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Robert T. Stafford Disaster Relief and Emergency Assistance Act: Legal Requirements for Federal and State Roles in Declarations of an Emergency or a Major Disaster

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Summary

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, 42 U.S.C. §§ 5121-5206, and implementing regulations in 44 C.F.R. §§ 206.31-206.48, provide the statutory framework for a Presidential declaration of an emergency or a declaration of a major disaster. Such declarations open the way for a wide range of federal resources to be made available to assist in dealing with the emergency or major disaster involved. The Stafford Act structure for the declaration process reflects the fact that federal resources under this act supplement state and local resources for disaster relief and recovery. Except in the case of an emergency involving a subject area that is exclusively or preeminently in the federal purview, the Governor of an affected state, or Acting Governor if the Governor is not available, must request such a declaration by the President. This report will review the statutory and regulatory requirements applicable to the affected state seeking the declaration and to the Presidential declaration, and will note the different types of resources that may be made available in the response to the two types of declarations. This report will be updated as needed.

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The Declaration Process

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5121 *et seq.*, is designed to provide a means by which the federal government may supplement state and local resources in major disasters or emergencies where those state and local resources have been or will be overwhelmed. The act provides separate but similar mechanisms for declaration of a major disaster and for declaration of an emergency. Except to the extent that an emergency involves primarily federal interests, both declarations of major disaster and declarations of emergency must be triggered by a request to the President from the Governor of the affected state. The pertinent provisions with respect to such declarations are set forth in Section 401 of the Stafford Act, 42 U.S.C. § 5170, with respect to major disasters declarations and in Section 501 of the Stafford Act, 42 U.S.C. § 5191, with respect to emergency declarations:

§ 5170. Procedure for declaration

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.¹

¹ 44 C.F.R. § 206.36 sets out the requirements to be fulfilled by the Governor or Acting Governor in his or her absence in requesting a Presidential major disaster declaration:

¹ (...continued)

§ 206.36 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Associate Director, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

- (1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and
- (2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.

(c) In addition to the above findings, the complete request shall include:

- (1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;
- (2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;
- (3) Information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster;
- (4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and
- (5) Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act.

(d) For those catastrophes of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send an abbreviated written request through the Regional Director for a declaration of a major disaster. This may be transmitted in the most expeditious manner available. In the event the FEMA Regional Office is severely impacted by the catastrophe, the request may be addressed to the Director of FEMA. The request must indicate a finding in accordance with § 206.36(b), and must include as a minimum the information requested by § 206.36 (c)(1), (c)(3), and (c)(5). Upon receipt of the request, FEMA shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 206.39. The Associate Director shall assure that documentation of the declaration is later assembled to comply fully with these regulations.

According to the Office of the General Counsel of FEMA, the role of the Associate Director is now performed by the Director of the Recovery Division. The position of Associate Director does not currently exist in FEMA. It appears that the present regulatory language does not reflect the current organizational structure. Cf., section on Mission and Organization in Federal Emergency Management Agency, *Annual Performance & Accountability Report for Fiscal Year 2002*, at 9-11 (2003), available at (continued...)

§ 5191. Procedure for declaration

(a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.²

¹ (...continued)

[http://www.fema.gov/pdf/opm/9mis_031103.pdf]. This and other Annual Performance and Accountability Reports are available at [<http://www.fema.gov/ofm/acrept/>].

² 44 C.F.R. § 206.35 sets out the requirements for requests made by the Governor of a State or the Acting Governor in his/her absence for emergency declarations by the President under 42 U.S.C. § 5191:

§ 206.35 Requests for emergency declarations.

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within five days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Associate Director provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

- (1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and
- (2) Requires supplementary Federal emergency assistance to save lives and

(continued...)

