted to acquire direct congressional funding for ESF-13 (see the text box). The ODAG's Emergency Preparedness and Crisis Response Coordinator told us that the

The Department's Unsuccessful Attempts to Obtain Direct Funding for ESF-13

We found that the Department attempted to obtain direct funding for ESF-13 in FY 2011 and FY 2013. In FY 2011, the Office of Management and Budget approved the Department's request for \$1.228 million and included it in the President's budget request; however, Congress did not approve the Department's request. In FY 2013, the Department attempted to obtain \$7 million in direct funding for ESF-13; however, the Office of Management and Budget again did not approve the Department's request and did not add it to the President's budget request.

Source: DOJ JMD budget staff

⁴⁹ Chief, Special Operations Division, ATF, memorandum for Assistant Director, Field Operations, ATF, Summary of the Funding Profile of Emergency Support Function #13 (ESF #13), September 19, 2018. The memorandum highlighted increasing ESF-13 costs due to an evolving and expanding role, FEMA's maturation of the overall ESF concept, and a more comprehensive application of pre-disaster declaration service. The memorandum stated that ESF-13 lacks an adequate supply of PPE for deploying QRTs and ESF-13 funding has not kept pace, causing ATF to have to find available base funding. ATF recommended three options: (1) increase funding contributions by the other DOJ law enforcement components; (2) establish a 3–5 year capital investment plan; or (3) establish annual DOJ-direct appropriated funding for ESF-13, eliminating the requirement for ATF allocations and contributions from the other law enforcement components.

Department should explore other ways to fund ESF-13, such as by creating a surge fund or through a direct funding line.

Untimely Reimbursements to ATF Hinder Its Law Enforcement Mission

We found that the DOJ policy memoranda, discussed in the [Introduction](#), do not specify when the DEA, FBI, BOP, and USMS must provide their annual reimbursement for ESF-13 support to ATF. Based on our analysis of ATF data, since FY 2013 ATF has not received reimbursements from the DOJ law enforcement components until nearly 8 months into each new fiscal year, which results in ATF having to use its own funds to support ESF-13 activities before receiving full reimbursements from the other DOJ components. See Figure 2.

Figure 2
Percent of Fiscal Year that ATF Did Not Receive ESF-13 Support Reimbursement, FY 2013–FY 2018

FY	Component	FY Quarters				Percent of Year without Reimbursement
		1st	2nd	3rd	4th	
2013	BOP	■				43.8%
	DEA	■	■	■		
	FBI				■	
	USMS	■	■	■		
2014	BOP	■	■			77.1%
	DEA	■	■	■	■	
	FBI	■	■	■	■	
	USMS	■	■	■	■	
2015	BOP	■	■			54.2%
	DEA	■	■			
	FBI	■	■	■	■	
	USMS	■	■	■		
2016	BOP	■				54.2%
	DEA	■	■			
	FBI	■	■	■	■	
	USMS	■	■			
2017	BOP	■	■	■		81.3%
	DEA	■	■	■	■	
	FBI	■	■	■	■	
	USMS	■	■	■	■	
2018	BOP	■	■	■		75.0%
	DEA	■	■	■		
	FBI	■	■	■	■	
	USMS	■	■	■		

Notes: Each component’s corresponding color indicates the length of time until it reimbursed ATF for ESF-13. The FBI provided its FY 2013 reimbursement to ATF during the 4th quarter, FY 2012.

Source: ATF Financial Management Division

Historically, peak hurricane season, which often requires ESF-13 support, occurs from mid-August to late October, a period during which the federal government closes one fiscal year and begins another.⁵⁰ Hurricanes in 2012, 2016, 2017, and 2018 all required ESF-13 support and all occurred during the fiscal year changeover. According to the Chief of ATF's Financial Management Division, delays in receiving ESF-13 reimbursements require ATF to transfer its own direct budget funds into the Department's ESF-13 program to fund ESF-13 budget shortfalls. He also said that funding ESF-13 steady state programmatic needs, including the pre-deployment activities and equipment shortfalls discussed above, coupled with fronting funds at the beginning of the fiscal year, hinders ATF's ability to support its own law enforcement operations. The Chief of ATF's Financial Management Division told us that, because of providing its own funds to ESF-13, ATF's Office of Field Operations, for example, has carried an unfunded requirements list for several years. This list includes Special Agent safety items such as ballistic vests, global positioning system trackers, and concealed body recorders.

The ODAG's Emergency Preparedness and Crisis Response Coordinator acknowledged to us that the Department should review ESF-13's funding to ensure the program's future sustainability. He also stated that the Department has been in conversations with its law enforcement components about ending the components' reimbursement requirements and seeking direct funding for ESF-13.

The Department Must Develop and Enforce Clearer ESF-13 Staffing Memoranda to Avoid Misinterpretation

We found that the Deputy Attorney General's May 2012 memorandum does not specifically address ESF-13 staffing requirements in the event of multiple disaster declarations or competing component missions during an ESF-13 activation. The 2012 memorandum directed each law enforcement component to provide two detailees by the end of FY 2012 to support the ESF-13 program. However, we found that ATF has had to compensate for a shortfall in positions during periods when the other law enforcement components did not provide the support personnel that the memorandum directed them to provide. For example, one ESF-13 Regional Law Enforcement Coordinator (RLEC) had provided dual coverage across two FEMA regions since the issuance of the memorandum because the FBI had not fulfilled its staffing requirement.⁵¹ Although FEMA never activated this region in response to a critical incident, the ESF-13 National Coordinator told us that the vacancy has reduced ESF-13's ability to deploy a qualified RLEC in support of an activation. ESF-13 staff noted that RLEC vacancies are critical when multiple disaster events occur simultaneously or concurrently because the vacancies affect ESF-13's ability to cover multiple deployment positions at its Field Coordination Centers (FCC) or FEMA's RRCCs, all of which are 24-hour operations. ESF-13 staff

⁵⁰ The federal government's fiscal year ends on September 30 of each year.

⁵¹ The additional requirement of covering another FEMA region increased the ESF-13 RLEC's footprint from 4 to a total of 10 states and territories.

also expressed concerns that state authorities may wonder why they do not have their own assigned RLEC.

ESF-13 staff also expressed concern about whether sufficient staff has been identified to respond in the event of multiple concurrent disaster events. In March 2013, the Deputy Attorney General directed ATF, DEA, FBI, BOP, and USMS to identify up to 5 percent of their law enforcement capability that would be available to respond to an ESF-13 activation.⁵² Although the DOJ law enforcement components have supported the personnel requirements when ESF-13 has requested Federal Law Enforcement Officers (FLEO), we found that the Deputy Attorney General's directive does not address the potential need to exceed the 5 percent limit in the event of multiple disaster declarations or competing component missions. For example, ESF-13 staff told us that the USMS's Incident Management Teams (IMT) are an invaluable asset during an ESF-13 activation. The IMTs consistently deploy with ESF-13 staff to establish FCCs and begin preparations to receive QRT personnel. However, according to the USMS, it has only four IMTs, each of which also performs USMS direct support missions.⁵³ In another example, during the 2017 hurricane season the FBI deployed over 350 FLEOs to support two major hurricanes. However, investigations of weapons of mass destruction (WMD) incidents and counter-terrorism operations are FBI priorities. If a WMD incident or act of terrorism were to occur during an ESF-13 activation, these FBI FLEOs may not be available for ESF-13 support.

In sum, we found that the Department's ESF-13 funding and staffing policies and practices may hinder the program's ability to prepare for and respond to future natural or manmade disasters. This potentially endangers the lives and health of DOJ personnel deployed during an ESF-13 activation. We believe that current funding also limits ESF-13's ability to provide timely support to federal assets that require force protection to complete their response mission and does not allow improvements to address historical deficiencies and advance the program to meet future needs. In addition, while we acknowledge that vacancies will periodically occur for a variety of reasons, we believe that ESF-13 staffing policies should address baseline minimums and establish DOJ priorities when the federal

⁵² The purpose of the memorandum was to ensure that the Department was ready to respond to an ESF-13 activation. The memorandum also recognized the importance of components maintaining their ongoing internal responsibilities and critical missions while supporting ESF-13 functions and stated that, in the event of a national crisis involving a terrorism event, those responsible for investigating the matter may not be required to participate in an ESF-13 response. James M. Cole, Deputy Attorney General, U.S. Department of Justice, memorandum for Director, Bureau of Alcohol, Tobacco, Firearms and Explosives; Administrator, Drug Enforcement Administration; Director, Federal Bureau of Investigation; Director, Federal Bureau of Prisons; and Director, U.S. Marshals Service, Support to Emergency Support Operations (ESF) #13 During a Crisis, March 16, 2013.

⁵³ In a USMS internal 2017 Hurricane Season AAR, the USMS stated that the 5 percent staffing requirement was difficult to meet due to staffing shortages. USMS IMT teams are predominately Deputy U.S. Marshals; however, some positions are professional staff personnel. IMT functions are collateral duties.

government is faced with multiple critical incidents competing with inherent component mission requirements.

ESF-13 Must Increase Federal Law Enforcement Officers' Situational Awareness and Improve Support Agencies' Program Knowledge to Foster More Effective Operations During Critical Incidents

Since 2008, the number of ESF-13 activations has increased 350 percent, requiring the deployment of more FLEOs to provide public safety and security. For example, when four major hurricanes struck the southeastern United States and its territories in 2017, ESF-13 activated over 2,660 FLEOs as part of its QRTs to support ESF-13 response activities.⁵⁴ However, we found that deployed FLEOs often lack adequate situational awareness of the disaster area and information on the equipment they will need to accomplish their mission effectively and safely.⁵⁵ We also found that ESF-13 support agencies lack sufficient knowledge about the ESF-13 program, such as ESF-13's mission and functions. We believe that improving FLEOs' situational awareness prior to their arrival at a disaster area and providing them with a better understanding of the ESF-13 program itself will improve ESF-13's effectiveness during activations.



ESF-13 QRT personnel support an Urban Search and Rescue mission with the aid of a high water vehicle during Hurricane Florence support, 2018.

Source: ATF/ESF-13

Deployed Personnel Supporting ESF-13 Requirements Need More Situational Awareness Upon Activation

The ESF-13 National Concept of Operations Plan (CONOPS Plan) states that the mission of the ESF-13 Field Support Team (FST) is to “quickly develop public safety and security situational awareness” within the disaster area.⁵⁶ Upon activation and receipt of a FEMA Mission Assignment, ESF-13's National Coordination Center (NCC) staff issues Deployment Orders to the ESF-13 support agency emergency management offices.⁵⁷ The ESF-13 Deployment Orders include general information

⁵⁴ FEMA activated ESF-13 five times in 2017; only three events required deployment of FLEOs.

⁵⁵ ESF-13 defines situational awareness as the combination of critical information regarding environmental hazards and criminal intelligence.

⁵⁶ ESF-13 National CONOPS Plan, May 2016.

The ESF-13 FST is the forward deployed element of the ESF-13 NCC that works with the FEMA Regional Response Coordination Centers and State Emergency Operations Centers in coordinating FEMA Mission Assignments and allocating resources within the disaster area. See [Appendix 5](#) for more information about ESF-13 activations.

⁵⁷ For each deploying QRT, ESF-13 will issue Deployment Orders specific to that team's mission.

about the potential mission, legal authorities, and use of force authority for the deploying FLEOs. However, we found that the ESF-13 support agencies and deployed FLEOs require more situational awareness of the disaster area, such as the environmental hazards they may face and the equipment they will need during the critical incident response.⁵⁸ We also found that FLEOs need more clarifying information about legal authorities beyond what is included in the ESF-13 Deployment Orders.

ESF-13 Support Agencies and Deploying Personnel Are Not Always Aware of Hazards and Equipment Needs in a Disaster Area

Disaster area situational awareness has been a recurring theme within ESF-13's AARs since Hurricane Sandy in 2012.⁵⁹ For example, ESF-13 identified a need for collection and dissemination of disaster area information to enhance the safety of deployed FLEOs. Although the ESF-13 CONOPS Plan, last updated in May 2016, directed the FST to develop disaster area situational awareness, we found that during the 2017 hurricane season ESF-13 support agencies and deployed FLEOs still lacked adequate disaster area situational awareness prior to arriving on scene. ESF-13 support agencies and deployed FLEOs told us that prior to arrival FLEOs lacked information on criminal activity, hostile threats, and potential hazards such as high water and downed electrical wires within the disaster area. Multiple FLEOs told us that any prior situational awareness had come from FLEOs that had deployed ahead of them or from FLEOs with prior ESF-13 experience, rather than from the ESF-13 staff.

