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Natural Disasters and the Law

March 23, 2021

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Natural Disasters and the Law

March 23, 24, and 25, 2021

Agenda

Tuesday, March 23, 2021- 4-5 p.m.

Impacts of Disasters at the Community Level

Speaker:

Tracy Figueroa, Esq.
Texas RioGrande Legal Aid

Wednesday, March 24, 2021 4-5 p.m.

The State's Role in Mitigating and Responding to Natural Disasters

Speaker:

Will Polk, Esq.
North Carolina's Department of Public Safety

Thursday, March 25, 2021 - 4-5 p.m.

The Current and Future State of Disaster Policies in the United States

Speaker:

Professor Dan Farber, Esq.
University of California-Berkley

Natural Disasters and the Law

March 23, 24, and 25, 2021

SPEAKER BIOGRAPHIES

TRACY FIGUEROA obtained her law degree from Washington University School of Law in St. Louis and served as a law clerk to Judge Hayden W. Head, Jr. of the U.S. District Court for the Southern District of Texas, Corpus Christi Division. She joined Texas RioGrande Legal Aid (TRLA) in 2002, and her primary practice areas have included Family Law, Wills and Estates, and Disaster Benefits, with an emphasis on administrative matters and litigation against the Federal Emergency Management Agency. In January 2021, she was named TRLA's Director of Pro Bono and Private Attorney Involvement. For over 18 years, she was the managing attorney in charge of TRLA's Disaster Assistance practice, and during that time coordinated TRLA's response to more than 15 federally declared natural disasters. This included organizing disaster-related outreach and community education efforts; developing intake protocols specific to disaster scenarios; providing training to legal aid staff and pro bono attorneys on issues related to disaster; recruiting and mentoring pro bono attorneys; engaging with local, state and national partners; and administering related grants. Because of her work on behalf of disaster survivors, she received an Impact Award from the Poverty Law Section of the State Bar of Texas in 2018 and a Resolution from the State Bar of Texas in 2019. She has been a member of the American Bar Association's Standing Committee on Disaster Response and Preparedness since 2018.

WILLIAM (WILL) POLK serves as Deputy General Counsel in the NC Department of Public Safety (NCDPS) and serves as in-house counsel for the Division of Emergency Management. Mr. Polk has served as a chair of the Legal Counsel Committee for the National Emergency Management Association and was a member of the Legal Services Corporation, Disaster Task Force.

Prior to his duties in NCDPS, Mr. Polk served as Deputy General Counsel in the Office of the Governor. Polk has also served as General Counsel in the Office of the Lt. Governor, and as Director of the Victims and Citizens Services Section of the Attorney General's Office. He started his career in state government as a public safety policy analyst for the Office of the Governor. He also was a chair of the workplace violence committee of the N.C. Council for Women/Domestic Violence Commission. He served as the Attorney General's designee to the N.C. Council for Women/Domestic Violence Commission. He was recognized for his legislative efforts, by being awarded the Legislative Advocacy award by the North Carolina Coalition against Domestic Violence.

Mr. Polk is a native of Harrisburg, N.C., and received a BA in Political Science/Criminal Justice Concentration from North Carolina State University in 1996, and his J.D. from N.C. Central University School of Law, in 1999. He is admitted to the N.C. Bar and U.S. District Court for the Eastern District of North Carolina

DAN FARBER is the Sho Sato Professor of Law at the University of California, Berkeley. He is also the Faculty Director of the Center for Law, Energy, and the Environment. Professor Farber serves on the editorial board of Foundation Press. He is a member of the American Academy of Arts and Sciences and a Life Member of the American Law Institute. He is the editor of *Issues in Legal Scholarship*.

Professor Farber is a graduate of the University of Illinois, where he earned his B.A., M.A., and J.D. degrees. He graduated, *summa cum laude*, from the College of Law, where he was the class valedictorian and served as Editor-in-Chief of the *University of Illinois Law Review*. After graduation from law school, he was a law clerk for Judge Philip W. Tone of the United States Court of Appeals for the Seventh Circuit and then for Justice John Paul Stevens of the Supreme Court of the United States. Professor Farber practiced law with Sidley & Austin, where he primarily worked on energy issues, before joining the University of Illinois College of Law faculty in 1978. He was a member of the University of Minnesota Law School faculty from 1981 to 2002, where he was the McKnight Presidential Professor of Public Law. He also has been a Visiting Professor at the Stanford Law School, Harvard Law School, and the University of Chicago Law School.

Among Professor Farber's eighteen books are *RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW* (Elgar 2010) (with A. O'Connell); *JUDGMENT CALLS: POLITICS AND PRINCIPLE IN CONSTITUTIONAL LAW* (Oxford University Press 2008) (with S. Sherry); *RETAINED BY THE PEOPLE: THE "SILENT" NINTH AMENDMENT AND THE RIGHTS AMERICANS DON'T KNOW THEY HAVE* (Basic Books 2007); and *LINCOLN'S CONSTITUTION* (University of Chicago Press 2003).

Impacts of Disasters at the Community Level

Speaker:

Tracy Figueroa, Esq.
Texas RioGrande Legal Aid

March 23, 2021

Stafford Act, *as Amended*, and Related Authorities

Homeland Security Act, *as amended* (Emergency Management-related Provisions)

FEMA P-592, May 2019



FEMA

Robert T. Stafford Disaster Relief and Emergency Assistance Act,
Public Law 93-288, as amended,
42 U.S.C. 5121 et seq., and Related Authorities

United States Code, Title 42. The Public Health and Welfare, Chapter 68. Disaster Relief

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Title I – Findings, Declarations and Definitions

Sec. 101. Congressional Findings and Declarations (42 U.S.C. 5121)

- (a) The Congress hereby finds and declares that -
- (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and
 - (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.
- (b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by -
- (1) revising and broadening the scope of existing disaster relief programs;
 - (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;
 - (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
 - (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
 - (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
 - (6) providing Federal assistance programs for both public and private losses sustained in disasters[.]

Sec. 102. Definitions (42 U.S.C. 5122)

As used in this Act -

- (1) **EMERGENCY** - “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 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.
- (2) **MAJOR DISASTER** - “Major disaster” means 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 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.
- (3) “UNITED STATES” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
 - (4) “STATE” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
 - (5) “GOVERNOR” means the chief executive of any State.
 - (6) INDIAN TRIBAL GOVERNMENT - The term “Indian tribal government” means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).
 - (7) INDIVIDUAL WITH A DISABILITY - The term “individual with a disability” means an individual with a disability as defined in [Section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))].
 - (8) LOCAL GOVERNMENT - The term “local government” means –
 - (A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;
 - (B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government as defined in paragraph (6); and
 - (C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.
 - (9) “FEDERAL AGENCY” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.
 - (10) PUBLIC FACILITY - “Public facility” means the following facilities owned by a State or local government:
 - (A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

- (B) Any non-Federal-aid street, road, or highway.
 - (C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.
 - (D) Any park.
- (11) PRIVATE NONPROFIT FACILITY -
- (A) IN GENERAL - The term “private nonprofit facility” means private nonprofit educational (without regard to the religious character of the facility), center-based childcare,* utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.
 - (B) ADDITIONAL FACILITIES – In addition to the facilities described in subparagraph (A), the term “private nonprofit facility” includes any private nonprofit facility that provides essential social services to the general public (including museums, zoos, performing arts facilities, community arts centers, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, food banks, broadcasting facilities, houses of worship, and facilities that provide health and safety services of a governmental nature), as defined by the President. No house of worship may be excluded from this definition because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.
- (12) CHIEF EXECUTIVE - The term “Chief Executive” means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

Sec. 103. References (42 U.S.C. 5123)

Except as otherwise specifically provided, any reference in this chapter to “State and local”, “State or local”, “State, and local”, “State, or local”, or “State, local” (including plurals) with respect to governments or officials and any reference to a “local government” in sections 5172(d)(3) and 5184 of this title [Section 406(d)(3) and Section 417] is deemed to refer also to Indian tribal governments and officials, as appropriate.