When an incident occurs or is imminent which the state official responsible for disaster operations determines may exceed state and local response capabilities, the state will request the FEMA Regional Director to perform a joint FEMA-state preliminary damage assessment (PDA). This provides a means to determine the impact and magnitude of damage and resulting unmet needs of individuals, businesses, the public sector, and the affected community as a whole. Information collected in this way is used by the state as a basis for the Governor's request for a presidential proclamation and by FEMA to document its recommendation to the President in response to the Governor's request. The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine that supplemental federal assistance will be needed, or in other situations determined by the Regional Director in consultation with the State. An assessment may still be needed to determine unmet needs for managerial response purposes.³

Once a request from the Governor of an affected state is received by the FEMA Regional Director whose region covers that state, the Regional Director provides a written acknowledgment of receipt of the request. Based on the joint PDA(s) and

² (...continued)

to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and

(4) Identification of the type and extent of additional Federal aid required.

(d) Modified declaration for Federal emergencies. The requirement for a Governor's request under paragraph (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws of the United States, the Federal government exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the FEMA Regional Director. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Director or transmitted through the Regional Director by another Federal agency. In determining that such an emergency exists, the Associate Director or Regional Director shall consult the Governor of the affected State, if practicable.

(e) Other authorities. It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

As noted above, the Office of General Counsel, FEMA, has indicated that the functions and responsibilities assigned above to the Associate Director are now performed by the Director, Recovery Division. The position of Associate Director does not exist in FEMA at the present time.

³ 44 C.F.R. § 206.33.

consultation with appropriate state and federal officials and other interested parties, the Regional Director then promptly prepares a summary of the PDA findings. An analysis of this information, including an examination of state and local resources and capabilities and other assistance available to meet the needs associated with the emergency or major disaster, is submitted with a recommendation to the Director of the Recovery Division of FEMA.⁴ Based on available information, the Director of FEMA makes a recommendation on the Governor's request to the President. A major disaster recommendation is based upon a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the state and local governments. It also contains a determination of whether or not supplemental federal Stafford Act assistance is necessary and appropriate.⁵ An emergency

⁴ Under the current regulation, this reference is to the Associate Director of FEMA. The regulatory language does not reflect the current organizational structure, in which these functions are performed by the Director of the Recovery Division.

⁵ The factors considered by FEMA is evaluating a Governor's request for a major disaster declaration are set out in 44 C.F.R. § 206.48:

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) Public Assistance Program. We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) Estimated cost of the assistance. We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of \$1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of \$1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) Localized impacts. We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) Insurance coverage in force. We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) Hazard mitigation. To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the

(continued...)

recommendation is based on a report indicating whether or not federal emergency assistance is necessary to supplement state and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. FEMA will only recommend an emergency declaration if it has been determined that all other resources and authorities to meet the crisis are inadequate and that Stafford Act emergency assistance would be appropriate. A modified federal emergency recommendation would be made based on a report as to whether an emergency does or does not exist for which Stafford Act emergency assistance would be appropriate. Such a recommendation would not be forthcoming in situations where the authority to respond or coordinate is within the jurisdiction of one or more federal agencies without a Presidential declaration. A modified federal emergency recommendation by FEMA for an emergency declaration by the President would not be foreclosed by other federal agency involvement if there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act.⁶

⁵ (...continued)

estimated public assistance damages fell below the per capita indicator.

(5) Recent multiple disasters. We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) Programs of other Federal assistance. We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) Factors for the Individual Assistance Program. We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) Concentration of damages. We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) Trauma. We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

(i) Large numbers of injuries and deaths;

(ii) Large scale disruption of normal community functions and services; and

(iii) Emergency needs such as extended or widespread loss of power or water.

(3) Special populations. We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance. We also consider the effect on American Indian and Alaskan Native Tribal populations in the event that there are any unique needs for people in these governmental entities.

(4) Voluntary agency assistance. We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) Insurance. We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) Average amount of individual assistance by State. There is no set threshold for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

⁶ 44 C.F.R. § 206.37.