We also found that ESF-13 Deployment Orders did not include sufficient information about equipment that FLEOs should have for their deployment. According to ESF-13's Deployment Orders, personnel must be "self-equipped with sustainment needs" for up to 72 hours. However, based on our review of Deployment Orders for the 2017 hurricane season, we found that the orders listed only food and water and were vague regarding the "protective clothing" necessary for the disaster environment. Deployed FLEOs told us that they lacked information as to what basic equipment they should bring with them. For example, some FLEOs told us that they deployed without the necessary basic equipment and gear, such as sleeping cots and flashlights, and had to purchase it on the way to the disaster area or once they arrived. A QRT team leader supporting Hurricane Harvey told us that due to the limited instructions her team brought only clothing and tactical vests; team members purchased equipment such as sleeping bags and life jackets on the way to the disaster area or once they arrived in Texas.⁶⁰

⁵⁸ In addition to the DOJ law enforcement components, the ESF-13 annex identifies other federal departments or agencies with FLEOs or law enforcement resources as ESF-13 support agencies.

⁵⁹ Hurricane Sandy was the first ESF-13 activation under the newly established ESF-13 NCC.

⁶⁰ Our analysis of interviews with deployed FLEOs revealed that FLEOs assigned to tactical units were better equipped to be self-sustainable for 72 hours, compared to those assigned to non-tactical units. However, ESF-13 FLEO deployments are based on requests for volunteers; therefore, deployed units may be a mix of tactical and non-tactical units.

ESF-13 NCC staff told us that, to improve situational awareness and increase communications, beginning with the 2018 hurricane season they provided the Deployment Orders directly to the QRT team leaders. Prior to 2018, ESF-13 provided Deployment Orders only to the ESF-13 support agencies' emergency management offices and relied on those offices to provide the Deployment Orders to their deploying team leaders. Based on our comparison of ESF-13's 2018 Deployment Orders with the 2017 orders, we found that ESF-13 had improved the list of equipment that FLEOs should have on hand at the disaster site.⁶¹ However, the Deployment Orders still did not provide initial information on the potential criminal threats and environmental hazards at the disaster site and stated only that FLEOs would receive an operational and situational awareness briefing upon arriving at the FCC. Finally, the ESF-13 National Coordinator told us that ESF-13 plans to establish a dedicated situational awareness section within the ESF-13 NCC to maintain awareness of the environmental conditions in the disaster area.

Deployed FLEOs Need More Information About Their Legal Authorities and Limitations

In the aftermath of Hurricane Katrina in 2005, the Senate Committee on Homeland Security and Governmental Affairs released a report criticizing the Department's delay in providing legal guidance to FLEOs and ensuring that FLEOs received deputation from the states.⁶² We found that the Department and ESF-13 have since implemented several improvements to increase FLEOs' knowledge of their legal authorities and to better prepare FLEOs to respond to a critical incident, including:

- obtaining an Office of Legal Counsel opinion in 2012 regarding state deputation;⁶³
- improving coordination between ESF-13, ESF-13 support agencies, and state legal counsels through a dedicated ESF-13 legal counsel;
- formalizing special deputation procedures with the USMS Special Deputation Program;⁶⁴ and

⁶¹ Equipment listed in the ESF-13 2018 Deployment Orders included three uniforms suitable for warm climate operations, rain jacket/rain gear, body armor, holsters, handcuffs, flashlight, pistol, hat, sunscreen/insect repellent, sturdy boots or shoes, and a notepad. The Deployment Orders also indicated that ESF-13 was to provide the required equipment for Urban Search and Rescue missions.

⁶² S. REP. 109-322, 617.

The OIG's 2010 WMD report found that the Department was still in the process of determining how deputation would be implemented during an ESF-13 activation. See DOJ OIG, *The Department's Preparation to Respond to a WMD Incident*.

⁶³ The Office of Legal Counsel opinion outlined the circumstances in which FLEOs can enforce state laws and accept state deputation during Stafford Act declarations. See DOJ Office of Legal Counsel, Opinion, "[State and Local Deputation of Federal Law Enforcement Officers During Stafford Act Deployments](#)," March 5, 2012, www.justice.gov/file/18311/download (accessed January 24, 2020). See [Appendix 3](#) for more information on the Stafford Act.

⁶⁴ The USMS Special Deputation Program expedites special deputation requests for ESF-13 and grants Title 18 authority to FLEOs, who would otherwise have restrictions regarding their arrest

(Cont'd)

- developing an ESF-13 Legal Authority Memorandum, included with the Deployment Orders for each activation, that outlines each ESF-13 support agency's federal authorities and identifies those FLEOs that require special deputation while deployed.⁶⁵

Despite these improvements, we found that ESF-13 QRT personnel and ESF-13 support agency emergency management officials still wanted more information. Specifically, they requested more information about the scope and application of the FLEOs' legal authorities, such as rules of engagement and how to respond to criminal activities.⁶⁶ This guidance is particularly important for FLEOs from support agencies with limited federal arrest authorities, including the BOP. FLEOs also stated that the State Peace Officer deputation process, particularly during Hurricane Harvey, was informal and conducted in a large gathering of other FLEOs. A BOP QRT team leader told us that he was not sure how "official" the process was because he did not recall receiving or signing any paperwork. Other deployed FLEOs told us that they had questions on their role when supporting state and local police in responding to criminal activity. Finally, we found that FLEOs had differing opinions regarding whom they would consult if they had questions about their legal authorities, ranging from their QRT team leader and local law enforcement to their agency counsel.

Although we were repeatedly told that FLEOs have been able to accomplish their missions, we believe that providing additional information on disaster area situational awareness, including environmental hazards that FLEOs may experience while deployed, would ensure that prior to deployment FLEOs have enough information and the equipment they need to perform their mission effectively and safely. In addition, ESF-13 should further enhance FLEOs' legal authority awareness so that deployed FLEOs are more informed of their legal limitations and authorities, particularly as they relate to state and local authorities. The ESF-13

authority. Title 18 allows FLEOs to "seek and execute arrest warrants and search warrants, and make arrests without a warrant if there are reasonable grounds to believe that the suspect has violated or is violating federal law."

⁶⁵ For ESF-13 activations requiring FLEOs, the ESF-13 legal counsel produces a Legal Authority Memorandum for that specific event. The ESF-13 Legal Authority Memorandum advises FLEOs that, when taking enforcement actions, such as use of force—regardless of whether they are operating under inherent authorities, special deputation authorities, or peace officer authorities—they are to follow their agency's procedures or the Department's procedures if receiving special deputation.

⁶⁶ While the ESF-13 Legal Authority Memorandum covers the arrest authorities of deployed FLEOs, including their authority while supporting state and local missions, it does not address the scope and application of FLEOs' legal authorities while supporting state or local police missions, such as crowd control, vehicle or foot patrols, or vandalism or looting incidents.

In response to a working draft of this report, ATF stated that it would be impossible to list the entire state and local criminal code within the ESF-13 Legal Authority Memorandum. ATF also stated that FLEOs in Direct Federal Assistance missions receive on-site briefings regarding the arrests they can make, as well as the resources that are available to FLEOs if they have questions. While we acknowledge that ESF-13 cannot list every state or local crime, we believe, based on our interviews with ESF-13 QRT personnel and ESF-13 support agency emergency management officials, that FLEOs need more information regarding the scope and application of their legal authorities.

legal counsel told us that, due to her coordination with ESF-13 support agencies, as well as state and local counsels, it was acceptable for FLEOs to have multiple sources for legal advice. However, we believe that ESF-13 should define legal points of contact that can provide authoritative federal, state, and local legal advice at the FLEOs' requests.

ESF-13 Support Agencies Lack Sufficient Knowledge of the ESF-13 Program

The ESF-13 CONOPS Plan emphasizes the importance of ESF-13 support agencies being "fully aware of the ESF-13 CONOPS Plan."⁶⁷ However, emergency management officials from four of the six ESF-13 support agencies that we interviewed told us that they had not read the ESF-13 CONOPS Plan. One ESF-13 support agency emergency management official told us that, even though he was aware of the ESF-13 CONOPS Plan, he had not read it and viewed it as an ESF-13 internal document that did not apply to his agency.

The ESF-13 CONOPS Plan also states that ESF-13 staff provide outreach and training to ESF-13 support agency emergency management officials to ensure familiarity with ESF-13's processes. In addition, according to ESF-13 NCC and field staff personnel, ESF-13 provides training to ESF-13 support agencies through annual AARs, annual stakeholder meetings, and ESF-13 informational briefs during FEMA region meetings, when requested. Despite these efforts, we found that ESF-13 support agencies and FLEOs lack sufficient knowledge of the ESF-13 program. For example, some deployed personnel that we interviewed had misconceptions about their roles as ESF-13 responders, believing that they would be performing "lifesaving rescue missions" rather than providing force protection for the federal emergency responders.

Further, we found that some federal agencies did not know that they could not direct their personnel deployed for ESF-13 to do tasks that supported their own internal agency priorities. The ESF-13 CONOPS Plan states that FLEOs, once assigned to an ESF-13 activation, are under the operational control of ESF-13 staff. However, we found that some ESF-13 support agency leaders in the field were not clear about the ESF-13 mission and their support agency's role. For example, in an internal DEA AAR following the 2017 hurricane season, the DEA identified a concern that field division leadership incorrectly assumed that their deployed ESF-13 FLEOs could support affected DEA offices concurrently with ESF-13 in response to a critical incident.⁶⁸ In addition, we found anecdotally that some ESF-13 support agencies deployed personnel for ESF-13 activities but provided them with tasks to support

⁶⁷ ESF-13 National CONOPS Plan, May 2016, 13.

⁶⁸ The DEA stated that it identified this misunderstanding when it occurred and corrected it contemporaneously. Specifically, the DEA stated that when a supervisor from the Houston Field Division called the DEA's Emergency Preparedness Section Chief to inquire about the parameters for the use of ESF-13 assets, the Section Chief clarified when ESF-13 could be used and resolved the misunderstanding. In addition, the DEA noted that it later provided guidance on the issue through its 2018 DEA ESF-13 Concept of Operations, which states that DEA personnel responding as part of ESF-13 are not authorized to deviate from their ESF-13 Mission Assignment.

internal agency priorities, such as locating unaccounted for agency personnel or moving agency supplies, that may have been outside of the ESF-13 command structure and mission assignment.⁶⁹

We also found that some deployed QRT team leaders lacked knowledge of the Incident Command System (ICS), leading to an increased risk of miscommunications and misunderstandings about tasks and mission priorities during deployments.⁷⁰ For example, during Hurricane Harvey in 2017, a USMS QRT team leader told us that she felt “lost” during the response because she did not understand the various ESF-13 personnel roles or ESF-13’s command structure and that her experience made her realize that she needed to take ICS courses to gain a better understanding. This example exhibits a lack of knowledge on the fundamentals of operating within the National Incident Management System, specifically the ICS, as well as the mission and functions of ESF-13.

ESF-13 Support Agency Training

DEA’s Back Country Skills training, conducted twice per year, provides instruction intended to mitigate challenges encountered during a critical incident. Special Agents learn base camp setup, use of chainsaws and safety equipment such as rope anchoring to support water crossings, and land navigation skills. Special Agents also receive medical training such as splint application and patient transportation.

Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) training consists of both classroom and field training. Agents learn cardiopulmonary resuscitation and buddy-system first aid, chainsaw and similar equipment operations, land navigation skills, rope skills, and field patrol techniques. Agents also receive a refresher in close quarter drills.

Sources: DEA and ICE

Finally, 12 of 16 deployed FLEOs that we interviewed told us that FLEOs need more education and training to understand the mission and purpose of the ESF-13 program. Other FLEOs suggested that ESF-13 conduct on-site training and information briefings on, for example, how to support state and local law enforcement during a Direct Federal Assistance mission. Although some ESF-13 support agency staff told us that it is difficult to train all FLEOs on the ESF-13 program due to the number of FLEOs eligible to volunteer for deployment, we found that two ESF-13 support agencies provide some basic deployment skills to assist their deployed FLEOs (see the text box).⁷¹ According to the ODAG’s Emergency

⁶⁹ The Purpose Act requires that federal funds be used only for the purpose for which they were appropriated. 31 U.S.C. § 1301(a) states that “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” When ESF-13 activates under the Stafford Act, FEMA uses appropriated funds to reimburse ESF-13 missions, including travel, per diem, and some overtime expenses; the home department or agency continues to pay FLEO salaries. Therefore, if FLEOs assigned to support ESF-13 are asked to perform tasks for the home department or agency while actively deployed, then—depending on the facts and circumstances—the home department or agency could run afoul of the Purpose Act.