* The addition of “center-based childcare” to the definition has an effective date of Oct. 5, 2018.

Title II -- Disaster Preparedness and Mitigation Assistance

Sec. 201. Federal and State Disaster Preparedness Programs (42 U.S.C. 5131)

- (a) UTILIZATION OF SERVICES OF OTHER AGENCIES - The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes -
- (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;
 - (2) training and exercises;
 - (3) postdisaster critiques and evaluations;
 - (4) annual review of programs;
 - (5) coordination of Federal, State, and local preparedness programs;
 - (6) application of science and technology;
 - (7) research.
- (b) TECHNICAL ASSISTANCE FOR THE DEVELOPMENT OF PLANS AND PROGRAMS - The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damages or destroyed public and private facilities.
- (c) GRANTS TO STATES FOR DEVELOPMENT OF PLANS AND PROGRAMS - Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—
- (1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and
 - (2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.
- (d) GRANTS FOR IMPROVEMENT, MAINTENANCE, AND UPDATING OF STATE PLANS - The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State.

Sec. 202. Disaster Warnings (42 U.S.C. 5132)

- (a) **READINESS OF FEDERAL AGENCIES TO ISSUE WARNINGS TO STATE AND LOCAL OFFICIALS** - The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.
- (b) **TECHNICAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS FOR EFFECTIVE WARNINGS** - The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.
- (c) **WARNINGS TO GOVERNMENTAL AUTHORITIES AND PUBLIC ENDANGERED BY DISASTER** - The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title [Section 611(c)] or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.
- (d) **AGREEMENTS WITH COMMERCIAL COMMUNICATIONS SYSTEMS FOR USE OF FACILITIES** - The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

Sec. 203. Predisaster Hazard Mitigation (42 U.S.C. 5133)

- (a) **DEFINITION OF SMALL IMPOVERISHED COMMUNITY** - In this section, the term “small impoverished community” means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.
- (b) **ESTABLISHMENT OF PROGRAM** - The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.
- (c) **APPROVAL BY PRESIDENT** - If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Public Infrastructure Predisaster Mitigation Fund established under subsection (i) of this section (referred to in this section as the “Fund”), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e) of this section.
- (d) **STATE RECOMMENDATIONS** -
 - (1) **IN GENERAL** -
 - (A) **RECOMMENDATIONS** - The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

- (B) DEADLINE FOR SUBMISSION - The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.
 - (C) CRITERIA - In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g) of this section.
- (2) USE -
- (A) IN GENERAL - Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.
 - (B) EXTRAORDINARY CIRCUMSTANCES - In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.
- (3) EFFECT OF FAILURE TO NOMINATE - If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g) of this section, any local governments of the State to receive assistance under this section.
- (e) USES OF TECHNICAL AND FINANCIAL ASSISTANCE -
- (1) IN GENERAL - Technical and financial assistance provided under this section—
 - (A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and
 - (B) may be used -
 - (i) to support effective public-private natural disaster hazard mitigation partnerships;
 - (ii) to improve the assessment of a community's vulnerability to natural hazards;
 - (iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community; or
 - (iv) to establish and carry out enforcement activities and implement the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters.
 - (2) DISSEMINATION - A State or local government may use not more than 10 percent

of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

(f) ALLOCATION OF FUNDS -

(1) IN GENERAL - The President shall award financial assistance under this section on a competitive basis for mitigation activities that are cost effective and in accordance with the criteria in subsection (g).

(2) MINIMUM AND MAXIMUM AMOUNTS - In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year -

(A) is not less than the lesser or -

(i) \$575,000; or

(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.

(3) REDISTRIBUTION OF UNOBLIGATED AMOUNTS - The President may—

(A) withdraw amounts of financial assistance made available to a State (including amounts made available to local governments of a State) under this subsection that remain unobligated by the end of the third fiscal year after the fiscal year for which the amounts were allocated; and

(B) in the fiscal year following a fiscal year in which amounts were withdrawn under subparagraph (A), add the amounts to any other amounts available to be awarded on a competitive basis pursuant to paragraph (1).

(g) CRITERIA FOR ASSISTANCE AWARDS - In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall provide financial assistance only in States that have received a major disaster declaration in the previous 7 years, or to any Indian tribal government located partially or entirely within the boundaries of such States, and take into account -

(1) the extent and nature of the hazards to be mitigated;

(2) the degree of commitment by the State or local government to reduce damages from future natural disasters;

(3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;

(4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;

(5) the extent to which the technical and financial assistance is consistent with other

- assistance provided under this Act;
- (6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;
 - (7) if the State or local government has submitted a mitigation plan under section 5165 of this title [Section 322], the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;
 - (8) the opportunity to fund activities that maximize net benefits to society;
 - (9) the extent to which assistance will fund mitigation activities in small impoverished communities;
 - (10) the extent to which the State, local, Indian tribal, or territorial government has facilitated the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards, including amendments made by State, local, Indian tribal, or territorial governments during the adoption process that incorporate the latest hazard-resistant designs and establish criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;
 - (11) the extent to which the assistance will fund activities that increase the level of resiliency; and
 - (12) such other criteria as the President establishes in consultation with State and local governments.
- (h) FEDERAL SHARE -
- (1) IN GENERAL - Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.
 - (2) SMALL IMPOVERISHED COMMUNITIES - Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.
- (i) NATIONAL PUBLIC INFRASTRUCTURE PREDISASTER MITIGATION ASSISTANCE -
- (1) IN GENERAL - The President may set aside from the Disaster Relief Fund, with respect to each major disaster, an amount equal to 6 percent of the estimated aggregate amount of the grants to be made pursuant to sections 403, 406, 407, 408, 410, 416, and 428 for the major disaster in order to provide technical and financial assistance under this section and such set aside shall be deemed to be related to activities carried out pursuant to major disasters under this Act.
 - (2) ESTIMATED AGGREGATE AMOUNT—Not later than 180 days after each major disaster declaration pursuant to this Act, the estimated aggregate amount of grants for purposes of paragraph (1) shall be determined by the President and such estimated amount need not be reduced, increased, or changed due to variations in estimates.
 - (3) NO REDUCTION IN AMOUNTS—The amount set aside pursuant to paragraph (1) shall not reduce the amounts otherwise made available for sections 403, 404, 406, 407,

408, 410, 416, and 428 under this Act.

(j) MULTHAZARD ADVISORY MAPS -

- (1) DEFINITION OF MULTHAZARD ADVISORY MAP - In this subsection, the term “multihazard advisory map” means a map on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.
- (2) DEVELOPMENT OF MAPS - In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).
- (3) USE OF TECHNOLOGY - In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.
- (4) USE OF MAPS -
 - (A) ADVISORY NATURE - The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.
 - (B) AVAILABILITY OF MAPS - The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of -
 - (i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);
 - (ii) supporting the activities described in subsection (e) of this section; and
 - (iii) other public uses.

