



U.S. House of Representatives
Committee on Transportation and Infrastructure

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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 “FEMA Reauthorization and Cutting the Red Tape in Recovery”

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Thursday, July 14, 2011, at 10:00 a.m., in 2253 Rayburn House Office Building to receive testimony from the Federal Emergency Management Agency (FEMA) and State and local emergency managers. The purpose of the hearing is to examine the issues of communities recovering from a disaster in the context of FEMA reauthorization.

BACKGROUND

Federal Emergency Management Agency: History and Reauthorization

FEMA was established in 1979 by Executive Order by President Carter following a number of massive disasters in the 1960s and 1970s which resulted in proposals by the National Governors Association and others to streamline and cut the number of agencies States were required to work with following a disaster. Prior to the creation of FEMA, the federal government’s emergency response mechanisms were scattered among many agencies throughout government. The creation of FEMA helped to centralize these authorities and the coordination of the federal government’s response to a disaster. Following more than two decades as an independent agency, The Homeland Security Act of 2002 (P.L. 107-296), which created the Department of Homeland Security (DHS), placed FEMA within DHS, and FEMA’s functions were dispersed among various offices and directorates of DHS.

In 2005, Hurricanes Katrina and Rita devastated the Gulf Coast. Following Hurricanes Katrina and Rita and the poor response that occurred, several investigations

and congressional inquiries and hearings took place to examine the preparation for, response to, and later recovery from these hurricanes. In particular, the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina was formed and culminated in the issuance of a report entitled, "A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina" on February 15, 2006.

Following the issuance of this report, Congress enacted the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (P.L. 109-295), which put FEMA back together again within DHS. PKEMRA, authorized, among other things, FEMA for the first time in legislation.

Other programs requiring reauthorization include the Urban Search and Rescue System and the Emergency Management Assistance Compacts:

Urban Search and Rescue (US&R) System – Currently, there are 28 FEMA US&R Task Forces spread throughout the continental United States that are trained and equipped by FEMA. These teams are comprised of firefighters, engineers, medical professionals, canine/handler teams and emergency managers with special training in urban search-and-rescue, and serve as a national resource for disaster response. The task force is a partnership between state fire departments, law enforcement agencies, federal and local governmental agencies and private companies.

Typically, the teams are trained to conduct physical search and rescue missions in collapsed buildings, provide emergency medical care to trapped victims, assess and control gas, electric service and hazardous materials, and evaluate and stabilize damaged structures. If a disaster event warrants national US&R support, FEMA will deploy the three closest task forces within six hours of notification, and additional teams as necessary. The role of these task forces is to support state and local emergency responders' efforts to locate victims and manage recovery operations.

Emergency Management Assistance Compacts (EMAC) – EMAC is an interstate compact approved by Congress that provides an effective avenue by which states can provide one another mutual aid in the event of a disaster. Through EMAC, a state impacted by a disaster can request and receive assistance from other member states more quickly and efficiently, by addressing concerns with regards to liability and reimbursement.

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.

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

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) (P.L. 93-288).²

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. So far in 2011, the President has issued 48 major disaster declarations and 10 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, is 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

² 42 U.S.C. §§ 5121-5207.

³ 42 U.S.C. § 5122.

⁴ Id.

⁵ 42 U.S.C. § 5122.

H.R. 3377, the Disaster Response, Recovery, and Mitigation Enhancement Act of 2009, to streamline the recovery process following a wide-spread 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.

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 to facilitate better recovery following a disaster. 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 Programs

FEMA’s major Stafford Act programs for disaster response and recovery in the aftermath of a major disaster are in 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-

⁶ Title VI, Public Law 109-295.

⁷ 6 U.S.C. § 701(4).

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 “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.

The Pre-Disaster Mitigation (PDM) program provides funds to states, territories, Indian tribal governments, communities, and universities for hazard mitigation planning and the implementation of mitigation projects prior to a disaster event. Funding these plans and projects reduces overall risks to the population and structures, while also reducing reliance on funding from actual disaster declarations. Congress reauthorized PDM last year in the Pre-Disaster Mitigation Act of 2010 (P.L. 111-351).

Recovery

Depending on the severity of a disaster, states and local communities may only need limited assistance under FEMA’s disaster assistance programs to recover and rebuild. However, in other cases, there may be such devastation that more resources are needed to facilitate recovery efforts. To provide other types of assistance, FEMA partners with other key agencies, including the Departments of Agriculture, Commerce, Homeland Security, Housing and Urban Development and Treasury, as well as the Small Business Administration. These agencies assist in various ways, including aiding with long-term housing needs, economic development, and loans for small businesses impacted by the disaster.

While the mechanisms are in place to assist states and local communities, the Subcommittee has conducted significant oversight and held hearings last Congress detailing, among other topics, the impediments to speeding up recovery following a widespread disaster like Hurricane Katrina and efforts to define catastrophic disaster, as described on pages 3-4. As recovery time is lengthened, costs escalate, jobs are impacted, and local economies continue to suffer. Finding ways to streamline the recovery process – through expedited assistance processes, improved coordination among

the relevant federal agencies, supporting mitigating efforts before a disaster strikes, and ensuring proper planning -- has been a significant issue for the Subcommittee.

WITNESSES

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency

Ms. Phyllis Little
Director
Cullman County Emergency Management Agency
International Association of Emergency Managers

Other Witnesses TBD