⁷⁰ The ICS is “a standardized approach to the command, control, and coordination of on-scene incident management that provides a common hierarchy within which personnel from multiple organizations can be effective.”

⁷¹ In response to a working draft of this report, the DEA stated that in 2019 it replaced its Back Country Skills training with a Disaster Readiness Course, which the DEA created specifically to prepare its personnel to execute their ESF-13 duties.

Preparedness and Crisis Response Coordinator, QRT team leaders should have a baseline of knowledge and be able to inform QRT members of their missions and expectations.

To ensure the future operational success of the Department's ESF-13 program, we believe that ESF-13 support agencies and their deploying FLEOs need more education and training on ESF-13's mission and underlying functions prior to an activation, as well as on-site at a disaster area. Sustained training for ESF-13 support agencies and FLEOs, including potential QRT team leaders, could help to reduce confusion and misunderstanding about what is expected of them during future ESF-13 activations.

CONCLUSION AND RECOMMENDATIONS

Conclusion

In our 2010 *Review of the Department's Preparation to Respond to a WMD Incident*, we recommended that the Department ensure that it is prepared to fulfill its emergency support function responsibilities under the National Response Framework. During this review, we found that the Department and ATF, through the auspices of the ESF-13 staff, have taken steps to improve the ESF-13 program and prepare it for future ESF-13 activations. For example, the Department has established permanent staffing for ESF-13's headquarters and 10 field offices. ESF-13 staff created a National Concept of Operations Plan (CONOPS Plan) to guide the program's operational functions during activations and to educate ESF-13 support agencies. We also found that ESF-13 has increased outreach and coordination with the Federal Emergency Management Agency's response coordinators, ESF-13 support agency emergency management offices, and program managers and specialists responsible for ESF-8 and ESF-9 operations. We also identified several areas that the Department must improve upon to ensure the continued success of the ESF-13 program in providing public safety and security during critical incidents.

First, although the Department assigned ATF as its lead coordinating agency for ESF-13 operations and, when requested, appoints a Senior Federal Law Enforcement Official (SFLEO), the Department has not developed policies or guidance defining the SFLEO's role and functions or the SFLEO's coordination with the ESF-13 program during critical incidents. We also found that the Federal Bureau of Investigation's (FBI) SFLEO Deployment Plan duplicates ESF-13's responsibilities and functions as established in the CONOPS Plan and that the FBI's SFLEO cadre is not familiar with the CONOPS Plan or with ESF-13's role and capabilities. Additionally, we found that the Department's SFLEO appointment in response to Hurricane Harvey and the lack of guidance about how the SFLEO is to interact with ESF-13 created initial confusion between ESF-13 and the SFLEO. We believe that, in order to prevent future confusion during ESF-13 activations and SFLEO appointments, the Department must ensure that the ESF-13 and SFLEO responses are coordinated. To improve efficiencies and effectiveness in responding to critical incidents, the Department should clarify and update policy and guidance to address the SFLEO appointment process as well as the SFLEO's role and responsibilities in relation to ESF-13.

Second, the ESF-13 funding and staffing policies that the Department established in 2012 limit ESF-13's growth and ability to prepare for and respond to critical incidents. This includes ESF-13's ability to purchase basic deployment gear and personal protective equipment and to provide timely force protection during a critical incident. Further, we found that DOJ funding policies do not specify timelines for the other DOJ law enforcement components' annual reimbursements to ATF to support ESF-13 steady state operations. Over the past 6 fiscal years, this has required ATF to provide the initial funding of the Department's ESF-13 program for up to 8 months at the expense of its own law enforcement mission.

Additionally, we found that existing DOJ policy does not address staffing requirements or potential multiple disaster declarations that could exceed the Department's mandate that each of the other law enforcement components provide up to 5 percent of its law enforcement personnel for an ESF-13 deployment. To ensure that ESF-13 remains ready and capable to respond to future critical incidents under an ESF-13 activation, we believe that the Department must reevaluate its funding and staffing policies.

Finally, we found that ESF-13 must increase situational awareness and improve program knowledge to ensure that Federal Law Enforcement Officers (FLEO) operate effectively during a critical incident. We found that deployed FLEOs lacked adequate situational awareness of the disaster area and knowledge of the appropriate basic deployment gear and safety equipment prior to deploying in support of an ESF-13 activation. We also found that FLEOs need more information about the scope of their federal legal authorities and, when applicable, their state authorities, to ensure that they are operating within the law and know whom to consult for legal advice. Additionally, we found that ESF-13 support agencies and FLEOs lack sufficient knowledge of the ESF-13 program, such as ESF-13's purpose and role, which has created misconceptions regarding the missions that FLEOs are able to perform. While we acknowledge that ESF-13 and its support agencies have made efforts to address these issues, we believe that additional training prior to activation and situational awareness prior to deployment will assist in ensuring that ESF-13 is able to continue to accomplish its vital mission.

Recommendations

To improve the Department's preparations for and ability to respond to future critical incidents during an ESF-13 activation, we recommend that the Department:

1. Establish in policy or guidance the mission, role, and functions of the Senior Federal Law Enforcement Official, including qualifications, the appropriate components from which to select the official, and how a Senior Federal Law Enforcement Official coordinates with the ESF-13 program during a critical incident response.
2. Ensure that the Senior Federal Law Enforcement Official cadre participates in National Level Exercises, when applicable, and ESF-13 Table Top Exercises.
3. Reevaluate ESF-13's funding process and operational requirements to determine appropriate funding mechanisms and cost sharing.
4. Reevaluate ESF-13's staffing to determine appropriate permanent staffing requirements and responsibilities.

As the Department's ESF-13 lead coordinating agency, we recommend that ATF develop and implement processes to improve the effectiveness of the ESF-13 program, including:

5. Develop methods to improve situational awareness of deploying ESF-13 personnel prior to their arrival at a disaster site.

6. Ensure that Federal Law Enforcement Officers are provided with legal guidance about how to respond to violations of state or local law when carrying out their ESF-13 mission within a disaster area, and identify a point of contact for Federal Law Enforcement Officers to consult for additional legal guidance during deployments.
7. Develop a comprehensive training program that outlines ESF-13's functions and addresses operational control and misconceptions to assist future ESF-13 team leaders in preparing for and executing ESF-13 missions.

METHODOLOGY OF THE OIG REVIEW

For this review, the OIG analyzed the Department's and its components' ability to meet their responsibilities under the National Response Framework and to execute ESF-13 activities in response to emergency or disaster situations requiring the capabilities of the federal government. Our fieldwork, conducted from April 2018 through May 2019, included data collection and analysis, interviews, observation of an ESF-13 activation, and document review and analysis. The following sections provide additional information about our methodology.

Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012).

Data Collection and Analysis

We analyzed ESF-13 data from FY 2008 through FY 2019 to assess and evaluate the Department's response and support to critical incidents under an ESF-13 activation.

We also analyzed ESF-13 activation data from FY 2008 through the 2018 hurricane season, which ended on November 30, 2018. We analyzed this data to assess changes in the Department's program. We also reviewed ESF-13's deployment rosters for the 2017 and 2018 hurricane seasons to assess the extent of personnel deployments and the types of missions Federal Law Enforcement Officers were performing in support of ESF-13.

In addition, we reviewed funding for the ESF-13 program from ATF and reimbursements from the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Federal Bureau of Prisons (BOP), and U.S. Marshals Service (USMS). We compared these funding sources to ESF-13's steady state operational expenses to assess program funding trends. We also reviewed ATF-stated impacts to its operational funding as a result of having to provide additional funds to support the ESF-13 program.

Interviews

We conducted 55 in-person and telephonic interviews with more than 90 individuals across the Department, its law enforcement components, and ESF-13 support agencies.

Department Interviews

We interviewed the Office of the Deputy Attorney General's (ODAG) Emergency Preparedness and Crisis Response Coordinator and ESF-13 National Coordination Center (NCC) staff, including ESF-13's National Coordinator. We also interviewed five ESF-13 Regional Law Enforcement Officers (RLEC) and one Field Coordinator who supported Federal Emergency Management Agency (FEMA)

Regions I and II, V, VI, VII, and IX.⁷² At the conclusion of our fieldwork, we conducted a follow-up interview with ODAG's Emergency Preparedness and Crisis Response Coordinator to obtain additional information and gain insights to our initial findings and recommendations. We included his feedback in the [Results of the Review](#).

From the DOJ law enforcement components, we interviewed four emergency management chiefs responsible for their respective agency's emergency management operations. This included the BOP's Office of Emergency Preparedness, the DEA's Office of Operations Management Security & Emergency Planning Section, the FBI's Crisis Management Unit, and the USMS's Office of Emergency Management. We also interviewed the USMS's leadership responsible for its Incident Management Teams and Special Deputation program. We interviewed three members of the FBI's Senior Federal Law Enforcement Official (SFLEO) cadre, including the SFLEO appointed by the Department during Hurricane Harvey in 2017 and two others who had received the FBI's SFLEO cadre training. In addition, we interviewed 16 DOJ component personnel who deployed in support of ESF-13, including 11 who were Quick Response Team (QRT) team leaders and 5 who were QRT team members.

ESF-13 Support Agency Interviews

We conducted interviews with the emergency management offices of four ESF-13 support agencies, which included the U.S. Departments of Homeland Security (DHS), Defense, State, and Health and Human Services (HHS) to obtain their level of interaction with ESF-13 and to identify areas for sustainment and improvement for future ESF-13 activations. Within DHS, we interviewed the leadership of FEMA's National Response Coordination Center, as well as the Emergency Management Unit Chief and specialists for U.S. Immigration and Customs Enforcement (ICE) and the Preparedness Planner and legal advisor for U.S. Customs and Border Protection. We also interviewed Department of Defense's U.S. Northern Command liaison to ESF-13 and the Department of State's emergency management officials, including those of the Department of State's Diplomatic Security Service. We interviewed HHS's ESF-8 (Public Health and Medical Services) and FEMA's ESF-9 (Search and Rescue) management specialists to assess ESF-13's support to these federal entities, as well as to compare and contrast funding and staffing requirements with that of ESF-13. We also interviewed the U.S. Department of Agriculture's ESF-4 (Firefighting) leadership to compare and contrast ESF-4's funding and staffing requirements to ESF-13's. Lastly, we interviewed two ICE personnel who deployed in support of ESF-13 activations during the 2017 hurricane season.

Site Visit and Observation

We visited ESF-13's NCC during its support to operations during Hurricane Lane in August 2018. We observed how the NCC tracks deployed personnel. We also participated in two operational updates, which included an operational update

⁷² One RLEC supports both FEMA Regions I and II.

from the forward-deployed ESF-13 leadership and an informational update to ESF-13 support agencies that had personnel deployed supporting Hurricane Lane response operations.

Policy and Document Review

We reviewed policies, guidance, and documents related to the ESF-13 program. We reviewed U.S. Senate and House Committee reports and the White House Lessons Learned Report pertaining to Hurricane Katrina to gain a better understanding of the history and origins of ESF-13's assignment to DOJ, as well as the lessons learned during the activation and deployment of federal law enforcement resources supporting a critical incident. We reviewed national policies and documents, including FEMA's National Incident Management System, National Response Framework and applicable annexes, and Response Federal Interagency Operational Plan, as well as Homeland Security Presidential Directive 5 and Presidential Policy Directive 8. See [Appendix 3](#) for more information about legislation and directives related to critical incident response.

We reviewed Department memoranda that established ATF as the Department's ESF-13 lead coordinating agency and directed the initial program funding and staffing levels for the ESF-13 program. Additionally, we reviewed ESF-13's National Concept of Operations Plan (CONOPS Plan) and its associated appendices and training and exercise briefing plans related to FEMA National Level Exercises and ESF-13 Table Top Exercises. We reviewed deployment documentation, such as FEMA Mission Assignments and ESF-13 Deployment Orders, as well as consolidated After Action Reports (AAR) for Hurricanes Sandy (2012); Matthew (2016); and Harvey, Irma, and Maria (2017). We also reviewed DOJ law enforcement component ESF-13 related policies, standard operating procedures, internal AARs, and the FBI's SFLEO Deployment Plan. Finally, we reviewed the OIG's *Review of the Department's Preparation to Respond to a WMD Incident* (2010) to evaluate the Department's progress in implementing the report's ESF-13 related recommendations.