(k) [*Expired*]

(l) PROHIBITION ON EARMARKS -

- (1) DEFINITION - In this subsection, the term “congressionally directed spending” means a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.
- (2) PROHIBITION - None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.
- (3) CERTIFICATION TO CONGRESS - The Administrator of [FEMA] shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.

- (m) LATEST PUBLISHED EDITIONS.—For purposes of subsections (e)(1)(B)(iv) and (g)(10), the term “latest published editions” means, with respect to relevant consensus-based codes, specifications, and standards, the 2 most recently published editions.*

Sec. 204. Interagency Task Force (42 U.S.C. 5134)

- (a) IN GENERAL - The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.
- (b) CHAIRPERSON - The Administrator of [FEMA] shall serve as the chairperson of the task force.
- (c) MEMBERSHIP - The membership of the task force shall include representatives of
- (1) relevant Federal agencies;
 - (2) State and local government organizations (including Indian tribes); and
 - (3) the American Red Cross.

* The authority in subsection (m) expires on Oct. 5, 2023.

Title III – Major Disaster and Emergency Assistance Administration

Sec. 301. Waiver of Administrative Conditions (42 U.S.C. 5141)

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

Sec. 302. Coordinating Officers (42 U.S.C. 5143)

- (a) **APPOINTMENT OF FEDERAL COORDINATING OFFICER** - Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.
- (b) **FUNCTIONS OF FEDERAL COORDINATING OFFICER** - In order to effectuate the purposes of this Act, the Federal coordinating officer, within the affected area, shall—
 - (1) make an initial appraisal of the types of relief most urgently needed;
 - (2) establish such field offices as he deems necessary and as are authorized by the President;
 - (3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this Act shall limit or in any way affect the responsibilities of the American National Red Cross under chapter 3001 of title 36; and
 - (4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.
- (c) **STATE COORDINATING OFFICER** - When the President determines assistance under this Act is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.
- (d) **SINGLE FEDERAL COORDINATING OFFICER FOR MULTI-STATE AREA** - Where the area affected by a major disaster or emergency includes parts of more than 1 State, the President, at the discretion of the President, may appoint a single Federal coordinating officer for the entire affected area, and may appoint such deputy Federal coordinating officers to assist the Federal coordinating officer as the President determines appropriate.

Sec. 303. Emergency Support and Response Teams (42 U.S.C. 5144)

- (a) **EMERGENCY SUPPORT TEAMS** – The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency.

Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this Act. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

- (b) EMERGENCY RESPONSE TEAMS -
- (1) ESTABLISHMENT - In carrying out subsection (a), the President, acting through the Administrator of [FEMA], shall establish-
 - (A) at a minimum 3 national response teams; and
 - (B) sufficient regional response teams, including Regional Office strike teams under [6 U.S.C. § 317]; and
 - (C) other response teams as may be necessary to meet the incident management responsibilities of the Federal Government.
 - (2) TARGET CAPABILITY LEVEL - The Administrator shall ensure that specific target capability levels, as defined pursuant to the guidelines established under [6 U.S.C. § 746(a)], are established for Federal emergency response teams.
 - (3) PERSONNEL - The President, acting through the Administrator, shall ensure that the Federal emergency response teams consist of adequate numbers of properly planned, organized, equipped, trained, and exercised personnel to achieve the established target capability levels. Each emergency response team shall work in coordination with State and local officials and onsite personnel associated with a particular incident.
 - (4) READINESS REPORTING - The Administrator shall evaluate team readiness on a regular basis and report team readiness levels in the report required under [6 U.S.C. § 752(a)].

Sec. 304. Reimbursement of Federal Agencies (42 U.S.C. 5147)

Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this Act shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

Sec. 305. Nonliability of Federal Government (42 U.S.C. 5148)

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act.

Sec. 306. Performance of Services (42 U.S.C. 5149)

- (a) UTILIZATION OF SERVICES OR FACILITIES OF STATE AND LOCAL GOVERNMENTS - In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.
- (b) APPOINTMENT OF TEMPORARY PERSONNEL, EXPERTS, AND CONSULTANTS; ACQUISITION, RENTAL, OR HIRE OF EQUIPMENT, SERVICES, MATERIALS AND SUPPLIES - In performing any services under this Act, any Federal agency is authorized -
 - (1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;
 - (2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and
 - (3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.
- (c) The Administrator of [FEMA] is authorized to appoint temporary personnel, after serving continuously for 3 years, to positions in [FEMA] in the same manner that competitive service employees with competitive status are considered for transfer, reassignment, or promotion to such positions. An individual appointed under this subsection shall become a career-conditional employee, unless the employee has already completed the service requirements for career tenure.

Sec. 307. Use of Local Firms and Individuals (42 U.S.C. 5150)

- (a) CONTRACTS OR AGREEMENTS WITH PRIVATE ENTITIES -
 - (1) IN GENERAL - In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.
 - (2) CONSTRUCTION - This section shall not be considered to restrict the use of Department of Defense resources under this Act in the provision of assistance in a major disaster.
 - (3) SPECIFIC GEOGRAPHIC AREA - In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.
-

(b) IMPLEMENTATION -

- (1) CONTRACTS NOT TO ENTITIES IN AREA - Any expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, not awarded to an organization, firm, or individual residing or doing business primarily in the area affected by such major disaster shall be justified in writing in the contract file.
 - (2) TRANSITION - Following the declaration of an emergency or major disaster, an agency performing response, relief, and reconstruction activities shall transition work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless the head of such agency determines that it is not feasible or practicable to do so.
 - (3) FORMATION OF REQUIREMENTS - The head of a Federal agency, as feasible and practicable, shall formulate appropriate requirements to facilitate compliance with this section.
- (c) PRIOR CONTRACTS - Nothing in this section shall be construed to require any Federal agency to breach or renegotiate any contract in effect before the occurrence of a major disaster or emergency.

Sec. 308. Nondiscrimination in Disaster Assistance (42 U.S.C. 5151)

- (a) REGULATIONS FOR EQUITABLE AND IMPARTIAL RELIEF OPERATIONS - The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.
- (b) COMPLIANCE WITH REGULATIONS AS PREREQUISITE TO PARTICIPATION BY OTHER BODIES IN RELIEF OPERATIONS - As a condition of participation in the distribution of assistance or supplies under this Act or of receiving assistance under this Act, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

Sec. 309. Use and Coordination of Relief Organizations (42 U.S.C. 5152)

- (a) In providing relief and assistance under this Act, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, long-term recovery groups, domestic hunger relief, and other relief, or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or

reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

- (b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, long-term recovery groups, domestic hunger relief, and other relief, or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this Act, and such other regulation as the President may require.

