



Federal Emergency Management Agency

Washington, D.C. 20472

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JUL - 6 1992

MEMORANDUM FOR: Russell F. Miller
Inspector General

FROM: *Handwritten signature of Patricia M. Gormley*
Patricia M. Gormley
General Counsel

SUBJECT: Draft Inspector General's Report: Federal
Response Planning and Coordination

The Office of General Counsel (OGC) has reviewed the draft report, "Federal Response Planning and Coordination" and I have identified the following legal issues:

1. On page X-2, the draft report identifies two issues about which further clarification is needed. Three others are supported by the text of the report and could be added for completeness:
 - a. The use or application of the Federal Response Plan (for Public Law 93-288, as Amended) (FRP) when there has been no Presidential declaration of an emergency or major disaster but it appears likely that there will be a declaration;
 - b. The use or application of the FRP when there has been no Presidential declaration of an emergency or major disaster and it appears likely that there will not be a declaration;
 - c. The integration of other (non-Stafford Act) authorities of the Federal Emergency Management Agency (FEMA) into the execution of the FRP.
2. On page 6 of the draft report, in the context of the Exxon Valdez oil spill, there is a reference to "incorrect perceptions regarding FEMA's role in emergencies 'outside' traditional Stafford Act coverage, i.e., natural disasters." This observation, with qualifications, more precisely pertains to FEMA's administrative interpretation of the Disaster Relief Act of 1974, Public Law 93-288, 88 Stat. 143, for the following reasons:
 - a. Both the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C.

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§§ 5121-5201 (the Stafford Act) and the act it amended, the Disaster Relief Act of 1974, distinguish between "emergency" and "major disaster." See the attached statutory definitions.

- b. In the Stafford Act, the definition of "major disaster" includes any natural catastrophe, "or, regardless of cause, any fire, flood, or explosion." 42 U.S.C. § 5122(2).
 - c. In the Disaster Relief Act of 1974, the definition of "major disaster" included enumerated natural catastrophes, fire, flood, explosion, "or other catastrophe." PL 93-288, § 102(2).
 - d. In the Stafford Act, "emergency" is defined primarily in terms of the scope of the damage, rather than the cause, which may be "any occasion or instance." 42 U.S.C. § 5122(1).
 - e. In the Disaster Relief Act of 1974, the definition of "emergency," like that of "major disaster," included natural catastrophe, fire, flood explosion, "or other catastrophe." PL 93-288, § 102(1).
 - f. "Catastrophe" is not defined in either act, but clearly encompasses both "emergency" and "major disaster."
 - g. The definitions of both "emergency and "major disaster," in both the Disaster Relief Act of 1974 and the Stafford Act, include some "non-natural" events.
 - h. After the Mariel Boatlift in 1980 and before enactment of the Stafford Act, FEMA administratively limited the interpretation of "emergency" to natural catastrophes.
3. Beginning on page 4 of the draft report, there are several references to NSEC (National System for Emergency Coordination) and NECS (National Emergency Coordination Structure) where the acronyms have been transposed. In addition, I recommend that the report explain the distinction between the National System for Emergency Coordination and the National Emergency Coordination Structure.

Attachments: Text of Statutory Definitions of "Emergency" and "Major Disaster"

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STATUTORY DEFINITIONS OF "EMERGENCY"

DISASTER RELIEF ACT OF 1974

(1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven rain, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, flood, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

Section 102(1), PL 93-288.

[Later Amended by the Stafford Act. See 42 U.S.C. § 5122(1).]

STAFFORD ACT

(1) "Emergency" means 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 protect property and public health and safety, or to avert or lessen the threat of a catastrophe in any part of the United States.

42 U.S.C. § 5122(1).

[Section 102(1) of PL 93-288, as amended.]



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STATUTORY DEFINITIONS OF "MAJOR DISASTER"

DISASTER RELIEF ACT OF 1974

(2) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven rain, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, flood, explosion, or other catastrophe 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, above and beyond emergency services by the Federal Government, 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.

Section 102(2), PL 93-288.

[Later amended by the Stafford Act. See 42 U.S.C. § 5122(2).]

STAFFORD ACT

(2) "Major disaster" means any natural catastrophe (including hurricane, tornado, storm, flood, high water, wind-driven rain, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, 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.

42 U.S.C. § 5122(2)

[Section 102(2) of PL 93-288, as amended.]

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