HURRICANE KATRINA REPORTS

Report from the Senate Committee on Homeland Security and Governmental Affairs

In August 2006, the U.S. Senate Committee on Homeland Security and Governmental Affairs issued a report (Senate report), which stated, “The [federal] government’s initial response [to Hurricane Katrina] fell far short of what the Gulf Coast’s citizens could have reasonably expected.”⁷³ The Senate report identified several areas for improvement as it related to the federal law enforcement response to Hurricane Katrina, including agencies identified as dual leads, unclear roles, a lack of understanding of responsibilities, and challenges acquiring proper legal authorities.

At the time of Hurricane Katrina, the U.S. Department of Homeland Security (DHS) and DOJ jointly shared responsibility for ESF-13, making ESF-13 the only ESF with two agencies designated as both coordinators and primary agencies. The Senate report identified this dual ESF-13 designation as the primary source of confusion and delayed response. The Senate report also noted that the Department was unclear about the roles it envisioned federal law enforcement performing during a natural disaster response and cited significant disagreement and confusion regarding the legal authority for DOJ Federal Law Enforcement Officers (FLEO) to enter a state and perform missions in support of state and local authorities. In addition, the Senate report identified a lack of understanding among the Department and its components about how requests for assistance from state and local authorities would be processed and assigned. Further, neither DHS nor DOJ effectively planned ahead of time for the disaster and DOJ in particular was slow to establish a chain of command to direct the response from its components, the Senate report found.

The Senate report was also critical of the designation of a Senior Federal Law Enforcement Official (SFLEO), noting that the National Response Plan (NRP) had not defined the role of the SFLEO.⁷⁴ The report criticized delays in the SFLEO appointment process and noted that the NRP offered “no insight” into how the SFLEO was supposed to interact with ESF-13 support agencies.⁷⁵ According to the Senate report, this ambiguity contributed to delays in DHS and DOJ appointing an SFLEO, which eventually led to the appointment of two co-equal SFLEOs: a Special Agent from DHS’s Immigration and Customs Enforcement and a Special Agent from DOJ’s Federal Bureau of Investigation. While the Senate report noted that the SFLEOs developed a positive working relationship and their presence improved the

⁷³ S. REP. No. 109-322, [Hurricane Katrina: A Nation Still Unprepared](http://www.congress.gov/109/crpt/srpt322/CRPT-109srpt322.pdf) (August 2006), 440, www.congress.gov/109/crpt/srpt322/CRPT-109srpt322.pdf (accessed January 24, 2020).

⁷⁴ According to the 2004 NRP, which was in effect during the Hurricane Katrina response, the SFLEO was responsible for directing law enforcement operations during a national incident. We further discuss the role of the SFLEO later in this report.

⁷⁵ The National Response Framework (NRF) replaced the NRP in 2008. Unless otherwise specified, throughout our report we refer to the NRF, 3rd edition, published in 2016.

law enforcement situation on the ground, it also noted that the co-SFLEO appointment created a convoluted command structure that both SFLEOs acknowledged would have been more effective with a single chain of command. Because of these findings, the report recommended that the NRP clarify the relationship between the SFLEO and ESF-13.

Report from the House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina

In February 2006, the U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina issued a report (House report) that described the federal government's various types of law enforcement support provided to state and local law enforcement in the effort to restore law and order after Hurricane Katrina.⁷⁶ The House report found that a lack of interoperability between agency communications equipment hindered coordination. As a mitigating factor, the report mentioned the success of the Law Enforcement Coordination Center (LECC), which was established during the response to serve as a clearinghouse for law enforcement requests. While highlighting that initial communication between responding agencies was lacking, the report acknowledged that the LECC proved to be a best practice in ensuring that law enforcement needs were identified and addressed as the response developed.⁷⁷ The House report also noted that a lack of a general policy on how FLEOs were to be deputized as state or local peace officers created delays and that some agencies lacked information on the proper state and local procedures and authorities their FLEOs would need to adhere to once they were deputized.

White House Lessons Learned Report

Also in February 2006, the White House issued a report (White House report) that focused on the massive scale of the federal response to Hurricane Katrina, as well as the challenges of establishing public safety and security in an austere environment.⁷⁸ The White House report found that while federal support significantly improved the security environment in disaster areas, DHS and DOJ failed to plan for and did not anticipate certain challenges, such as the need for hundreds of FLEOs to receive deputation to enforce state and local laws. The White House report also found that DOJ and DHS would have benefited from a deeper

⁷⁶ H.R. REP. NO. 109-377, [*A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*](#) (February 2006), www.nrc.gov/docs/ML1209/ML12093A081.pdf (accessed January 24, 2020).

⁷⁷ A state or local authority may establish a LECC when affected by an incident to the extent that its command, control, and/or administration are incapable of managing the law enforcement functions. The LECC functions as a clearinghouse for federal law enforcement assistance with the public safety and security mission. We did not review the LECC concept during our fieldwork for this review.

⁷⁸ Executive Office of the President, [*The Federal Response to Hurricane Katrina: Lessons Learned*](#) (February 2006), www.library.stmarytx.edu/acadlib/edocs/katrinawh.pdf (accessed January 24, 2020).

understanding of federal responsibilities to support state and local law enforcement during disaster responses.

The White House report made four recommendations to improve the federal law enforcement response to disasters. The first recommendation focused on revising the NRP to ensure more effective coordination of both ESF-13 and the SFLEO functions. Specifically, to eliminate the confusion, delays, and dual authority caused by the joint designation of DHS and DOJ, the report recommended designating DOJ as the primary agency for ESF-13 and giving the Attorney General the sole authority to appoint an SFLEO. The second recommendation urged DOJ to lead the development of the federal government's capability to surge law enforcement resources to a disaster zone, which included cataloguing federal law enforcement assets and coordinating with state and local law enforcement. The third recommendation directed DOJ to streamline deputation procedures and work with states to increase federal awareness of state peace officer authorities. Finally, the White House report recommended that DOJ coordinate with DHS to incorporate force protection into federal response planning to prevent disruption of operations and protect federal personnel and property.⁷⁹

⁷⁹ In 2006, DHS issued a revised version of the NRP, which included changes identified in the Senate, House, and White House reports. For example, the 2006 NRP identified DOJ as the primary agency for ESF-13.

LEGISLATION AND DIRECTIVES RELATING TO CRITICAL INCIDENT RESPONSE

Legislation

Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1987 (42 U.S.C. Chapter 68, Public Health and Welfare), As Amended

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1987 (Stafford Act) authorizes the federal government to provide assistance during an emergency or major disaster. An emergency or major disaster declaration authorizes implementation of Title IV or V of the Stafford Act, which outline various types of disaster relief assistance, to include potential activation of Emergency Support Functions.⁸⁰

The Stafford Act states, “the President may direct any federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under federal law...in support of State and local assistance response and recovery efforts.”⁸¹ This authority has been delegated to the Federal Emergency Management Agency (FEMA) Administrator, who, upon a federal disaster declaration, can authorize the issuance of mission assignments. Pursuant to the Stafford Act, expenditures incurred by federal agencies executing FEMA mission assignments may be reimbursed using the Disaster Relief Fund, a no-year account administered by FEMA.

Directives

Homeland Security Presidential Directive 5, Management of Domestic Incidences

Homeland Security Presidential Directive 5 (HSPD-5), issued in February 2003, called for the federal government to establish a single, comprehensive approach to domestic incident management. It established the Secretary of Homeland Security as the principal federal official for domestic incident management and called upon the Secretary to develop the National Incident Management System (NIMS) and the National Response Plan (NRP). HSPD-5 also established the Secretary as the lead official for coordinating with state and local authorities for a critical incident response.

HSPD-5 further established that the Attorney General, acting through the Federal Bureau of Investigation (FBI), is responsible for coordinating the federal response to an act of terrorism. Additionally, HSPD-5 restated that the Attorney General has lead responsibility for criminal investigations of terrorist acts or

⁸⁰ ESF 13 is activated for Stafford Act declarations of emergency that require extensive public safety and security and where state, tribal, and local government resources are overwhelmed or are inadequate; for federal-to-federal support; or in pre-incident or post-incident situations requiring capabilities unique to the federal government.

⁸¹ 42 U.S.C. § 5170a (1987).

terrorist threats and that, acting through the FBI, the Attorney General “shall coordinate the activities of the other members of the law enforcement community to detect, prevent, preempt, and disrupt terrorist attacks against the United States.”⁸²

Originally issued in 2004 and most recently updated in 2017, NIMS guides all levels of government, nongovernmental organizations, and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from incidents. NIMS is designed to ensure a unified, national approach across all of these mission areas. NIMS provides a basis for key preparedness concepts, such as the Incident Command System (ICS), emergency operations centers, and other critical coordination elements. NIMS is centered around three concepts—flexibility, standardization, and unity of effort—and is designed to be scalable and adaptable to all hazards.

The ICS is a standardized approach to the command, control, and coordination of on-scene incident management that provides a common hierarchy within which personnel from multiple organizations can be effective. The ICS was created to apply across various disciplines and organizations to foster effective collaboration during responses to critical incidents. The system is designed for use at all levels of government, as well as nongovernmental organizations and the private sector. The ICS specifies an organizational structure for incident management that includes five major functional areas: Command, Operations, Planning, Logistics, and Finance/Administration. This structure integrates and coordinates a combination of procedures, personnel, equipment, facilities, and communications. Both ESF-13 and the Senior Federal Law Enforcement Official staff are organized based on ICS principles.

Homeland Security Presidential Directive 8, National Preparedness

Homeland Security Presidential Directive 8 (HSPD-8), issued in December 2003 and designed as a companion to HSPD-5, detailed how federal departments and agencies are to prepare for critical incident response. HSPD-8 affirmed that the NRP was to provide the structure and mechanisms for national level policy with regard to support provided to state and local authorities during critical incident response.

Presidential Policy Directive 8, National Preparedness

Presidential Policy Directive 8 (PPD-8), issued in March 2011, replaced HSPD-8 and implemented several structural changes to the federal government’s existing systematic preparation for critical incident responses. PPD-8 established the National Preparedness Goal, which outlined core capabilities in the areas of Prevention, Protection, Mitigation, Response, and Recovery necessary to prepare for specific threats to the nation. Each capability features its own framework, which guides stakeholders in achieving the National Preparedness Goal.

⁸² DHS, HSPD-5, February 2003.

The National Preparedness Goal is “a secure and resilient Nation with the [core] capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from threats and hazards that pose the greatest risk.”⁸³ The National Preparedness Goal is designed to prepare the nation for the risks that will severely stress our collective capabilities and resources. The core capabilities—Prevention, Protection, Mitigation, Response, and Recovery—are interdependent and require coordination and unity of effort and systems to achieve the National Preparedness Goal.

PPD-8 also created the National Preparedness System, which is designed to guide domestic efforts at all levels of government and non-government sectors in achieving the National Preparedness Goal. The guidance, programs, processes, and systems that support each component of the National Preparedness System enable a collaborative, whole-community approach to national preparedness that engages individuals, families, communities, private and nonprofit sectors, faith-based organizations, and all levels of government.