The President may respond to a Governor's request for a declaration of a major disaster by a declaration of an emergency, a declaration of a major disaster, or a denial of the request. In response to a Governor's request for a declaration of emergency, the President's options are limited to declaration of an emergency or denial of the request.⁷ A denial of a declaration request may be appealed within 30 days of the date of the denial letter, submitted with additional information to the President through the Regional Director.⁸ An extension of the time limit may be sought within the 30 day time frame from the Director of the Recovery Division upon written request citing the reasons for the delay.⁹

Once the decision is made, the FEMA Director or his or her designee must promptly notify the Governor. If the President has declared a major disaster or an emergency, FEMA must also notify other federal agencies and interested parties. Following either type of declaration, the Regional Director or Director of the Recovery Division¹⁰ is to promptly notify the Governor of the designations of assistance and of the areas eligible for such assistance.¹¹ The determinations of the types of assistance to be made available and the areas eligible to receive such assistance are made by the Director of the Recovery Division of FEMA.¹² A denial of the types of assistance or areas eligible to receive assistance may be made in writing within 30 days of the date of the denial letter, accompanied with justification and/or additional information to the Director, Recovery Division, through the Regional Director.¹³ The Director of the Recovery Division may extend the time for filing the appeal upon written request received during the 30 day time frame citing reasons for the delay.¹⁴

Once a declaration of an emergency or a major disaster is made by the President, the Director of FEMA, or, in his absence the Deputy Director or the Director, Recovery Division, must appoint a Federal Coordinating Officer (FCO) who shall immediately initiate action to assure that federal assistance is provided in accordance with the declaration, applicable laws and regulations, and the FEMA-state agreement entered into pursuant to 44 C.F.R. §206.44. The FEMA Regional Director will designate a Disaster Recovery Manager to exercise all of the Regional Director's authority in a major disaster or emergency. Once a declaration is made, the Governor

⁷ 44 C.F.R. § 206.38.

⁸ 44 C.F.R. § 206.46(a).

⁹ 44 C.F.R. § 206.46(d).

¹⁰ Although the current regulations give this authority to the Associate Director of FEMA. At the present time, there is no position of Associate Director of FEMA. This function is performed by the Director of the Recovery Division under the current organizational structure.

¹¹ 44 C.F.R. § 206.39.

¹² 44 C.F.R. § 206.40. As noted above, although this regulation refers to the Associate Director, this authority is vested in the Director of the Recovery Division under the current organizational structure.

¹³ 44 C.F.R. § 206.46(b).

¹⁴ 44 C.F.R. § 206.46(d).

is to designate a State Coordinating Officer to coordinate state and local assistance efforts with federal efforts. The Governor's Authorized Representative designated by the Governor in the FEMA-state agreement is to administer federal disaster assistance programs on behalf of the state and local governments and other grant or loan recipients and is also responsible for state compliance with the FEMA-state agreement.¹⁵ The FCO's responsibilities following a declaration of a major disaster or emergency are to:

(a) ...

- (1) Make an initial appraisal of the types of assistance most urgently needed;
- (2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;
- (3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies, and those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary relief organizations which agree to operate under the FCO's advice and direction;
- (4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and
- (5) Take other action, consistent with the provisions of the Stafford Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The SCO coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan. It is the responsibility of the SCO to ensure that all affected local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive such assistance.

The FCO may activate emergency support teams of federal program and support personnel to be deployed to the affected areas to assist the FCO in carrying out his or her Stafford Act responsibilities.¹⁶

If the Governor so requests, the Director of the Recovery Division of FEMA¹⁷ may lend or advance to the state, either for its own use or for the use of public or private nonprofit applicants for disaster assistance under the Stafford Act, the portion

¹⁵ 44 C.F.R. § 206.41.

¹⁶ 44 C.F.R. § 206.43.

¹⁷ According to the Office of General Counsel, FEMA, the functions assigned to the Associate Director in these regulations are performed by the Director of the Recovery Division. There is no current position of Associate Director in FEMA.

of assistance for which the state or other eligible disaster assistance applicant is responsible under the cost-sharing provisions¹⁸ in any case in which:

- (1) The State or other eligible disaster assistance applicant is unable to assume their financial responsibility under such cost sharing provisions:
 - (i) As a result of concurrent, multiple major disasters in a jurisdiction, or
 - (ii) After incurring extraordinary costs as a result of a particular disaster;