Sec. 310. Priority to Certain Applications for Public Facility and Public Housing Assistance (42 U.S.C. 5153)

- (a) PRIORITY - In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:
- (1) The United States Housing Act of 1937 [42 U.S.C. § 1437 et seq.] for the provision of low-income housing.
 - (2) [40 U.S.C. §§] 3502 to 3505 for assistance in public works planning.
 - (3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. § 5301 et seq.].
 - (4) [7 U.S.C. §] 1926.
 - (5) The Public Works and Economic Development Act of 1965 [42 U.S.C. § 3121 et seq.].
 - (6) Subtitle IV of title 40.
 - (7) The Federal Water Pollution Control Act [33 U.S.C. § 1251 et seq.].
- (b) OBLIGATION OF CERTAIN DISCRETIONARY FUNDS - In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

Sec. 311. Insurance (42 U.S.C. 5154)

- (a) APPLICANTS FOR REPLACEMENT OF DAMAGED FACILITIES -
- (1) COMPLIANCE WITH CERTAIN REGULATIONS - An applicant for assistance under section 5172 of this title [Section 406] (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title [Section 422] (relating to simplified procedure) or section 3149(c)(2) of this title shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types

- and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.
- (2) DETERMINATION - In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.
 - (b) MAINTENANCE OF INSURANCE - No applicant for assistance under section 5172 of this title [Section 406] (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title [Section 422] (relating to simplified procedure), or section 3149(c)(2) of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this Act unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title [Section 301].
 - (c) STATE ACTING AS SELF-INSURER - A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 of this title [Section 406 or 422] or section 3149(c)(2) of this title) or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a). No such self-insurer may receive assistance under section 5172 or 5189 of this title [Section 406 or 422] for any property or part thereof for which it has previously received assistance under this Act, to the extent that insurance for such property or part thereof would have been reasonably available.

*Prohibited Flood Disaster Assistance (42 U.S.C. 5154a)**

- (a) GENERAL PROHIBITION - Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.
- (b) TRANSFER OF PROPERTY -
 - (1) DUTY TO NOTIFY - In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to -
 - (A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and
 - (B) maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

* This section enacted by Sec. 582 of the National Flood Insurance Reform Act of 1994.

- (2) FAILURE TO NOTIFY - If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property -
 - (A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,
 - (B) the property is damaged by a flood disaster, and
 - (C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.
- (3) PROPERTY DESCRIBED - For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.
- (c) [Omitted]*
- (d) "FLOOD DISASTER AREA" DEFINED - For purposes of this section, the term "flood disaster area" means an area with respect to which -
 - (1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to [7 U.S.C. § 1961(a)]; or
 - (2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the [Stafford Act] (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.
- (e) EFFECTIVE DATE - This section and the amendments made by this section shall apply to disasters declared after September 23, 1994.

Sec. 312. Duplication of Benefits (42 U.S.C. 5155)

- (a) GENERAL PROHIBITION - The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.
- (b) SPECIAL RULES -
 - (1) LIMITATION - This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative

* Amended Flood Disaster Protection Act (42 U.S.C 4012a(a)) to state requirement to maintain flood insurance exists for the life of the property, regardless of transfer of ownership.

- assistance to the agency providing the Federal assistance.
- (2) PROCEDURES - The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.
 - (3) EFFECT OF PARTIAL BENEFITS - Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.
 - (4) WAIVER OF GENERAL PROHIBITION.* -
 - (A) IN GENERAL - The President may waive the general prohibition provided in subsection (a) upon request of a Governor on behalf of the State or on behalf of a person, business concern, or any other entity suffering losses as a result of a major disaster or emergency, if the President finds such waiver is in the public interest and will not result in waste, fraud, or abuse. In making this decision, the President may consider the following:
 - (i) The recommendations of the Administrator of [FEMA] made in consultation with the Federal agency or agencies administering the duplicative program.
 - (ii) If a waiver is granted, the assistance to be funded is cost effective.
 - (iii) Equity and good conscience.
 - (iv) Other matters of public policy considered appropriate by the President.
 - (B) GRANT OR DENIAL OF WAIVER - A request under subparagraph (A) shall be granted or denied not later than 45 days after submission of such request.
 - (C) PROHIBITION ON DETERMINATION THAT LOAN IS A DUPLICATION - Notwithstanding subsection (c), in carrying out subparagraph (A), the President may not determine that a loan is a duplication of assistance, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency.
 - (c) RECOVERY OF DUPLICATIVE BENEFITS - A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.
 - (d) ASSISTANCE NOT INCOME - Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

* The Disaster Recovery Reform Act (DRRA), Div. D of Pub. L. 115-254 § 1210 (2018). Sec. 1210 of DRRA provides that paragraph 312(b)(4) is effective for declarations between Jan. 1, 2016 to Dec. 31, 2021. It does not apply to sections 406 and 408 of the Stafford Act.

Sec. 313. Standards and Reviews (42 U.S.C. 5156)

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this Act. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this Act.

Sec. 314. Penalties (42 U.S.C. 5157)

- (a) **MISUSE OF FUNDS** - Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.
- (b) **CIVIL ENFORCEMENT** - Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.
- (c) **REFERRAL TO ATTORNEY GENERAL** - The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal prosecution.
- (d) **CIVIL PENALTY** - Any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than \$5,000 for each violation.

Sec. 315. Availability of Materials (42 U.S.C. 5158)

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section "construction materials" shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

Sec. 316. Protection of Environment (42 U.S.C. 5159)

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173, or 5192 of this title [Section 402, 403, 406, 407, or 502], including such assistance provided pursuant to the procedures provided for in section 5189 of this title [Section 422], which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality

of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. §4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 [42 U.S.C. §4321 et seq.] to other Federal actions taken under this Act or under any other provisions of law.

Sec. 317. Recovery of Assistance (42 U.S.C. 5160)

- (a) **PARTY LIABLE** - Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.
- (b) **RENDERING OF CARE** - A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

Sec. 318. Audits and Investigations (42 U.S.C. 5161)

- (a) **IN GENERAL** - Subject to the provisions of chapter 75 of title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.
- (b) **ACCESS TO RECORDS** - For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this Act.
- (c) **STATE AND LOCAL AUDITS** - The President may require audits by State and local governments in connection with assistance under this Act when necessary to assure compliance with this Act or related regulations.

Sec. 319. Advance of Non-Federal Share (42 U.S.C. 5162)

- (a) **IN GENERAL** - The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this Act in any case in which--
 - (1) the State is unable to assume its financial responsibility under such cost-sharing provisions--
 - (A) with respect to concurrent, multiple major disasters in a jurisdiction, or
 - (B) after incurring extraordinary costs as a result of a particular disaster; and
 - (2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this Act.
- (b) **TERMS OF LOANS AND ADVANCES** -
 - (1) **IN GENERAL** - Any loan or advance under this section shall be repaid to the United

States.

- (2) INTEREST - Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.
- (c) REGULATIONS - The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

Sec. 320. Limitation on Use of Sliding Scales (42 U.S.C. 5163)

No geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.

Sec. 321. Rules and Regulations (42 U.S.C. 5164)

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this Act, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this Act.

Sec. 322. Mitigation Planning (42 U.S.C. 5165)

- (a) REQUIREMENT OF MITIGATION PLAN - As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e) of this section, a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.
- (b) LOCAL AND TRIBAL PLANS - Each mitigation plan developed by a local or tribal government shall -
 - (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and
 - (2) establish a strategy to implement those actions.
- (c) STATE PLANS - The State process of development of a mitigation plan under this section shall -
 - (1) identify the natural hazards, risks, and vulnerabilities of areas in the State;
 - (2) support development of local mitigation plans;
 - (3) provide for technical assistance to local and tribal governments for mitigation planning; and
 - (4) identify and prioritize mitigation actions that the State will support, as resources become available.
- (d) FUNDING -
 - (1) IN GENERAL - Federal contributions under section 5170c of this title [Section 404] may be used to fund the development and updating of mitigation plans under this

section.