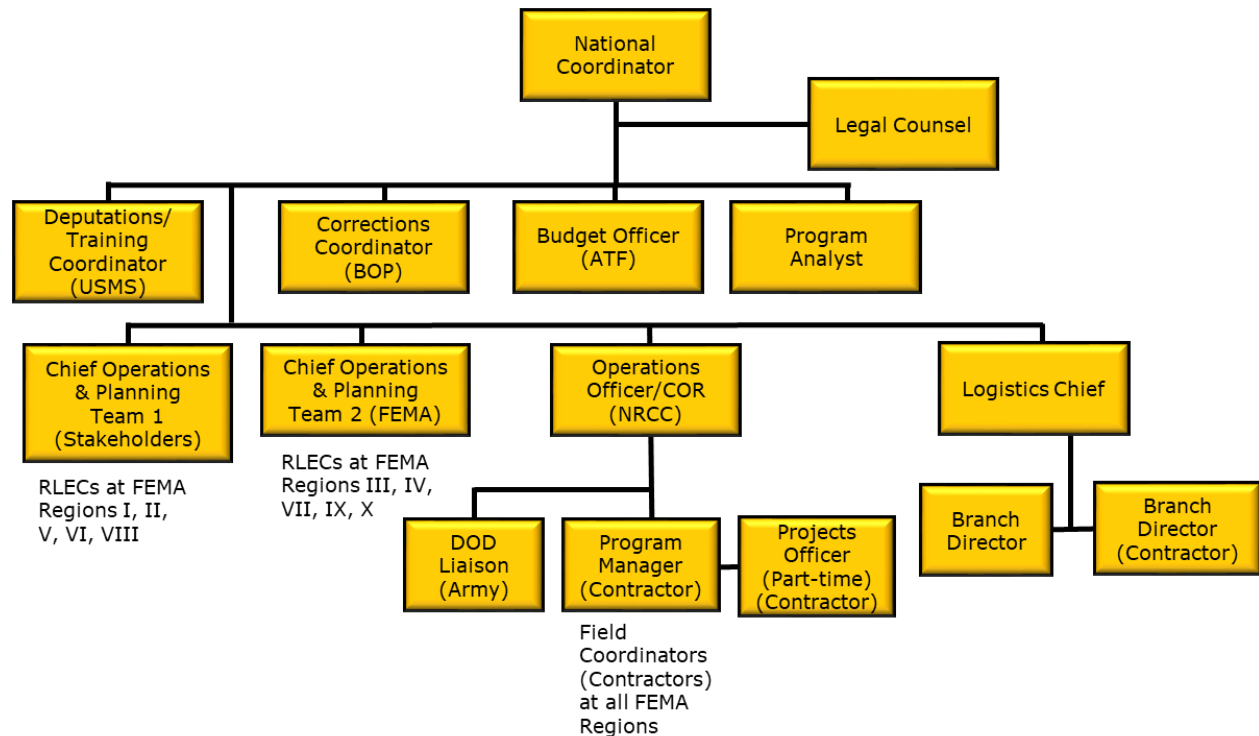
⁸³ DHS, National Preparedness Goal, September 2015.

ESF-13 ORGANIZATIONAL STRUCTURE

ESF-13 Structure During Steady State Operations

ESF-13 is composed of a National Coordination Center (NCC) located in Washington, D.C., and 10 field offices co-located with Federal Emergency Management Agency (FEMA) regional offices. The NCC is responsible for establishing the all-hazards ESF-13 law enforcement planning for the 50 states, the District of Columbia, and 4 territories. During steady state operations, the NCC and its field offices support incident management planning activities and pre-incident interactions with state and local law enforcement authorities. The NCC has 13 permanent personnel and 1 Department of Defense liaison assigned on a temporary basis. In Figure 3, each block represents a function and not necessarily a position filled by an individual staff member.

Figure 3
ESF-13 Steady State Organizational Structure



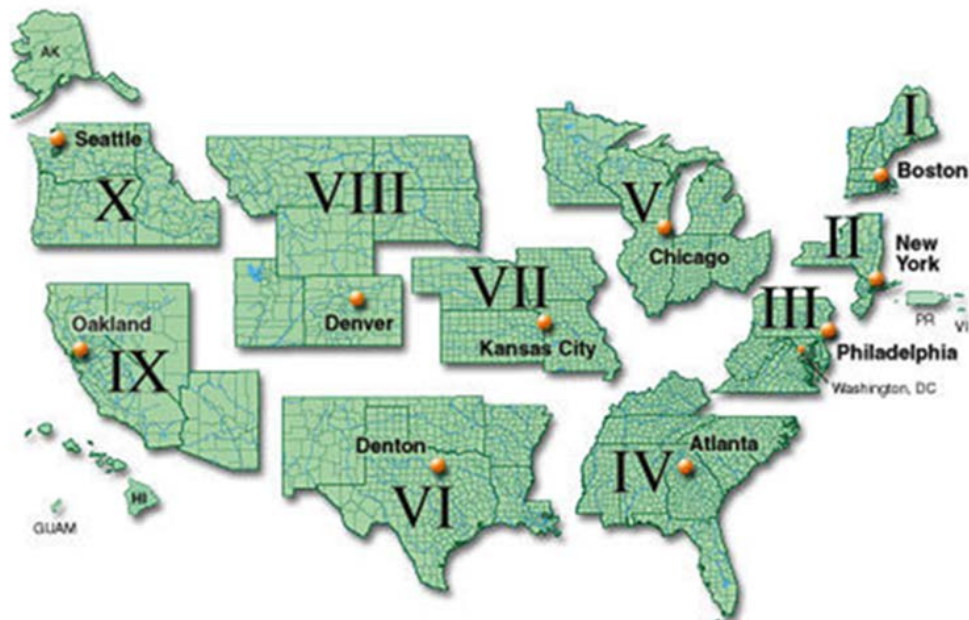
Note: BOP=Federal Bureau of Prisons; COR=Contracting Officer's Representative; DOD=Department of Defense; NRCC=National Response Coordination Center; RLEC=Regional Law Enforcement Coordinator; USMS=U.S. Marshals Service.

Source: ESF-13 NCC

Each ESF-13 field office is co-located with a FEMA regional office and consists of a Regional Law Enforcement Coordinator (RLEC) and contracted Field Coordinator. During steady state operations, the RLEC and Field Coordinator's primary mission is to conduct liaison operations within their assigned FEMA region.

RLECs and Field Coordinators generally conduct liaison operations with the FEMA Regional Administrator’s staff, state-level emergency management offices, and federal government agencies.⁸⁴ They also work with their respective state and local governments to develop and maintain regional ESF-13 support plans and assist in planning and executing regional- and state-level disaster preparedness training exercises. On an annual basis, the ESF-13 field staff provides an ESF-13 missions and functions informational brief during a FEMA Regional Conference. See Figure 4 and Table 1 below for FEMA regions with ESF-13 field staff jurisdiction and assignments.

Figure 4
FEMA Regions



Source: FEMA, “[FEMA Regional Contacts](http://www.fema.gov/fema-regional-contacts),” September 17, 2018, www.fema.gov/fema-regional-contacts (accessed January 24, 2020)

⁸⁴ RLECs and Field Coordinators may also liaise with local governments that may have direct interests in potential disasters, such as a potential earthquake along the New Madrid Seismic Zone.

The New Madrid Seismic Zone, located in southeastern Missouri, northeastern Arkansas, western Tennessee, western Kentucky, and southern Illinois, is the most active seismic zone in the United States east of the Rocky Mountains. The zone includes major cities such as Memphis, Tennessee; St. Louis, Missouri; Little Rock, Arkansas; and Evansville, Indiana. Missouri Department of Natural Resources, “[Facts About the New Madrid Seismic Zone](http://www.dnr.mo.gov/geology/geosrv/geores/techbulletin1.htm),” www.dnr.mo.gov/geology/geosrv/geores/techbulletin1.htm (accessed January 24, 2020).

Table 1

FEMA Regions with ESF-13 Field Staff Jurisdiction and Assignments

FEMA Region and Headquarters Location ^a	Jurisdiction	Responsible DOJ Law Enforcement Component
FEMA Region I (Boston, Mass.)	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	FBI (Jurisdiction Covered by FEMA Region II RLEC) ^b
FEMA Region II (New York, N.Y.)	New Jersey, New York, Puerto Rico, Virgin Islands	ATF
FEMA Region III (Philadelphia, Pa.)	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia	USMS
FEMA Region IV (Atlanta, Ga.)	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	ATF
FEMA Region V (Chicago, Ill.)	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	USMS
FEMA Region VI (Denton, Tex.)	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	ATF
FEMA Region VII (Kansas City, Mo.)	Iowa, Kansas, Missouri, Nebraska	DEA
FEMA Region VIII (Denver, Colo.)	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	ATF
FEMA Region IX (San Francisco, Calif.)	Arizona, California, Hawaii, Nevada, Pacific Islands	ATF
FEMA Region X (Seattle, Wash.)	Alaska, Idaho, Oregon, Washington	DEA

Note: DEA=Drug Enforcement Administration; FBI=Federal Bureau of Investigation; USMS=U.S. Marshals Service.

^a Lee Loftus, DOJ Assistant Attorney General for Administration, memorandum for Chief Financial Officers of Law Enforcement Components, ESF #13 Staffing and Funding, May 21, 2012, assigned a FEMA region to each DOJ law enforcement component.

^b The FEMA Region I RLEC position has been vacant since May 2012. The region is covered by the ESF-13 Field Coordinator and the ATF RLEC from Region II.

Source: FEMA, "FEMA Regional Contacts"

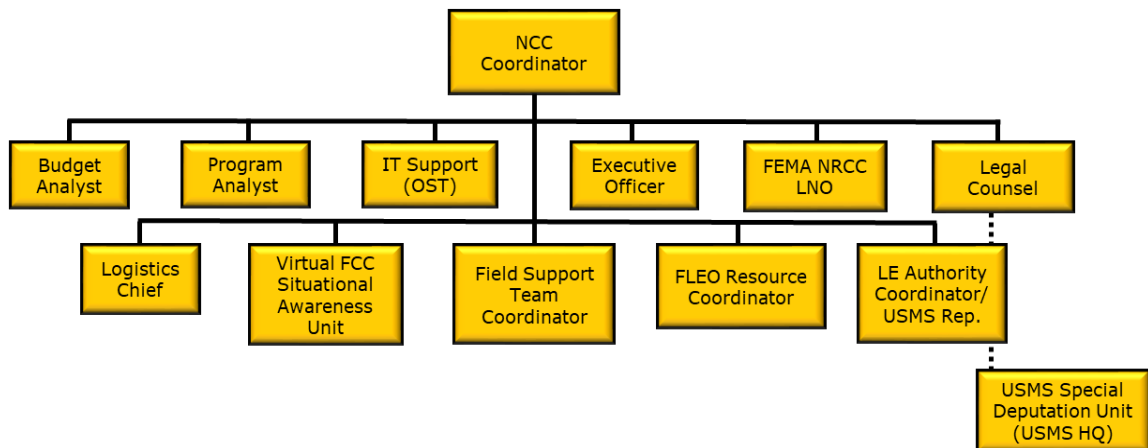
During steady state operations, non-DOJ ESF-13 support agencies participate in the ESF-13 Stakeholder Committee and the ESF-13 Advisory Board. The ESF-13 Stakeholder Committee, with representatives from each federal department or agency that employs armed Federal Law Enforcement Officers (FLEO), meets every 6 months or as needed to ensure FLEOs are current on ESF-13 policies, practices, and issues. The ESF-13 Advisory Board, with representatives from ATF; the Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); Federal Bureau of Prisons (BOP); U.S. Marshals Service (USMS); and the Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement (ICE), advises the ESF-13 National Coordinator on the formulation, review, and maintenance of ESF-13 policy, procedures, protocols, and best practices. ESF-13 support agencies may also participate in FEMA National Level Exercises and ESF-13 Table Top Exercises. During an ESF-13 activation, ESF-13 support agencies provide general and specialized resources to assist in the ESF-13 response.

ESF-13 Structure During an Activation

Once FEMA activates ESF-13, the NCC provides national-level coordination of FLEOs in response to FEMA requirements to support the critical incident. The staff of the NCC will be composed primarily of ESF-13 staff, and, at times, personnel from ESF-13 support agencies may augment the NCC. In Figure 5, each block represents a function and not necessarily a position filled by an individual staff member. Depending on the size and scope of the critical incident, individual ESF-13 staff may cover several functions or each function could be the responsibility of a single ESF-13 staff member. The ESF-13 NCC also provides a Liaison Officer to FEMA's National Response Coordination Center to coordinate with FEMA during the mission assignment process.

Figure 5

ESF-13 NCC Organizational Structure During an Activation



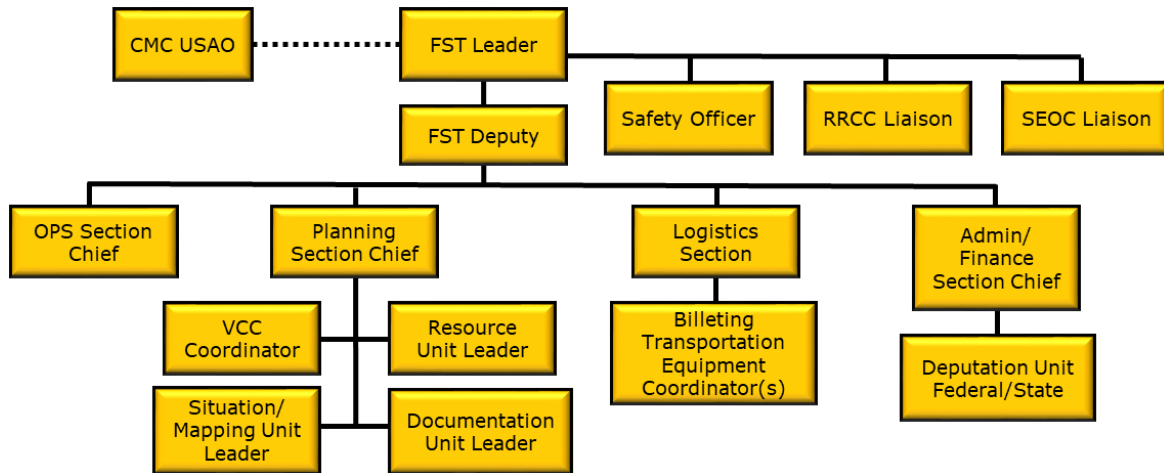
Note: FCC=Field Coordination Center; LE=Law Enforcement; LNO=Liaison Officer; NRCC=National Response Coordination Center; OST=Operational Support Team.

