



Federal Emergency Management Agency

Washington, D.C. 20472

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July 19, 1993

MEMORANDUM FOR: William F.W. Jones
 Deputy Associate Director
 National Preparedness Directorate

FROM: H. Joseph Flynn *H. Joseph Flynn*
 Associate General Counsel for Program Law

SUBJECT: Use of Stafford Act Authorities in National Security Emergencies

You have requested a legal opinion on the use of Stafford Act authorities in a national security emergency. In your memorandum of May 28, 1993, you asked this office to review the guidance contained in a memorandum of October 4, 1988, from George W. Watson, Acting General Counsel, to Homer V. Hervey, Assistant Associate, Director, Office of Operations, National Preparedness Directorate in light of the subsequent enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act of 1988, as amended, 42 U.S.C. §§ 5121-5201.

The key points in Mr. Watson's memorandum were:

1. The definitions of "emergency" and "major disaster" in the Disaster Relief Act of 1974, as amended, 42 U.S.C. § 5121, et seq., were sufficiently broad that they could be said to include any catastrophic situation, whether or not it was a natural occurrence; and
2. One should not assume that the Disaster Relief Act provided the President with adequate authorities for use in a broad spectrum of national security emergencies.

DEFINITIONS OF "EMERGENCY" AND "MAJOR DISASTER"

In one respect, the passage of the Stafford Act does change the conclusions of the memorandum of October 4, 1988. The definitions of "emergency" and "major disaster" have been changed.

Under section 102(1) of the Stafford Act (42 U.S.C. 5122(1)), an emergency is:

[A]ny occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and

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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.

Under section 102(2) of the Stafford Act (42 U.S.C. § 5122(2)), A "major disaster" is:

[A]ny 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 Act 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.

Under the present definitions, a man-made condition may qualify as a major disaster only if fire, flood, or explosion causes the damage which exceeds the capacity of State and local governments to respond. 42 U.S.C. § 5122(2). The source of the damage or threatened damage does not enter at all into the determination of whether an event qualifies as an emergency under the Stafford Act. 42 U.S.C. § 5122(1).

STAFFORD ACT AND NATIONAL SECURITY EMERGENCIES

Since enactment of the Stafford Act, it is still the case that there might be national security emergencies to which the disaster relief authorities or emergency assistance do not apply. Section 101(a) of Executive Order 12656 of November 18, 1988, "Assignment of Emergency Preparedness Responsibilities," 3 C.F.R., 1988 Comp., p. 585, defines a national security emergency as "any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States." There is no necessary connection between the E.O. 12656 definition of national security emergency and the Stafford Act definitions of emergency and major disaster. Neither are they mutually exclusive.

A Presidential declaration of a major disaster or an emergency under the Stafford Act triggers the authorities of Title IV or V of that Act. If it happens that the situation also qualifies as a national security emergency, that circumstance neither strengthens nor weakens the authority of the President or his or her designees under the Stafford Act. Stafford Act authorities may be used in a national security emergency only if the situation qualifies as both a national security emergency under E. O. 12656 and a major disaster or emergency under the Stafford Act.



If you have any questions or comments, please call me on 646-4102.
I am available to meet with you or your staff as necessary.

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