



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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March 25, 2011

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BRIEFING MEMORANDUM

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management
FROM: Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff
SUBJECT: Oversight Hearing on “Improving the Nation’s Response to Catastrophic Disasters: How to Minimize Costs and Streamline our Emergency Management Programs”

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Wednesday, March 30, 2011, at 10:00 a.m., in 2253 Rayburn House Office Building to receive testimony from the Federal Emergency Management Agency (FEMA), the U.S. Forest Service, the Nuclear Regulatory Commission (NRC) as well as the American Red Cross and state and local emergency managers.

BACKGROUND

Federal Emergency Management Agency and Disaster Declarations

FEMA is the federal government’s lead agency for preparing for, mitigating against, responding to, and recovering from disasters and emergencies related to all hazards – whether natural or man-made. When state and local resources are overwhelmed and the “disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments,”¹ the Governor of the affected State may request that the President declare a major disaster.

If the President issues a declaration, federal resources are deployed in support of state and local response efforts. FEMA’s primary authority in carrying out these functions stems from the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).²

¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170.

² 42 U.S.C. §§ 5121-5207.

There are two categories of incidents included in the Stafford Act – “major disasters” and “emergencies”. A “major disaster” is defined under the Stafford Act as:

Any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.³

An “emergency” is defined as:

Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.⁴

The key distinction between a major disaster and emergency is that emergencies authorize fewer types of assistance and do not require a state level disaster declaration or a request from a governor. In addition, emergencies are typically less severe events, limited in cost or can be declared to “lessen or avert the threat of a catastrophe.”⁵

In 2010, the President issued 81 major disaster declarations and nine emergency declarations.

Catastrophic Disasters

Generally, a disaster that would be considered “catastrophic” would fall within the definition of a major disaster; however, an ongoing question, especially given the slow response and recovery following Hurricane Katrina in 2005, relates to whether a separate “catastrophic” category for disasters should be added to the Stafford Act. Last Congress, Members of the Committee on Transportation and Infrastructure included provisions in H.R. 3377, the Disaster Response, Recovery, and Mitigation Enhancement Act of 2009, that were intended to streamline the recovery process following a widespread disaster. However, finding the appropriate threshold or “trigger” for a catastrophic disaster and how “catastrophic” is defined for the purposes of federal assistance has remained a point of discussion at Congressional hearings and in the emergency management community.

³ 42 U.S.C. § 5122.

⁴ Id.

⁵ 42 U.S.C. 5122.

In 2006, the Committee passed and Congress enacted the Post Katrina Emergency Management Reform Act⁶, which addressed some of the potential gaps related to catastrophic disasters. Most of these new provisions are related to planning and response, but not recovery. With respect to planning, the Act amended the definition of a “catastrophic incident” as:

Any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area.⁷

This definition provides the scope of planning activities for the Federal Government to prepare for a catastrophic incident. However, there exists a question about whether this definition is too broad to be used as a trigger for extraordinary authority to provide Federal assistance in the aftermath of such an event. In addition, the Post-Katrina Emergency Management Act provided for additional authority for response activities including: “accelerated Federal assistance” which can be provided in the absence of a state request in certain situations during the response to a major disaster or an emergency; expedited payments for debris removal; use of local contractors for federal disaster response contracts; and the rescue, care, and shelter for pets and individuals and households with pets.

Moreover, the Stafford Act itself provides broad authority and discretion to the President and FEMA in managing declared disasters. Many of the impediments to expediting response and recovery following a disaster, however, are often found in regulations and policies that the agency established. For example, in the Disaster Mitigation Act enacted by Congress in 2000, Congress authorized FEMA to implement cost estimating as a mechanism to speed up the rebuilding process following a disaster. However, FEMA has not yet implemented these cost estimating provisions.

Disaster Assistance

FEMA’s major Stafford Act programs for disaster response and recovery in the aftermath of a major disaster are the Public Assistance Program and the Individual Assistance Program. The Public Assistance Program, authorized primarily by sections 403, 406, and 407 of the Stafford Act, reimburses state and local emergency response costs and provides grants to state and local governments, as well as certain private non-profits to rebuild facilities. The Public Assistance Program generally does not provide direct services to citizens.

The Individual Assistance program, also known as the Individuals and Households Program, is primarily authorized by section 408 of the Stafford Act. The program provides assistance to families and individuals impacted by disasters, including housing assistance. Housing assistance includes money for repair, rental assistance, or

⁶ Title VI, Public Law 109-295.

⁷ 6 U.S.C. § 701(4).

“direct assistance”, such as the provision of temporary housing. This section also authorizes the “other needs program”, which provides grants to mostly low-income families for loss of personal property, as well as disaster-related dental, medical, and funeral costs to individuals regardless of income. Other Individual Assistance programs authorized by the Stafford Act include: unemployment assistance (section 410), disaster food stamps (section 412), disaster legal services (section 415), and crisis counseling (section 416).

Section 404 of the Stafford Act authorizes the Hazard Mitigation Grant Program (HMGP). HMGP provides grants to state and local governments to rebuild after a disaster in ways that are cost effective and reduce the risk of future damage, hardship, and loss from all hazards. FEMA also provides grants under HMGP to assist families in reducing the risk to their homes from future disasters, through such steps as elevating the home or purchasing the home to remove it from the floodplain.