Source: ESF-13 National Concept of Operations Plan (CONOPS Plan), May 2016, Appendix A1

Once activated, the ESF-13 RLECs and Field Coordinators form into a Field Support Team (FST). The ESF-13 RLEC for the affected FEMA region will typically deploy to the local FEMA Regional Response Coordination Center (RRCC). The ESF-13 RLEC is responsible for developing liaison/working relationships, conducting and providing situational assessments and awareness, providing technical subject matter expert assistance, and coordinating the ESF-13 mission assignment process with FEMA RRCC staff. The Field Coordinator for the affected FEMA region deploys to the State Emergency Operations Center (SEOC). The Field Coordinator is responsible for developing working relationships, conducting and providing situational assessments and awareness, providing technical subject matter expertise, and assisting the SEOC Operations Chief and the state's ESF-13 Coordinator with drafting Resource Request Forms for FLEO assistance. The remaining ESF-13 RLECs and Field Coordinators from the non-affected region will establish a Field Coordination Center (FCC) to perform functions within the FST/FCC as directed by the ESF-13 NCC. See Figure 6 below for the FST/FCC organizational structure.

Figure 6

FST/FCC Organizational Structure During an ESF-13 Activation



Note: CMC=Crisis Management Coordinator; OPS=Operations; USAO=U.S. Attorney’s Office; VCC=Virtual Command Center.

Source: ESF-13 National CONOPS Plan, May 2016, Appendix B1⁸⁵

Under the direction of the Field Support Team Leader, the FCC is responsible for all ESF-13 field operations and provides overall leadership and guidance to the deployed field support element. ESF-13 staff assigned to the ESF-13 FST/FCC performs tasks that include liaising with activated FEMA Incident Management Assistance Team(s), developing public safety and security situational awareness, establishing staging area(s), and preparing to accept ESF-13 Quick Response Teams (QRT).⁸⁶ DOJ law enforcement components, as well as non-DOJ ESF-13 support agencies may also augment the FST/FCC to ensure continuity of operations. Although the ESF-13 NCC staff initially identifies deployable ESF-13 QRTs and provides the Deployment Orders upon activation, the ESF-13 FST/FCC determines the specific mission tasking that each ESF-13 QRT receives once arriving to the disaster area.

Generally, an ESF-13 QRT consists of a supervisory agent or officer and 24 FLEOs. ESF-13 QRTs may also include additional non-FLEO personnel such as

⁸⁵ Crisis Management Coordinators, provided by U.S. Attorney’s Offices, perform as Field Legal Advisors within their district upon an ESF-13 activation.

The Law Enforcement Online Virtual Command Center provides near real-time status and progress information on mission assignments and tasking orders, internal ESF-13 mission tasks, and information updates. Additionally, it assists in reducing duplicate or repetitive information requests and providing greater situational awareness to all ESF-13 staff during large, complex, and multisite incidents.

⁸⁶ FEMA Incident Management Assistance Team(s) are pre-deployed to potential disaster locations or deployed to incident sites where it is anticipated that federal assistance may be required. Their mission is to support the initial establishment of unified command and to provide federal and state decision makers with situational awareness crucial to determining the level and type of federal support that may be required to cope with the event.

medical and communications specialists that provide support to the ESF-13 QRT. Non-FLEO personnel that perform functions such as communications and information technology support; Crisis Management Coordination and Incident Management Teams; intelligence research; and logistics, including mobile bunk housing, also support ESF-13 activations. According to the ESF-13 Annex, ESF-13 support agencies include any department or agency with FLEOs. See Table 2 for ESF-13 support agencies that have provided FLEOs to support ESF-13 activations since 2008.

Table 2
ESF-13 Support Agencies That Have Provided Federal Law Enforcement Officers Since FY 2008

U.S. Department of Agriculture	Forest Service Office of Inspector General
U.S. Department of Commerce	National Oceanic and Atmospheric Administration
U.S. Department of Education	Office of Inspector General
U.S. Environmental Protection Agency	Criminal Investigation Division
U.S. Department of Health and Human Services	Office of Inspector General
U.S. Department of Homeland Security	Customs and Border Protection, ICE, Transportation Security Administration–Federal Air Marshals Service
U.S. Department of Housing and Urban Development	Office of Inspector General
U.S. Department of the Interior	Bureau of Indian Affairs, Bureau of Land Management, Fish and Wildlife Service, National Parks Service
U.S. Department of Justice	ATF, BOP, DEA, FBI, USMS, OIG
U.S. Department of State	Diplomatic Security Service
U.S. Department of the Treasury	Internal Revenue Service Criminal Investigation Division, Treasury Inspector General for Tax Administration

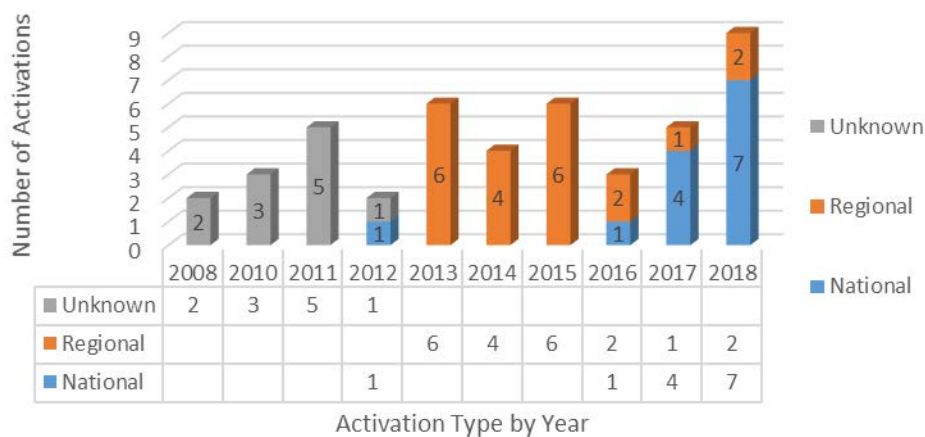
Sources: ESF-13 Activations and Deployment Matrices

ESF-13 ACTIVATIONS SINCE FY 2008 AND THE ACTIVATION PROCESS

ESF-13 Activations Since FY 2008

Since the 2008 designation of DOJ as the primary agency for ESF-13 functions, the number of ESF-13 activations generally increased through 2018, from 10 activations in the first 4 years to 17 activations in the most recent 3 years. See Figure 7.

Figure 7
ESF-13 Activations, FY 2008–FY 2018



Note: Performance metrics did not specify the type of activations for FY 2008 through early FY 2012. According to ESF-13 data, there were no ESF-13 activations in FY 2009.

Source: ATF data

An ESF-13 activation occurs as result of either a national or a regional activation request.⁸⁷ An ESF-13 activation does not automatically require deployment of Quick Response Teams (QRT). Rather, the ESF-13 National Coordination Center (NCC) may activate only its staff to operate positions at the Federal Emergency Management Agency’s (FEMA) National Response Coordination Center (NRCC) or Regional Response Coordination Center (RRCC) or at a State Emergency Operations Center to maintain awareness of the developing situation and to assist with the integration of federal assets in the event QRTs are subsequently required. National activations occur under the authority of FEMA’s NRCC. In 2012 and 2016, Hurricanes Sandy and Matthew, respectively, were the only national

⁸⁷ National activations occur when FEMA activates its National Response Coordination Center and requests ESF-13 support. Regional activations occur when a FEMA region activates its Regional Response Coordination Center and requests ESF-13 support.

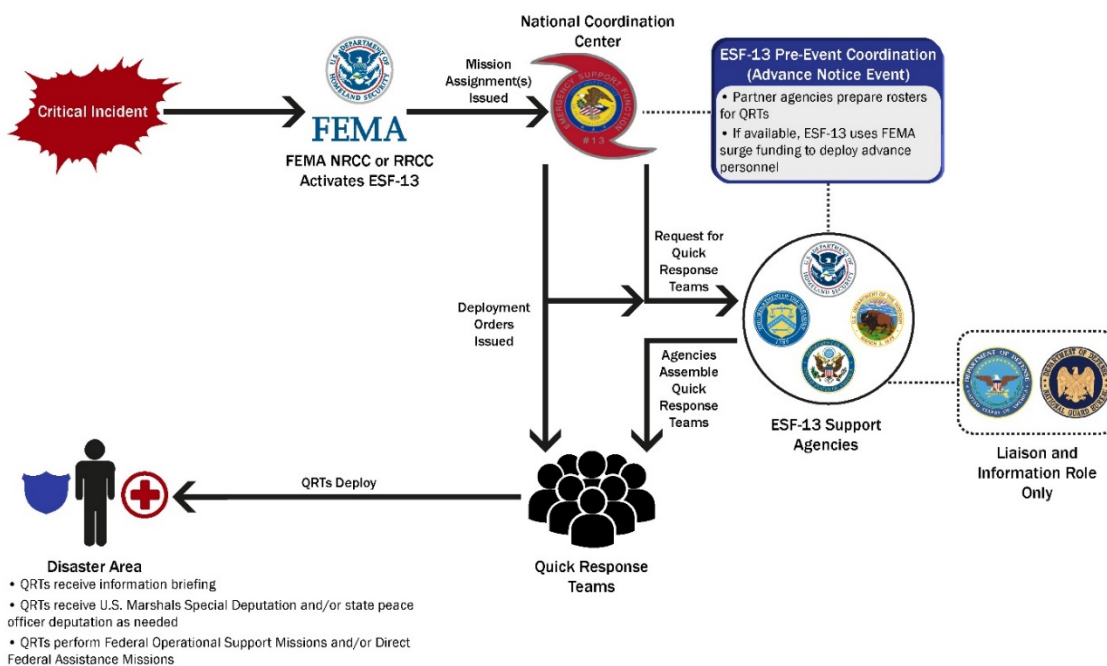
Examples of ESF-13 activations during which only ESF-13 staff were deployed include presidential inaugurations; the Ferguson, Missouri, and Baltimore, Maryland, riots in 2014 and 2015, respectively; and Hurricane Hector in 2018.

activations. ESF-13 deployed on four national activations during 2017, including Hurricanes Harvey, Irma, Maria, and Nate. There were seven national activations in 2018, including Hurricanes Lane, Oliva, Isaac, Florence, and Michael and Typhoons Mangkhut and Yutu. Regional activations occur under the authority of FEMA's RRCCs. In addition to responding for hurricane support, regional activations have occurred for presidential inaugurations; Super Bowl support; and natural disasters such as floods, snowstorms, and tornadoes.

ESF-13 Activation Process

When FEMA activates ESF-13, the NCC contacts ESF-13 support agencies to request QRTs. ESF-13, in coordination with requesting federal, state, local, tribal, and territorial authorities, defines the number of requested personnel through a Resource Request Form, which is then submitted to FEMA. If approved, FEMA funds the request through a Mission Assignment and ESF-13 support agencies select their personnel to fulfill the request. Once an ESF-13 support agency identifies its QRTs, the NCC provides Deployment Orders to the ESF-13 support agency and QRT team leaders. QRTs are responsible for deploying to the disaster area, where they receive follow-on information briefings and, if required, federal special deputation from U.S. Marshals and/or peace officer deputation from state and local law enforcement authorities before beginning their assigned missions. QRTs will demobilize and return to their home stations once response operations are completed. See Figure 8.