- (2) **MAXIMUM FEDERAL CONTRIBUTION** - With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 5170c of this title [Section 404] not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.
- (e) **INCREASED FEDERAL SHARE FOR HAZARD MITIGATION MEASURES** -
 - (1) **IN GENERAL** - If, at the time of the declaration of a major disaster or event under section 420, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster or event under section 420, the maximum percentage specified in the last sentence of section 5170c(a) of this title [Section 404(a)].
 - (2) **FACTORS FOR CONSIDERATION** -In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established -
 - (A) eligibility criteria for property acquisition and other types of mitigation measures;
 - (B) requirements for cost effectiveness that are related to the eligibility criteria;
 - (C) a system of priorities that is related to the eligibility criteria; and
 - (D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

Sec. 323. Minimum Standards for Public and Private Structures
(42 U.S.C. 5165a)

- (a) **IN GENERAL** - As a condition of receipt of a disaster loan or grant under this Act -
 - (1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and
 - (2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.
- (b) **EVIDENCE OF COMPLIANCE** - A recipient of a disaster loan or grant under this Act shall provide such evidence of compliance with this section as the President may require by regulation.

Sec. 324. Management Costs (42 U.S.C. 5165b)

- (a) **DEFINITION OF MANAGEMENT COST** - In this section, the term “management cost” includes any indirect cost, any direct administrative cost, and any other administrative expense associated with a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.
- (b) **ESTABLISHMENT OF MANAGEMENT COST RATES** -
 - (1) **IN GENERAL** - Notwithstanding any other provision of law (including any

administrative rule or guidance), the President shall by regulation implement management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this Act for management costs.

- (2) **SPECIFIC MANAGEMENT COSTS** - The Administrator of [FEMA] shall provide the following percentage rates, in addition to the eligible project costs, to cover direct and indirect costs of administering the following programs:
 - (A) **HAZARD MITIGATION** - A grantee under section 404 may be reimbursed not more than 15 percent of the total amount of the grant award under such section of which not more than 10 percent may be used by the grantee and 5 percent by the subgrantee for such costs.
 - (B) **PUBLIC ASSISTANCE** - A grantee under sections 403, 406, 407, and 502 may be reimbursed not more than 12 percent of the total award amount under such sections, of which not more than 7 percent may be used by the grantee and 5 percent by the subgrantee for such costs.
- (c) **REVIEW** - The President shall review the management cost rates established under subsection (b) not later than 3 years after the date of establishment of the rates and periodically thereafter.

Sec. 325. Public Notice, Comment, and Consultation Requirements
(42 U.S.C. 5165c)

- (a) **PUBLIC NOTICE AND COMMENT CONCERNING NEW OR MODIFIED POLICIES** -
 - (1) **IN GENERAL** - The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that -
 - (A) governs implementation of the public assistance program administered by [FEMA] under this Act; and
 - (B) could result in a significant reduction of assistance under the program.
 - (2) **APPLICATION** - Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.
- (b) **CONSULTATION CONCERNING INTERIM POLICIES** -
 - (1) **IN GENERAL** - Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this Act, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely -
 - (A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or
 - (B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency.
 - (2) **NO LEGAL RIGHT OF ACTION** - Nothing in this subsection confers a legal right of action on any party.

- (c) PUBLIC ACCESS - The President shall promote public access to policies governing the implementation of the public assistance program.

Sec. 326. Designation of Small State and Rural Advocate (42 U.S.C. 5165d)

- (a) IN GENERAL - The President shall designate in [FEMA] a Small State and Rural Advocate.
- (b) RESPONSIBILITIES - The Small State and Rural Advocate shall be an advocate for the fair treatment of small States and rural communities in the provision of assistance under this Act.
- (c) DUTIES - The Small State and Rural Advocate shall -
 - (1) participate in the disaster declaration process under section 5170 of this title [Section 401] and the emergency declaration process under section 5191 of this title [Section 501], to ensure that the needs of rural communities are being addressed;
 - (2) assist small population States in the preparation of requests for major disaster or emergency declarations; and
 - (3) conduct such other activities as the Administrator of [FEMA] considers appropriate.

Sec. 327. National Urban Search and Rescue Response System (42 U.S.C. 5165f)

- (a) DEFINITIONS - In this section, the following definitions shall apply:
 - (1) ADMINISTRATOR - The term “Administrator” means the Administrator of [FEMA].
 - (2) AGENCY - The term “Agency” means [FEMA].
 - (3) HAZARD - The term “hazard” has the meaning given the term in section 602.
 - (4) NONEMPLOYEE SYSTEM MEMBER - The term “nonemployee System member” means a System member not employed by a sponsoring agency or participating agency.
 - (5) PARTICIPATING AGENCY - The term “participating agency” means a State or local government, nonprofit organization, or private organization that has executed an agreement with a sponsoring agency to participate in the System.
 - (6) SPONSORING AGENCY - The term “sponsoring agency” means a State or local government that is the sponsor of a task force designated by the Administrator to participate in the System.
 - (7) SYSTEM - The term “System” means the National Urban Search and Rescue Response System to be administered under this section.
 - (8) SYSTEM MEMBER - The term “System member” means an individual who is not a full-time employee of the Federal Government and who serves on a task force or on a System management or other technical team.
 - (9) TASK FORCE - The term “task force” means an urban search and rescue team designated by the Administrator to participate in the System.
 - (b) GENERAL AUTHORITY - Subject to the requirements of this section, the Administrator shall continue to administer the emergency response system known as the National
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Urban Search and Rescue Response System.*

- (c) FUNCTIONS - In administering the System, the Administrator shall provide for a national network of standardized search and rescue resources to assist States and local governments in responding to hazards.
- (d) TASK FORCES. -
- (1) DESIGNATION - The Administrator shall designate task forces to participate in the System. The Administration shall determine the criteria for such participation.
 - (2) SPONSORING AGENCIES - Each task force shall have a sponsoring agency. The Administrator shall enter into an agreement with the sponsoring agency with respect to the participation of each task force in the System.
 - (3) COMPOSITION -
 - (A) PARTICIPATING AGENCIES - A task force may include, at the discretion of the sponsoring agency, one or more participating agencies. The sponsoring agency shall enter into an agreement with each participating agency with respect to the participation of the participating agency on the task force.
 - (B) OTHER INDIVIDUALS - A task force may also include, at the discretion of the sponsoring agency, other individuals not otherwise associated with the sponsoring agency or a participating agency. The sponsoring agency of a task force may enter into a separate agreement with each such individual with respect to the participation of the individual on the task force.
- (e) MANAGEMENT AND TECHNICAL TEAMS - The Administrator shall maintain such management teams and other technical teams as the Administrator determines are necessary to administer the System.
- (f) APPOINTMENT OF SYSTEM MEMBERS INTO FEDERAL SERVICE -
- (1) IN GENERAL - The Administrator may appoint a System member into Federal service for a period of service to provide for the participation of the System member in exercises, preincident staging, major disaster and emergency response activities, and training events sponsored or sanctioned by the Administrator.
 - (2) NONAPPLICABILITY OF CERTAIN CIVIL SERVICE LAWS - The Administrator may make