¹⁸ See, 44 C.F.R. § 206.47 regarding cost-share adjustments. The federal share of essential assistance shall not be less than 75% of the eligible costs of such assistance. 42 U.S.C. § 5170b(b), (c)(4). For hazard mitigation under 42 U.S.C. § 5170c(a), the federal share is up to 75% of the cost of hazard mitigation measures the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. For repair, restoration and replacement of damaged facilities under 42 U.S.C. § 5172(b)(1) the federal share is not less than 75 percent, but this amount may be reduced to not less than 25% under § 5172(b)(2) in the case of repair, restoration, reconstruction or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster that has been damaged on more than one occasion in the last 10 years by a similar event and with respect to which the owner has failed to implement appropriate mitigation measures to address the hazard which caused the damage to the facility. For debris removal under 42 U.S.C. § 5173(d), the federal share of assistance is not less than 75 percent of the eligible cost. The federal share for assistance to individuals and households under 42 U.S.C. § 5174 is 100% of eligible costs generally, except that it is 75% for financial assistance for other needs, the non-federal share to be paid from state funds. The maximum financial assistance that an individual or household can receive under this program is \$25,000 with respect to a single disaster, with the limit subject to annual adjustment to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

A simplified procedure under 42 U.S.C. § 5189, may be used if the federal estimate of cost is less than \$35,000, adjusted annually for to reflect changes in the Consumer Price Index, for repairing, restoring, reconstructing or replacing a damaged or destroyed public or private nonprofit facility under 42 U.S.C. § 5172; emergency assistance under §§ 5170b or 5192, or debris removal under § 5173. Under this provision, the President, upon application by the state, local government, or owner or operator of the private nonprofit facility, may make the federal contribution based on the federal cost estimate.

Under 42 U.S.C. § 5184, Community disaster loans to local governments suffering a substantial loss of tax and other revenues due to a major disaster which have demonstrated a need for financial assistance to perform its governmental functions shall not exceed 25% of the annual operating budget of the local government for the fiscal year in which the major disaster occurred, up to a maximum of \$5,000,000.

Federal emergency assistance under 42 U.S.C. § 5192 is to be not less than 75 % of eligible costs, up to a limit of \$5,000,000 per emergency. The latter limit may be exceeded if the president determines that continued emergency assistance is immediately required, there is a continuing and immediate risk to lives, property, public health, and safety, and necessary assistance will not otherwise be provided on a timely basis. 42 U.S.C. § 5193. When that limitation is exceeded, the President must report to Congress on the nature and extent of emergency assistance requirements and is to propose additional legislation if necessary. *Id.*

Also, as noted above, the regulation, which refers to the Associate Director rather than the Director of the Recovery Division, does not reflect the current organizational structure in FEMA.

- (2) The damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the State or other eligible disaster assistance applicant to immediately assume their financial responsibility under the Act; and
- (3) The State and the other eligible disaster applicants are not delinquent in payment of any debts to FEMA incurred as a result of Presidentially declared major disasters or emergencies.

Such loans must be repaid to the United States with interest, and the Governor must include a repayment schedule as part of the request for the advance.¹⁹ Denial of a Governor's request for an advance of a non-federal share may be appealed in writing within 30 days of the date of the denial letter accompanied by justification and/or additional information sent to the Director of the Recovery Division through the Regional Director.²⁰ The Director of the Recovery Division may extend the time for filing upon written request filed with reasons for the delay within the original 30 day time period.²¹

Types of Disaster Assistance Available under Major Disaster Declarations

Eligibility for disaster assistance begins on the date of the occurrence of the event which results in a declaration a major disaster exists, except that reasonable expenses incurred in anticipation of and immediately preceding the event may also be eligible for federal assistance.²² A major disaster declaration by the President opens the door to two types of federal disaster assistance: general federal assistance under Section 402(a) of the Stafford Act, 42 U.S.C. § 5170a, and essential federal assistance under Section 403 of the Stafford Act, 42 U.S.C. § 5170b. These provide:

§ 5170a. General Federal assistance

In any major disaster, the President may —

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for —
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks and hazards;
 - (C) public health and safety information, including dissemination of such information;

¹⁹ 42 U.S.C. § 5162, 44 C.F.R. § 206.45.

²⁰ 44 C.F.R. § 206.46(c).

²¹ 44 C.F.R. § 206.46(d).