Figure 8
ESF-13 Activation Process



Sources: ESF-13 National Concept of Operations Plan, May 2016, and OIG interviews with ESF-13 staff

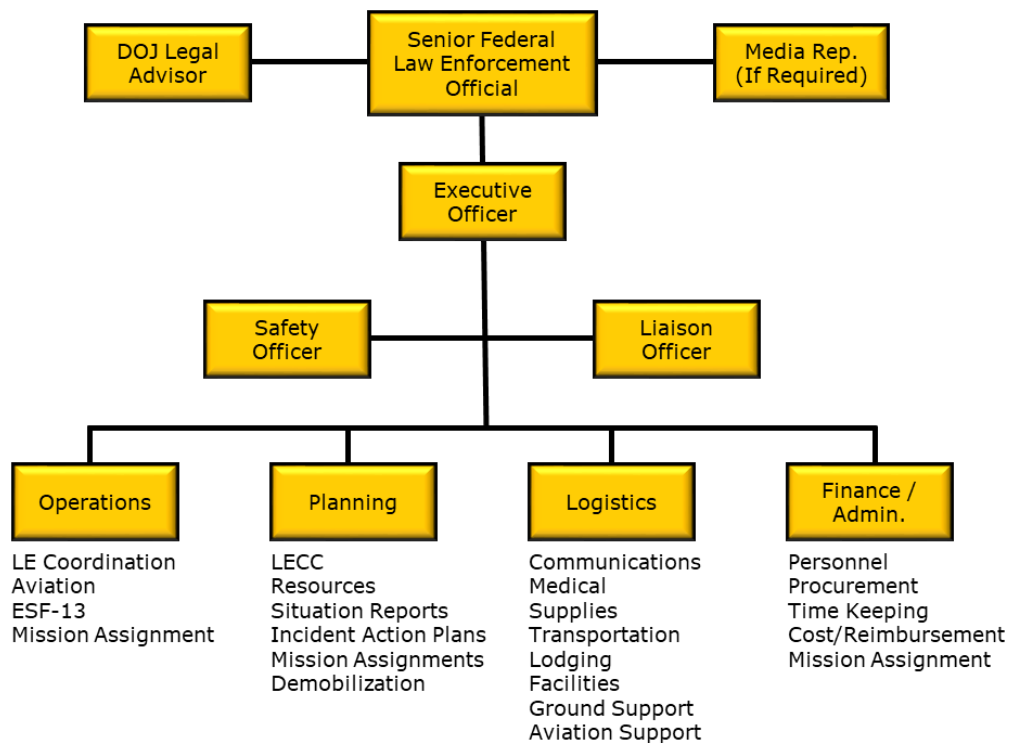
Figure 8 depicts a general outline of an ESF-13 activation process in response to a critical incident. For example, a presidential disaster declaration may occur

after an earthquake event; as part of the response efforts, FEMA may activate ESF-13. In some cases, such as an approaching hurricane, FEMA may activate ESF-13 prior to a presidential disaster declaration using surge funding to allow ESF-13 to pre-deploy personnel to the projected disaster area. Regardless of the time of activation—prior to or after a presidential disaster declaration—ESF-13's mission, functions, and deployment structure remain the same.

ORGANIZATION OF THE SENIOR FEDERAL LAW ENFORCEMENT OFFICIAL'S STAFF

According to the Federal Bureau of Investigation's (FBI) Senior Federal Law Enforcement Official (SFLEO) Deployment Plan, the SFLEO staff is organized using the Incident Command System organizational concept. The staff's composition is flexible and can be adjusted depending on the scope of the response. For additional support, an SFLEO may call upon FBI resources, such as aviation assets, tactical teams, forensic laboratory teams, operational medical staff, and communication specialists. See Figure 9.

Figure 9
SFLEO Organizational Structure



Note: LE=Law Enforcement; LECC=Law Enforcement Coordination Center.

Source: FBI SFLEO Deployment Plan, June 2016

FUNCTIONAL COMPARISON OF ESF-13 AND THE SENIOR FEDERAL LAW ENFORCEMENT OFFICIAL

The OIG analyzed the ESF-13 National Concept of Operations Plan (CONOPS Plan) and the Federal Bureau of Investigation's Senior Federal Law Enforcement Official (SFLEO) Deployment Plan and found that the two documents include overlapping roles, functions, and responsibilities. However, the CONOPS Plan establishes ESF-13 as a permanent program that operates year-round whereas the SFLEO Deployment Plan indicates that the individual appointed as SFLEO will perform the role of the SFLEO only when activated in response to a particular incident. For example, in each of the 10 Federal Emergency Management Agency (FEMA) regions, ESF-13 maintains permanent staff who regularly liaise with FEMA and state disaster management specialists on topics relating to critical incident response and ESF-13 support. ESF-13's permanent staff also engages with the ESF-13 support agencies throughout the year to provide education on the ESF-13 process and updates to the ESF-13 program. In contrast, according to the FBI's SFLEO Deployment Plan, officials who may potentially serve as SFLEO and their staff begin performing their functions once appointed.

We also identified two major differences between the ESF-13 National Coordinator and SFLEO roles during a critical incident. First, the ESF-13 National Coordinator is located at the ESF-13 National Coordination Center in Washington, D.C., while the SFLEO is co-located with the FEMA Federal Coordinating Officer, within the Unified Coordination Group at the disaster site.⁸⁸ Second, the ESF-13 National Coordinator specifically oversees ESF-13 operations whereas, according to the SFLEO Deployment Plan, the SFLEO, when deployed, "will perform functions on behalf of the Attorney General and the DOJ."⁸⁹ Table 3 below illustrates the core functions of each mission as identified in the ESF-13 CONOPS Plan and the SFLEO Deployment Plan.

⁸⁸ The Federal Coordinating Officer, appointed by the President, is responsible for the overall management of the federal response, short-term and intermediate recovery, and mitigation activities. The Federal Coordinating Officer is also responsible for establishing the Unified Coordination Group.

The Unified Coordination Group executes unified command and leads incident activities at the field level to achieve unity of effort. Its purpose is to establish and achieve shared objectives. The Unified Coordination Group comprises senior leaders representing state and federal interests and, in certain circumstances, tribal governments, local jurisdictions, or the private sector.

⁸⁹ FBI, SFLEO Deployment Plan, June 2016.

Table 3
Comparison of ESF-13 CONOPS Plan and SFLEO Deployment Plan Core Functions

Task/Responsibility	ESF 13 CONOPS	SFLEO Deployment Plan
Coordinate federal public safety and security assistance in response to critical incidents.	Yes	Yes
Perform functions on behalf of the Attorney General as a member of the Unified Coordination Group.	No ^a	Yes
Liaise with state and local emergency response officials during the steady state (pre-activation) period.	Yes	No
Identify federal resources available for response.	Yes	Yes
Establish liaison with FEMA's National Response Coordination Center and Regional Response Coordination Center.	Yes	Yes
Determine the type of resources needed to fill local law enforcement gaps.	Yes	Yes
Support court and prison security operations.	No ^b	Yes
Provide criminal intelligence to local jurisdictions receiving evacuees.	No	Yes
Coordinate with federal law enforcement agencies to support state and local law enforcement.	Yes	Yes
Establish Law Enforcement Coordination Center, if needed.	Yes	Yes

^a Since DOJ is the primary agency for ESF-13, ATF has been designated by the Attorney General as the lead coordinating agency for ESF-13. While both the SFLEO and ESF-13 are designated by the Attorney General, when activated the SFLEO acts as the Attorney General's senior representative in the disaster area.

^b Although the ESF-13 CONOPS Plan does not explicitly state that ESF-13 will support court and prison security operations, personnel deployed for ESF-13 may engage in court and prison security operations if requested as part of their support to federal, state, local, tribal, and territorial authorities.

Sources: ESF-13 National CONOPS Plan, May 2016, and FBI SFLEO Deployment Plan, June 2016

THE DEPARTMENT'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice


Office of the Deputy Attorney General

Washington, D.C. 20530

January 14, 2020

MEMORANDUM

TO: Nina S Pelletier
Assistant Inspector General
Evaluation and Inspections

FROM: Mark E. Michalic 
Emergency Preparedness and Crisis Response Coordinator

SUBJECT: Response To Formal Draft Report On The Department Of Justice's Preparedness
To Respond To Critical Incidents Under Emergency Support Function 13

This memorandum provides a response on behalf of the Office of the Deputy Attorney General (ODAG) to the Office of the Inspector General's (OIG) December 18, 2019, formal draft audit report entitled, "Review of the Department of Justice's Preparedness to Respond to Critical Incidents Under Emergency Support Function 13, Assignment Number A-2018-003." We appreciate the professionalism and thoroughness of the OIG's Evaluation Team and the opportunity to comment on the report's recommendations.

The OIG's report contains four recommendations that pertain to ODAG:

Recommendation 1: Establish in policy or guidance the mission, role, and functions of the Senior Federal Enforcement Official, including qualification, the appropriate components from which to select the official, and how a Senior Federal Law Enforcement Official coordinates with the ESF-13 program during a critical incident response.

Recommendation 2: Ensure that the Senior Federal Law Enforcement Official cadre participates in National Level Exercises, when applicable, and ESF-13 Table Top Exercises.

Recommendation 3: Reevaluate ESD-13's funding process and operational requirement to determine appropriate funding mechanisms and cost sharing.

Recommendation 4: Reevaluate ESF-13's staffing to determine appropriate permanent staffing requirements and responsibilities.

ODAG concurs with all four recommendations. ODAG will convene working group meetings in the near future consisting of representative from DOJ law enforcement and other appropriate components. The meetings will focus on establishing DOJ-level policy or guidance pertaining to the mission, role, and functions of the Senior Federal Enforcement Official, and will also focus on training, funding, and staffing requirements as noted in the four recommendations. ODAG anticipates that the DOJ working group will make its recommendations for implementation later this year.

OIG ANALYSIS OF THE DEPARTMENT'S RESPONSE

The Office of the Inspector General provided a draft of this report to the Department for its comment. The Office of the Deputy Attorney General's (ODAG) response is included in [Appendix 8](#) to this report. The OIG's analysis of the ODAG's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1: Establish in policy or guidance the mission, role, and functions of the Senior Federal Law Enforcement Official, including qualifications, the appropriate components from which to select the official, and how a Senior Federal Law Enforcement Official coordinates with the ESF-13 program during a critical incident response.

Status: Resolved.

ODAG Response: The ODAG concurred with the recommendation and stated that it will convene working group meetings in the near future consisting of representatives from DOJ law enforcement and other appropriate components. The meetings will focus on establishing DOJ-level policy or guidance pertaining to the mission, role, and functions of the Senior Federal Law Enforcement Official and will also focus on training, funding, and staffing requirements as noted in the four recommendations. The ODAG stated that it anticipates that the DOJ working group will make its recommendations for implementation later this year.

OIG Analysis: The ODAG's planned actions are responsive to our recommendation. By May 15, 2020, please provide a status update on the ODAG's efforts to convene a working group to establish policy or guidance pertaining to the mission, role, and functions of the Senior Federal Law Enforcement Official, to include position qualifications, from which components to select the official, and how a Senior Federal Law Enforcement Official coordinates with ESF-13 during a critical incident response.

Recommendation 2: Ensure that the Senior Federal Law Enforcement Official cadre participates in National Level Exercises, when applicable, and ESF-13 Table Top Exercises.

Status: Resolved.

ODAG Response: See the ODAG's response to Recommendation 1 above.

OIG Analysis: The ODAG's planned actions are responsive to our recommendation. By May 15, 2020, please provide a status update on the ODAG's efforts to convene working group meetings pertaining to the Senior Federal Law Enforcement Official cadre's participation in National Level Exercises, when applicable, and ESF-13 Table Top Exercises.

Recommendation 3: Reevaluate ESF-13's funding process and operational requirements to determine appropriate funding mechanisms and cost sharing.

Status: Resolved.

ODAG Response: See the ODAG's response to Recommendation 1 above.

OIG Analysis: The ODAG's planned actions are responsive to our recommendation. By May 15, 2020, please provide a status update on the ODAG's efforts to convene working group meetings pertaining to the reevaluation of ESF-13's funding process and operational requirements to determine appropriate funding mechanisms and cost sharing.

Recommendation 4: Reevaluate ESF-13's staffing to determine appropriate permanent staffing requirements and responsibilities.

Status: Resolved.

ODAG Response: See the ODAG's response to Recommendation 1 above.

OIG Analysis: The ODAG's planned actions are responsive to our recommendation. By May 15, 2020, please provide a status update on the ODAG's efforts to convene working group meetings pertaining to the reevaluation of ESF-13's staffing to determine appropriate permanent staffing requirements and responsibilities.