* Sec. 1218 of DRRRA provides that "(a) IN GENERAL.—The Administrator of the Federal Emergency Management Agency may establish one or more national veterinary emergency teams at accredited colleges of veterinary medicine. (b) RESPONSIBILITIES.—A national veterinary emergency team shall— (1) deploy with a team of the National Urban Search and Rescue Response System to assist with— (A) veterinary care of canine search teams; (B) locating and treating companion animals, service animals, livestock, and other animals; and (C) surveillance and treatment of zoonotic diseases; (2) recruit, train, and certify veterinary professionals, including veterinary students, in accordance with an established set of plans and standard operating guidelines to carry out the duties associated with planning for and responding to major disasters and emergencies as described in paragraph (1); (3) assist State governments, Indian tribal governments, local governments, and nonprofit organizations in developing emergency management and evacuation plans that account for the care and rescue of animals and in improving local readiness for providing veterinary medical response during an emergency or major disaster; and (4) coordinate with the Department of Homeland Security, the Department of Health and Human Services, the Department of Agriculture, State, local, and Indian tribal governments (including departments of animal and human health), veterinary and health care professionals, and volunteers."

- appointments under paragraph (1) without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.
- (3) RELATIONSHIP TO OTHER AUTHORITIES - The authority of the Administrator to make appointments under this subsection shall not affect any other authority of the Administrator under this Act.
 - (4) LIMITATION - A System member who is appointed into Federal service under paragraph (1) shall not be considered an employee of the United States for purposes other than those specifically set forth in this section.
- (g) COMPENSATION -
- (1) PAY OF SYSTEM MEMBERS—Subject to such terms and conditions as the Administrator may impose by regulation, the Administrator shall make payments to the sponsoring agency of a task force -
 - (A) to reimburse each employer of a System member on the task force for compensation paid by the employer to the System member for any period during which the System member is appointed into Federal service under subsection (f)(1); and
 - (B) to make payments directly to a nonemployee System member on the task force for any period during which the nonemployee System member is appointed into Federal service under subsection (f)(1).
 - (2) REIMBURSEMENT FOR EMPLOYEES FILLING POSITIONS OF SYSTEM MEMBERS -
 - (A) IN GENERAL - Subject to such terms and conditions as the Administrator may impose by regulation, the Administrator shall make payments to the sponsoring agency of a task force to be used to reimburse each employer of a System member on the task force for compensation paid by the employer to an employee filling a position normally filled by the System member for any period during which the System member is appointed into Federal service under subsection (f)(1).
 - (B) LIMITATION - Costs incurred by an employer shall be eligible for reimbursement under subparagraph (A) only to the extent that the costs are in excess of the costs that would have been incurred by the employer had the System member not been appointed into Federal service under subsection (f)(1).
 - (3) METHOD OF PAYMENT. - A System member shall not be entitled to pay directly from the Agency for a period during which the System member is appointed into Federal Service under subsection (f)(1).
- (h) PERSONAL INJURY, ILLNESS, DISABILITY, OR DEATH -
- (1) IN GENERAL - A System member who is appointed into Federal service under subsection (f)(1) and who suffers personal injury, illness, disability, or death as a result of a personal injury sustained while acting in the scope of such appointment, shall, for the purposes of subchapter I of chapter 81 of title 5, United States Code, be treated as though the member were an employee (as defined by section 8101 of that title) who had sustained the injury in the performance of duty.

(2) ELECTION OF BENEFITS -

- (A) IN GENERAL - A System member (or, in the case of the death of the System member, the System member's dependent) who is entitled under paragraph (1) to receive benefits under subchapter I of chapter 81 of title 5, United States Code, by reason of personal injury, illness, disability, or death, and to receive benefits from a State or local government by reason of the same personal injury, illness, disability or death shall elect to -
- (i) receive benefits under such subchapter; or
 - (ii) receive benefits from the State or local government.
- (B) DEADLINE - A System member or dependent shall make an election of benefits under subparagraph (A) not later than 1 year after the date of the personal injury, illness, disability, or death that is the reason for the benefits, or until such later date as the Secretary of Labor may allow for reasonable cause shown.
- (C) EFFECT OF ELECTION - An election of benefits made under this paragraph is irrevocable unless otherwise provided by law.
- (3) REIMBURSEMENT FOR STATE OR LOCAL BENEFITS - Subject to such terms and conditions as the Administrator may impose by regulation, if a System member or dependent elects to receive benefits from a State or local government under paragraph (2)(A), the Administrator shall reimburse the State or local government for the value of the benefits.
- (4) PUBLIC SAFETY OFFICER CLAIMS - Nothing in this subsection shall be construed to bar any claim by, or with respect to, any System member who is a public safety officer, as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b), for any benefits authorized under part L of title I of that Act (42 U.S.C. 3796 et seq.).
- (i) LIABILITY - A System member appointed into Federal service under subsection (f)(1), while acting within the scope of the appointment, shall be considered to be an employee of the Federal Government under section 1346(b) of title 28, United States Code, and chapter 171 of that title, relating to tort claims procedure.
- (j) EMPLOYMENT AND REEMPLOYMENT RIGHTS - With respect to a System member who is not a regular full-time employee of a sponsoring agency or participating agency, the following terms and conditions apply:
- (1) SERVICE - Service as a System member shall be considered to be "service in the uniformed services" for purposes of chapter 43 of title 38, United States Code, relating to employment and reemployment rights of individuals who have performed service in the uniformed services (regardless of whether the individual receives compensation for such participation). All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in such chapter.
 - (2) PRECLUSION - Preclusion of giving notice of service by necessity of appointment under this section shall be considered to be preclusion by "military necessity"

for purposes of section 4312(b) of title 38, United States Code, pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to judicial review.

- (k) **LICENSES AND PERMITS** - If a System member holds a valid license, certificate, or other permit issued by any State or other governmental jurisdiction evidencing the member's qualifications in any professional, mechanical, or other skill or type of assistance required by the System, the System member is deemed to be performing a Federal activity when rendering aid involving such skill or assistance during a period of appointment into Federal service under subsection (f)(1).
- (l) **PREPAREDNESS COOPERATIVE AGREEMENTS** - Subject to the availability of appropriations for such purpose, the Administrator shall enter into an annual preparedness cooperative agreement with each sponsoring agency. Amounts made available to a sponsoring agency under such a preparedness cooperative agreement shall be for the following purposes:
 - (1) training and exercises, including training and exercises with other Federal, State, and local government response entities.
 - (2) acquisition and maintenance of equipment, including interoperable communications and personal protective equipment.
 - (3) medical monitoring required for responder safety and health in anticipation of and following a major disaster, emergency, or other hazard, as determined by the Administrator.
- (m) **RESPONSE COOPERATIVE AGREEMENTS** - The Administrator shall enter into a response cooperative agreement with each sponsoring agency, as appropriate, under which the Administrator agrees to reimburse the sponsoring agency for costs incurred by the sponsoring agency in responding to a major disaster or emergency.
- (n) **OBLIGATIONS** - The Administrator may incur all necessary obligations consistent with this section in order to ensure the effectiveness of the System.
- (o) **EQUIPMENT MAINTENANCE AND REPLACEMENT** - Not later than 180 days after the date of enactment of this section, the Administrator shall submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) a report on the development of a plan, including implementation steps and timeframes, to finance, maintain, and replace System equipment.

