



Federal Emergency Management Agency

Washington, D.C. 20472

OCT 28 1992

MEMORANDUM FOR: Peter F. Dabrowski, Colonel U.S. Army
Chief, Military Support Liaison Office

FROM: *Patricia M. Gormley*
Patricia M. Gormley
General Counsel

SUBJECT: Review of DoD Reimbursement Rates

This is in response to your memorandum of June 23, 1992 requesting that I review DoD's reimbursement rates for services performed to determine if it is legally possible for FEMA to be charged at DoD rates for military support requested in response to a presidentially declared disaster. I believe that the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"), 42 U.S.C. § 5121, et seq., gives FEMA the authority to request that DoD perform services, at DoD in house rates, in response to a Presidentially declared disaster. I recommend that FEMA add an appropriate clause to the FEMA/DoD MOU which is currently under revision.

LEGAL ANALYSIS

The Stafford Act and its implementing regulations authorize the President and FEMA to direct DoD's activities without reimbursement. Reimbursement is permissible but not required:

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.

§ 5170(a)(1) (emphasis added). Similarly, § 5192(a)(1) of the Stafford Act authorizes the President to direct any Federal agency, with or without reimbursement, to support the assistance efforts in a presidentially declared emergency.

Moreover, FEMA's regulations implementing the Stafford Act state that in any declared major disaster or emergency, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and resources granted to it under Federal law to support assistance efforts. 44 C.F.R. § 206.5(a), (b). The regulations further state that this assistance may be provided "with or without compensation as considered appropriate by the Associate Director or Regional

Director." 44 C.F.R. § 206.8(a) (emphasis added).

As the Stafford Act and the implementing regulations permit the President or FEMA to direct DoD to use its resources to support FEMA assistance efforts without any reimbursement, such assistance efforts could be directed at rates consistent with rates that DoD would charge itself. I would recommend that the FEMA/DoD MOU state that DoD will charge FEMA the same rate that it would charge DoD entities and organizations for future mission assignments wherein DoD provides assistance to FEMA.

If I can be of further assistance, please let me know.

cc: Grant C. Peterson
Associate Director
State and Local Programs
And Support