ATF'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC

www.atf.gov

600010:ADW
8310

January 22, 2020


MEMORANDUM TO: Assistant Inspector General
Evaluation and Inspections

FROM: Assistant Director
(Office of Professional Responsibility and Security Operations)

SUBJECT: OIG Formal Draft Report - Bureau of Alcohol, Tobacco, Firearms and
Explosives' Response to the Review of the Departments of Justice's
Preparedness to Respond to Critical Incidents Under Emergency Support
Function 13 (ESF-13) (A-2018-003)

This memorandum serves to transmit ATF's response to the above-cited report. Attached is a summary of the status of the actions taken relative to the open recommendations.

Should you have any questions or need additional information, please contact the Chief of ATF's Audit Liaison Office, Adam Pallotto at (202) 648-8706.


Celinez Nunez
FOR

Attachment

cc: Director
Assistant Director (Field Operations)
Chief Counsel
Assistant Director, Audit Liaison Group, Justice Management Division
Department of Justice

ATF Response to the OIG's Review of Emergency Support Function 13



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

www.atf.gov

700000:RPM
8310

January 21, 2020

MEMORANDUM TO: Assistant Director
Office of Professional Responsibility and Security Operations

FROM: Assistant Director
Office of Field Operations

SUBJECT: Review of the Department of Justice's Preparedness to Respond to
Critical Incidents Under Emergency Support Function 13 (A-2018-
003)

This memorandum responds to the recommendations contained in the Office of Inspector General's (OIG) report titled "Review of the Department of Justice's Preparedness to Respond to Critical Incidents Under Emergency Support Function 13" (A-2018-003). We welcome OIG's constructive comments and appreciate the opportunity to respond.

Recommendation # 5. Develop methods to improve situational awareness of deploying ESF-13 personnel prior to their arrival at a disaster site.

ATF concurs that providing enhanced situational awareness information to deploying personnel is necessary. In April 2019, prior to the OIG report being issued, ESF #13 added an additional contractor position to provide planning and situational awareness support. The plans/situational awareness officer is primarily responsible for coordinating the planning and situational awareness processes of ESF-13 during steady state and deployment operations. When a national event occurs which could possibly require an ESF-13 activation, a Situational Awareness SPOT Report is now generated and provided to all support agencies for their situational awareness for support and planning purposes. During activations, the plans/situational awareness officer provides situational awareness to internal staff, external partners, and deploying personnel

ATF Response to the OIG's Review of Emergency Support Function 13

through situation reports. In addition, ESF-13 is testing a new process for communication with Quick Response Team (QRT) Team Leaders during the initial stages of their deployment. Once the support agency provides a deployment roster to the ESF-13 Law Enforcement Resources Coordinator (LERC), the support agency and the QRT Team Leader receive a copy of the deployment order. The QRT Team Leader is then contacted telephonically by the Logistics Coordination Center (LCC) who will work directly with the QRT Team Leader until the team arrives in theater and report to the Incident Command Post (ICP) for in-processing and equipment issue (the LCC was established recently to improve logistical coordination during ESF-13 activations). The QRT Team Leader will be provided updated environmental information, travel route information, lodging information, rental car information (if applicable), and updates on the overall law enforcement environment.

Recommendation #6. Ensure that Federal Law Enforcement Officers are provided with legal guidance about how to respond to violations of state or local law when carrying out their ESF-13 mission within a disaster area and identify a point of contact for Federal Law Enforcement Officers to consult for additional legal guidance during deployments.

ATF concurs with the spirit of this recommendation. ATF already provides comprehensive legal guidance to QRTs tasked with Direct Federal Assistance (DFA) missions in a legal authority memorandum, which details the scope of their local arrest authorities. It would be impossible to detail how federal law enforcement officers (FLEOs) apply those authorities given that the use of those authorities will always be fact-specific based on the situation on the ground, and necessarily requires the use of discretion. Any attempt at laying out an application of such authorities could potentially lead to an unintended constraint on the use of such authorities. However, on future deployments involving DFA missions, when possible, ESF #13 will strive to utilize QRTs from support agencies that typically work closely with state and local law enforcement agencies to ensure that ESF #13 has the most experienced personnel responding on DFA missions.

In addition to the legal authority memorandum, ESF #13 and local authorities brief those QRTs on DFA missions regarding their arrest authorities and responsibilities. Moreover, QRTs are partnered with and work alongside local authorities, so if any questions arise based on the facts on the ground, our local partners are there to assist with any questions/procedures per state law. FLEOs are also provided with contact information for local counsel when appropriate, and FLEOs always may reach out directly to their own agency counsel, with whom the ESF #13 attorney closely coordinates. These three legal points of contact – local, agency, and ESF #13 counsel – all provide authoritative, consistent, and accurate legal advice during deployments. The ESF #13 attorney also visits support agencies and provides training regarding authorities during both federal operations support (FOS) and DFA missions.

Following lessons learned from 2017, the legal authority memorandum is now included in the body of the deployment order, rather than as a separate attachment. Additionally, deployment orders are sent directly to QRT Team Leaders rather than just support agency representatives in order to ensure that QRTs received them. Finally, ESF #13 has since added language to the legal authority memorandum and the body of the deployment order which provides the ESF #13

ATF Response to the OIG's Review of Emergency Support Function 13

attorney's full contact information should any questions arise regarding the scope or application of their authorities during the course of their deployment.

Recommendation #7. Develop a comprehensive training program that outlines ESF-13's functions and addresses operational control and misconceptions to assist future ESF-13 team leaders in preparing for and executing ESF-13 missions.

ATF concurs with this recommendation. It has been a challenge providing adequate training to an unknown nationwide pool of FLEOS sourced by outside agencies. Since 2017, ESF #13 has provided comprehensive ESF #13 online training to all support agencies and directed them to provide such training to all FLEOs. In order to better address these concerns, ESF #13 will develop video-based training to provide to QRT Team Leaders with the following pertinent information prior to deployment. This will provide a baseline of the ESF #13 program and mission requirements:

- ESF #13 Program Overview
- QRT Team Leader responsibilities
- Deployment Orders
- Equipment Lists
- Incident Command Post (ICP) (formerly referred to as Field Coordination Center (FCC)), briefings
- FEMA Incident Command Structure
- USMS Deputation
- Missions – FOS and DFA

We are committed to ensuring that ESF #13 support agencies receive the training and fundamental understanding of the required mission and performance requirements. This video-based training will provide a mobile, consistent training experience to ensure that all QRT Team Leaders are receiving the same information to better prepare them prior to deploying for ESF #13 missions.

Please let me know if I can be of further assistance on this or any other matter.



Thomas Chittum

Attachments: None

OIG ANALYSIS OF ATF'S RESPONSE

The Office of the Inspector General provided a draft of this report to ATF for its comment. ATF's response is included in [Appendix 10](#) to this report. The OIG's analysis of ATF's response and the actions necessary to close the recommendations are discussed below.

Recommendation 5: Develop methods to improve situational awareness of deploying ESF-13 personnel prior to their arrival at a disaster site.

Status: Resolved.

ATF Response: ATF concurred with the recommendation. ATF stated that it added a contractor position that is primarily responsible for coordinating ESF-13's planning and situational awareness process during steady state and deployment operations.⁹⁰ ESF-13 is now providing all support agencies with a Situational Awareness SPOT Report when a national event occurs that could possibly require an ESF-13 activation. During activations, the Plans and Situational Awareness Officer provides situational awareness reports to internal staff, external partners, and deploying personnel. In addition, ATF stated that ESF-13 is also testing a new communication process with Quick Response Team (QRT) team leaders during the initial stages of their deployment. ESF-13 staff will provide the QRT team leaders with a copy of the Deployment Orders and will coordinate with the team leaders until their team arrives in the disaster area. The team leaders will be provided updated environmental information, travel route information, lodging information, rental car information (if applicable), and updates on the overall law enforcement environment.

OIG Analysis: ATF's planned actions are responsive to our recommendation. By May 15, 2020, please provide examples of recent Situational Awareness SPOT reports provided to support agencies. Also, please provide an assessment of ESF-13's new communication process and any materials provided to QRT team leaders to improve the situational awareness of deploying ESF-13 personnel prior to their arrival at a disaster site.

Recommendation 6: Ensure that Federal Law Enforcement Officers are provided with legal guidance about how to respond to violations of state or local law when carrying out their ESF-13 mission within a disaster area, and identify a point of contact for Federal Law Enforcement Officers to consult for additional legal guidance during deployments.

Status: Resolved.

ATF Response: ATF concurred with the spirit of the recommendation. ATF stated that it already provides comprehensive legal guidance to QRTs tasked with

⁹⁰ ATF referred to the additional contractor's title as the Plans and Situational Awareness Officer.

Direct Federal Assistance missions in a Legal Authority Memorandum, which details the scope of the QRTs local arrest authorities. ATF also stated that it would be impossible to detail how Federal Law Enforcement Officers (FLEO) apply those authorities given that the use of those authorities will always be fact-specific based on the situation on the ground and necessarily require the use of discretion. Any attempt at laying out an application of such authorities could potentially lead to an unintended constraint on the use of such authorities. However, on future deployments involving Direct Federal Assistance missions, when possible, ESF-13 will strive to utilize QRTs from support agencies that typically work closely with state and local law enforcement agencies to ensure that ESF-13 has the most experienced personnel responding on Direct Federal Assistance missions.

In addition, ESF-13 and local authorities brief those QRTs on Direct Federal Assistance missions regarding their arrest authorities and responsibilities. Moreover, QRTs are partnered with and work alongside local authorities. If any questions arise based on the facts on the ground, ATF's local partners are there to assist with any questions/procedures per state law. FLEOs are also provided with contact information for local counsel, when appropriate, and FLEOs always may reach out directly to their own agency counsel, with whom the ESF-13 counsel closely coordinates. These three legal points of contact—local, agency, and ESF-13 counsel—all provide authoritative, consistent, and accurate legal advice during deployments. Following lessons learned from 2017, the Legal Authority Memorandum is now included in the body of the Deployment Orders, the Deployment Orders are sent directly to QRT team leaders, and ESF-13 provides the ESF-13 counsel's full contact information on the Deployment Orders in case any questions arise regarding the scope or application of the QRTs' authorities during the course of their deployment.

OIG Analysis: ATF's response is partially responsive to our recommendation. However, the response does not address ensuring that FLEOs receive guidance on how to respond to violations of state or local law when carrying out their ESF-13 mission within a disaster area. The OIG does not expect ATF to detail every scenario that a FLEO may encounter on the ground. However, ATF can provide an overview regarding violations of state or local law that FLEOs are more likely to encounter during their deployment. This would be particularly important for FLEOs from support agencies deployed from outside the jurisdiction, and that do not typically work with state and local law enforcement, or FLEOs from support agencies with limited federal arrest authorities. By May 15, 2020, please describe how ATF plans to ensure that FLEOs have the legal guidance discussed above and that they understand how to respond to violations of state or local law within the particular jurisdiction when carrying out their ESF-13 Federal Operational Support or Direct Federal Assistance mission within a disaster area. Also, please provide recent examples of deployment orders that include the ESF-13 counsel's full contact information.

Recommendation 7: Develop a comprehensive training program that outlines ESF-13's functions and addresses operational control and misconceptions to assist future ESF-13 team leaders in preparing for and executing ESF-13 missions.

Status: Resolved.

ATF Response: ATF concurred with the recommendation and stated that ESF-13 will develop video-based training to provide to QRT team leaders with the following pertinent information prior to deployment. This will provide a baseline of the ESF-13 program and mission requirements:

- ESF-13 Program Overview,
- QRT Team Leader Responsibilities,
- Deployment Orders,
- Equipment Lists,
- Incident Command Post (formerly referred to as Field Coordination Center) briefings,
- Federal Emergency Management Agency Incident Command Structure,
- U.S. Marshals Service Deputation, and
- Missions–Federal Operational Support and Direct Federal Assistance.

ATF stated that it is committed to ensuring that ESF-13 support agencies receive the training and fundamental understandings of the required mission and performance requirements. This video-based training will provide a mobile, consistent training experience to ensure that all QRT team leaders are receiving the same information to better prepare them prior to deploying for ESF-13 missions.

OIG Analysis: ATF's planned actions are responsive to our recommendation. By May 15, 2020, please provide a status update on ESF-13's efforts to develop training that outlines ESF-13's functions and addresses operational control and misconceptions to assist future QRT team leaders in preparing for and executing ESF-13 missions. Also, please consider including legal authority guidance training regarding responding to violations of state or local law and examples of situations that FLEOs may encounter on the ground when discussing pertinent baseline information for QRT team leaders.



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Washington, DC 20530 0001

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