Title IV -- Major Disaster Assistance Programs

Sec. 401. Procedure for Declaration (42 U.S.C. 5170)

(a) **IN GENERAL** - 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 Act, 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 Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

(b) **INDIAN TRIBAL GOVERNMENT REQUESTS** -

- (1) **IN GENERAL** - The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that a major disaster exists consistent with the requirements of subsection (a).
- (2) **REFERENCES** - In implementing assistance authorized by the President under this chapter in response to a request of the Chief Executive of an affected Indian tribal government for a major disaster declaration, any reference in this subchapter or subchapter III (except sections 5153 and 5165d of this title [Sections 310 and 326]) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.
- (3) **SAVINGS PROVISION** - Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this subchapter through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

(c) **COST SHARE ADJUSTMENTS FOR INDIAN TRIBAL GOVERNMENTS**

- (1) **IN GENERAL** - In providing assistance to an Indian tribal government under this subchapter, the President may waive or adjust any payment of a non-Federal contribution with respect to the assistance if -
 - (A) The President has the authority to waive or adjust the payment under another provision of this subchapter; and
 - (B) The President determines that the waiver of adjustment is necessary and appropriate.
- (2) **CRITERIA FOR MAKING DETERMINATIONS** - The President shall establish criteria for making determinations under paragraph (1)(B).

Sec. 402. General Federal Assistance (42 U.S.C. 5170a)

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 response and recovery efforts, including precautionary evacuations;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;
- (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;
 - (D) provision of health and safety measures;
 - (E) management, control, and reduction of immediate threats to public health and safety; and
 - (F) recovery activities, including disaster impact assessments and planning;
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance;
- (5) provide assistance to State and local governments for building code and floodplain management ordinance administration and enforcement, including inspections for substantial damage compliance; and
- (6) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—
 - (A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and
 - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

Sec. 403. Essential Assistance (42 U.S.C. 5170b)

- (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 Act.
- (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 durable medical equipment,* 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 durable medical equipment, 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;
 - (I) reduction of immediate threats to life, property, and public health and safety; and
 - (J) provision of rescue, care, shelter, and essential needs -
 - (i) to individuals with household pets and service animals; and
 - (ii) to such pets and animals.
 - (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 title or title V of this Act, the Governor
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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 [Section 407(b)], 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 Act.
 - (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 Act.
 - (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.
- (d) SALARIES AND BENEFITS -
- (1) IN GENERAL - If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to -
 - (A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—
 - (i) the work is not typically performed by the employees; and
 - (ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals[;] or
 - (B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective

measures under this section.

- (2) OVERTIME - The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).
- (3) NO EFFECT ON MUTUAL AID PACTS - Nothing in this subsection shall affect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.

Sec. 404. Hazard Mitigation (42 U.S.C. 5170c)

- (a) IN GENERAL - The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 420. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title [Section 322] and shall be subject to approval by the President. Subject to section 5165 of this title [Section 322], the total of contributions under this section for a major disaster or event under section 420 shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act with respect to the major disaster or event under section 420.*
- (b) PROPERTY ACQUISITION AND RELOCATION ASSISTANCE -
 - (1) GENERAL AUTHORITY - In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of [FEMA] may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).
 - (2) TERMS AND CONDITIONS - An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if -
 - (A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and
 - (B) on or after December 3, 1993, the applicant for the assistance enters

* Sec. 1210(b) of DRR provides that "Notwithstanding section 312 of the [Stafford Act] (42 U.S.C. 5155) and its implementing regulations, assistance provided pursuant to section 404 of such Act may be used to fund activities authorized for construction within the scope of a federally authorized water resources development project of the Army Corps of Engineers if such activities are also eligible activities under such section." The provision also says that federal funding provided pursuant to this section may not exceed the total Federal share for the project. In addition, no further federal funding shall be provided for construction of such a project constructed with funding pursuant to this subsection.

into an agreement with the Administrator that provides assurances that -

- (i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
 - (ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than--
 - (I) a public facility that is open on all sides and functionally related to a designated open space;
 - (II) a rest room; or
 - (III) a structure that the Administrator approves in writing before the commencement of the construction of the structure; and
 - (iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program--
 - (I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and
 - (II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.
- (3) STATUTORY CONSTRUCTION - Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.
- (c) PROGRAM ADMINISTRATION BY STATES -
- (1) IN GENERAL - A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.
 - (2) CRITERIA - The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). Until such time as the Administrator promulgates regulations to implement this paragraph, the Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program. The criteria shall include, at a minimum -
 - (A) the demonstrated ability of the State to manage the grant program under this section;
 - (B) there being in effect an approved mitigation plan under section 5165 of this title [Section 322]; and

- (C) a demonstrated commitment to mitigation activities.
- (3) APPROVAL - The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).
- (4) WITHDRAWAL OF APPROVAL - If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.
- (5) AUDITS - The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.
- (d) STREAMLINED PROCEDURES -
 - (1) IN GENERAL - For the purpose of providing assistance under this section, the President shall ensure that—
 - (A) adequate resources are devoted to ensure that applicable environmental reviews under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and historic preservation reviews under the National Historic Preservation Act [16 U.S.C. 470 et seq.] are completed on an expeditious basis; and
 - (B) the shortest existing applicable process under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and the National Historic Preservation Act [16 U.S.C. 470 et seq.] is utilized.
 - (2) AUTHORITY FOR OTHER EXPEDITED PROCEDURES - The President may utilize expedited procedures in addition to those required under paragraph (1) for the purpose of providing assistance under this section, such as procedures under the Prototype Programmatic Agreement of [FEMA], for the consideration of multiple structures as a group and for an analysis of the cost-effectiveness and fulfillment of cost-share requirements for proposed hazard mitigation measures.
- (e) ADVANCE ASSISTANCE - The President may provide not more than 25 percent of the amount of the estimated cost of hazard mitigation measures to a State grantee eligible for a grant under this section before eligible costs are incurred.
- (f) USE OF ASSISTANCE - Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by a wildfire or windstorm, such as—
 - (1) reseeded ground cover with quick-growing or native species;
 - (2) mulching with straw or chipped wood;
 - (3) constructing straw, rock, or log dams in small tributaries to prevent flooding;
 - (4) placing logs and other erosion barriers to catch sediment on hill slopes;
 - (5) installing debris traps to modify road and trail drainage mechanisms;
 - (6) modifying or removing culverts to allow drainage to flow freely;
 - (7) adding drainage dips and constructing emergency spillways to keep roads and

- bridges from washing out during floods;
 - (8) planting grass to prevent the spread of noxious weeds;
 - (9) installing warning signs;
 - (10) establishing defensible space measures;
 - (11) reducing hazardous fuels;
 - (12) mitigating windstorm damage, including replacing or installing electrical transmission or distribution utility pole structures with poles that are resilient to extreme wind and combined ice and wind loadings for the basic wind speeds and ice conditions associated with the relevant location;
 - (13) removing standing burned trees; and
 - (14) replacing water systems that have been burned and have caused contamination.
- (g) USE OF ASSISTANCE FOR EARTHQUAKE HAZARDS - Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by earthquake hazards, including—
- (1) improvements to regional seismic networks in support of building a capability for earthquake early warning;
 - (2) improvements to geodetic networks in support of building a capability for earthquake early warning; and
 - (3) improvements to seismometers, Global Positioning System receivers, and associated infrastructure in support of building a capability for earthquake early warning.