Emergency Management Performance Grants

One of the key all-hazards grant programs that provides assistance in the planning for catastrophic disasters is the Emergency Management Performance Grants (EMPG). The events surrounding Hurricanes Katrina and Rita highlighted the critical importance of effective catastrophic all-hazards planning. In order to ensure adequate planning and preparation, state and local jurisdictions engage in comprehensive national and regional planning processes that seek to enhance emergency management and catastrophic capabilities through strengthened national and regional relationships and the allocation of resources toward all-hazards planning, including maintaining current hazard mitigation plans. EMPG assists state and local governments to sustain and enhance all-hazards-emergency management capabilities.

National Level Exercise 2011

FEMA coordinates national level exercises to help improve and prepare federal, state, and local resources for catastrophic disasters. The National Level Exercise 2011 (NLE 2011) is scheduled for May 2011. The purpose of the exercise is to prepare and coordinate a multiple-jurisdictional integrated response to a national catastrophic event.

This year the NLE will simulate the catastrophic nature of a major earthquake in the central United States region of the New Madrid Seismic Zone (NMSZ). The year 2011 is the bicentennial anniversary of the 1811 New Madrid earthquake. NLE 2011 activities will take place at command posts, emergency operation centers and other locations, including federal facilities in the Washington D.C. area and federal, regional, state, tribal, local and private sector facilities in the eight member states of the Central United States Earthquake Consortium (CUSEC). The eight member states of CUSEC encompass four different FEMA regions: Alabama, Kentucky, Mississippi, and Tennessee (FEMA Region IV); Illinois and Indiana (FEMA Region V); Arkansas (FEMA Region VI); and Missouri (FEMA Region VII).

FEMA Independence and the Principal Federal Official

The Post-Katrina Act reconstituted FEMA as a distinct entity, but retained FEMA within the Department of Homeland Security (DHS). Last Congress, Members of the Committee introduced H.R. 1174, the FEMA Independence Act of 2009, which would have made FEMA an independent agency as it was prior to the creation of DHS. While FEMA remains in DHS as a distinct entity, DHS has continued to take actions that blur the lines of authority. The confusion regarding roles and responsibilities was widely criticized as a factor that led to the failed response to Hurricane Katrina. By law, the President, acting through FEMA, is authorized to appoint a Federal Coordinating Officer (FCO) to lead the Federal response to major disasters and emergencies. However, despite the clear reading of the law and funding prohibitions contained in previous Appropriations bills, DHS has continued to attempt to create parallel systems and chains of command, including designating Principal Federal Officials (PFOs) in previous disasters, creating confusion as it relates to the statutory authority of the FCO.

Preparedness and Nuclear Reactors

The United States has 104 commercial nuclear power reactors licensed to operate at 65 sites in 31 states. For each site, there are onsite and offsite emergency plans to assure that adequate protective measures can be taken to protect the public in the event of a radiological emergency. Federal oversight of emergency preparedness for licensed nuclear power plants is shared by the Nuclear Regulatory Commission (NRC) and FEMA. This sharing is facilitated through a Memorandum of Understanding (MOU) that provides for FEMA taking the lead in overseeing offsite planning and response, and NRC assisting FEMA in carrying out this role. The NRC has statutory responsibility for the radiological health and safety of the public by overseeing onsite preparedness and has overall authority for both onsite and offsite emergency preparedness.

Preparedness and Wildfires

The Forest Service, within the Department of Agriculture (USDA), manages over 190 million acres of national forest and grasslands. The State and Private Forestry (S&PF) organization within the USDA Forest Service provides technical and financial assistance to landowners and resource managers to help sustain the Nation's forests and protect communities and the environment from wildfires. It also plays a key role, along with others within the Forest Service and the Department of the Interior, in implementing the *National Fire Plan* to manage the impacts of wildfires. Fire and Aviation Management is an integrated program within the S&PF organization that responds to all phases of wildfire operations.

States are responsible for fire protection of nonfederal lands, except for lands protected by the federal agencies under cooperative agreements. The federal government, primarily through the Forest Service, has wildfire programs to provide assistance to states, local governments, and communities to protect nonfederal lands from wildfire damages. State fire assistance includes financial and technical help for fire prevention and fire control.

FEMA also manages fire assistance grants. For example, Fire Management Assistance grants are available to states, local and tribal governments, for the mitigation, management, and control of fires on publicly or privately owned forests or grasslands, which threaten to cause destruction that would constitute a major disaster. Eligible firefighting costs may include expenses for field camps; equipment use, repair and replacement; tools, materials and supplies; and mobilization and demobilization activities.

Other fire-related FEMA grant programs include Assistance to Firefighters Grant Program (AFGP). This program includes the Assistance to Firefighters Grant (AFG), the Fire Prevention and Safety Grant, and the Staffing for Adequate Fire and Emergency Response (SAFER) Grants. These grants assist in the preparedness and response capabilities of states and local governments in dealing with fire and fire hazards.

WITNESSES

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency

Mr. James Hubbard
Deputy Chief for State and Private Forestry
USDA Forest Service

Mr. Michael Weber
Deputy Executive Director for Operations for Materials,
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U.S. Nuclear Regulatory Commission

Mr. Brendan Murphy
Director, Grants Management
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Mr. Charley Shimanski
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Mr. Gary A. Christmann
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