²² 42 U.S.C. § 5189b.

- (D) provision of health and safety measures; and
- (E) management, control, and reduction of immediate threats to public health and safety; and
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

§ 5170b. Essential assistance

(a) In general

Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

(2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including —

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines

Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

(6) Definitions

For purposes of this section —

(A) Department of Defense

The term “Department of Defense” has the meaning the term “department” has under section 101 of Title 10.

(B) Emergency work

The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.²³

²³ The regulations pertinent to this section in 44 C.F.R. § 206.34 provide:

(a) General. During the immediate aftermath of an incident which may ultimately qualify for a Presidential declaration of a major disaster or emergency, when threats to life and property are present which cannot be effectively dealt with by the State or local governments, the Associate Director may direct DOD to utilize DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) Request process. The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Associate Director through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

(1) Information describing the types and amount of DOD emergency assistance

(continued...)

²³ (...continued)

being requested;

(2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;

(4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and

(5) An agreement:

(i) To provide all lands, easements and rights-of-way necessary to accomplish the approved work without cost to the United States;

(ii) To hold and save the United States free from damages due to the requested work, and to indemnify the Federal government against any claims arising from such work; and

(iii) To assist DOD in all support and local jurisdictional matters.

(c) Processing the request. Upon receipt of the request, the Regional Director shall gather adequate information to support a recommendation and forward it to the Associate Director. If the Associate Director determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) Implementation of assistance. The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) Limits. Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Associate Director.

(f) Federal share. The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) Project management. DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Director and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Director upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) Reimbursement of DOD. Reimbursement will be made in accordance with § 206.8 of these regulations.

The references in this regulation to the Associate Director do not accurately reflect the current organizational structure, in which the Director of the Recovery Division performs these functions.

Types of Emergency Assistance Made Available by a Declaration of Emergency

The declaration of an emergency by the President makes federal emergency assistance available. The pertinent statutory provision, Section 502 of the Stafford Act, 42 U.S.C. § 5192, states:

§ 5192. Federal emergency assistance

(a) Specified

In any emergency, the President may —

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for —
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks or hazards;
 - (C) public health and safety information, including dissemination of such information;
 - (D) provision of health and safety measures; and
 - (E) management, control, and reduction of immediate threats to public health and safety;
- (4) provide emergency assistance through Federal agencies;
- (5) remove debris in accordance with the terms and conditions of section 5173 of this title;
- (6) provide assistance in accordance with section 5174 of this title; and
- (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

(b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

The Stafford Act includes specific provisions dealing with hazard mitigation, 42 U.S.C. § 5170c; repair, reconstruction, restoration, or replacement of United States facilities, 42 U.S.C. § 5171; repair, reconstruction, restoration, or replacement of damaged state, local, or private nonprofit facilities, 42 U.S.C. § 5172; debris removal, 42 U.S.C. § 5173; federal assistance to individuals and households, 42 U.S.C. § 5174; unemployment assistance, 42 U.S.C. § 5177; emergency grants to assist low-income migrant and seasonal farmworkers, 42 U.S.C. § 5177a; food coupons and distribution, 42 U.S.C. § 5179; food commodities, 42 U.S.C. § 5180; relocation assistance, 42 U.S.C. § 5181; legal services, 42 U.S.C. § 5182; crisis counseling assistance and training, 42 U.S.C. § 5183; community disaster loans, 42

U.S.C. § 5184;²⁴ emergency communications, 42 U.S.C. § 5185; emergency public transportation, 42 U.S.C. § 5186; fire management assistance, 42 U.S.C. § 5187; and timber sharing contracts, 42 U.S.C. § 5188. Each of these statutory provisions specifies the circumstances to which it applies.

The Stafford Act provides for appeals of assistance decisions within 60 days after the date on which the applicant for assistance is notified of the award or denial of award of the assistance. A decision on an appeal is to be made within 90 days of the date the official designated to administer such appeals received notice of the appeal.²⁵

²⁴ *Cf.*, Community Disaster Loan Act of 2005, P.L. 109-88 (October 7, 2005).

²⁵ 42 U.S.C. § 5189a.

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