Sec. 405. Federal Facilities (42 U.S.C. 5171)

- (a) REPAIR, RECONSTRUCTION, RESTORATION, OR REPLACEMENT OF UNITED STATES FACILITIES - The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.
- (b) AVAILABILITY OF FUNDS APPROPRIATED TO AGENCY FOR REPAIR, RECONSTRUCTION, RESTORATION, OR REPLACEMENT OF AGENCY FACILITIES - In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.
- (c) STEPS FOR MITIGATION OF HAZARDS - In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction

practices, in accordance with standards prescribed by the President.

Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities
(42 U.S.C. 5172)

(a) CONTRIBUTIONS -

(1) IN GENERAL - The President may make contributions -

- (A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and
- (B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) ASSOCIATED EXPENSES - For the purposes of this section, associated expenses shall include -

- (A) the costs of mobilizing and employing the National Guard for performance of eligible work;
- (B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging;
- (C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster; and
- (D) base and overtime wages for extra hires to facilitate the implementation and enforcement of adopted building codes for a period of not more than 180 days after the major disaster is declared.

(3) CONDITIONS FOR ASSISTANCE TO PRIVATE NONPROFIT FACILITIES -

(A) IN GENERAL - The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if -

- (i) the facility provides critical services (as defined by the President) in the event of a major disaster; or
- (ii) the owner or operator of the facility -
 - (I) has applied for a disaster loan under [Sec. 7(b) of the Small Business Act (15 U.S.C. § 636(b))]; and
 - (II) (aa) has been determined to be ineligible for such a loan; or
(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) DEFINITION OF CRITICAL SERVICES - In this paragraph, the term “critical

services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications (including broadcasting and telecommunications), education, and emergency medical care.

- (C) RELIGIOUS FACILITIES - A church, synagogue, mosque, temple, or other house of worship, educational facility, or any other private nonprofit facility, shall be eligible for contributions under paragraph (1)(B), without regard to the religious character of the facility or the primary religious use of the facility. No house of worship, educational facility, or any other private nonprofit facility may be excluded from receiving contributions under paragraph (1) (B) because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.
- (4) NOTIFICATION TO CONGRESS - Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify—
 - (A) the Committee on Environment and Public Works of the Senate;
 - (B) the Committee on Transportation and Infrastructure of the House of Representatives;
 - (C) the Committee on Appropriations of the Senate; and
 - (D) the Committee on Appropriations of the House of Representatives.
- (b) FEDERAL SHARE -
 - (1) MINIMUM FEDERAL SHARE - Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.
 - (2) REDUCED FEDERAL SHARE* - The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster -
 - (A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and
 - (B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.
 - (3) INCREASED FEDERAL SHARE -
 - (A) INCENTIVE MEASURES - The President may provide incentives to a State or Tribal government to invest in measures that increase readiness for, and resilience from, a major disaster by recognizing such investments through a sliding scale that increases the minimum Federal share to 85 percent. Such measures may include -
 - (i) the adoption of a mitigation plan approved under section 322;
 - (ii) investments in disaster relief, insurance, and emergency management

* This paragraph is not effective until FEMA issues implementing regulations.

- programs;
- (iii) encouraging the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;
 - (iv) facilitating participation in the community rating system; and
 - (v) funding mitigation projects or granting tax incentives for projects that reduce risk.
- (B) **COMPREHENSIVE GUIDANCE** - Not later than 1 year after the date of enactment of this paragraph, the President, acting through the Administrator, shall issue comprehensive guidance to State and Tribal governments regarding the measures and investments, weighted appropriately based on actuarial assessments of eligible actions, that will be recognized for the purpose of increasing the Federal share under this section. Guidance shall ensure that the agency's review of eligible measures and investments does not unduly delay determining the appropriate Federal cost share.
- (C) **REPORT** - One year after the issuance of the guidance required by subparagraph (B), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report regarding the analysis of the Federal cost shares paid under this section.
- (D) **SAVINGS CLAUSE** - Nothing in this paragraph prevents the President from increasing the Federal cost share above 85 percent.
- (c) **LARGE IN-LIEU CONTRIBUTIONS** -
- (1) **FOR PUBLIC FACILITIES** -
 - (A) **IN GENERAL** - In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
 - (B) **USE OF FUNDS** - Funds contributed to a State or local government under this paragraph may be used -
 - (i) to repair, restore, or expand other selected public facilities;
 - (ii) to construct new facilities; or
-

- (iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.
 - (C) LIMITATIONS - Funds made available to a State or local government under this paragraph may not be used for -
 - (i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
 - (ii) any uninsured public facility located in a special flood hazard area identified by the Administrator of [FEMA] under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).
- (2) FOR PRIVATE NONPROFIT FACILITIES -
 - (A) IN GENERAL - In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
 - (B) USE OF FUNDS - Funds contributed to a person under this paragraph may be used -
 - (i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;
 - (ii) to construct new private nonprofit facilities to be owned or operated by the person; or
 - (iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.
 - (C) LIMITATIONS - Funds made available to a person under this paragraph may not be used for -
 - (i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
 - (ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of [FEMA] under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).
- (d) FLOOD INSURANCE -
 - (1) REDUCTION OF FEDERAL ASSISTANCE - If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Administrator pursuant to the National Flood Insurance Act of 1968 (42 U.S.C.

4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2). This section shall not apply to more than one building of a multi-structure educational, law enforcement, correctional, fire, or medical campus, for any major disaster or emergency declared by the President under section 401 or 501, respectively, of the [Stafford Act] (42 U.S.C. 5170, 5191) on or after January 1, 2016 through December 31, 2018.

- (2) AMOUNT OF REDUCTION - The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of -
 - (A) the value of such facility on the date of the flood damage or destruction, or
 - (B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.
- (3) EXCEPTION - Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.
- (4) DISSEMINATION OF INFORMATION - The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) ELIGIBLE COST -

- (1) DETERMINATION -
 - (A) IN GENERAL - For the purposes of this section, for disasters declared on or after August 1, 2017, or a disaster in which a cost estimate has not yet been finalized for a project, or for any project for which the finalized estimate is on appeal, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—
 - (i) on the basis of the design of the facility as the facility existed immediately before the major disaster;
 - (ii) in conformity with the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purposes of protecting the health, safety, and general welfare of the facility's users against disasters (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)); and

- (iii) in a manner that allows the facility to meet the definition of resilient developed pursuant to this subsection.*
- (B) COST ESTIMATION PROCEDURES** –
 - (i) IN GENERAL – Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.
 - (ii) APPLICABILITY – The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title [Section 422].
- (C) CONTRIBUTIONS – Contributions for the eligible cost made under this section may be provided on an actual cost basis or on cost-estimation procedures.**

Note: Subsection (e)(2) is not effective until the regulations required under subsection (e)(3) are published.

(2) MODIFICATION OF ELIGIBLE COST -

- (A) ACTUAL COST GREATER THAN CEILING PERCENTAGE OF ESTIMATED COST - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).
- (B) ACTUAL COST LESS THAN ESTIMATED COST -
 - (i) GREATER THAN OR EQUAL TO FLOOR PERCENTAGE OF ESTIMATED COST - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.
 - (ii) LESS THAN FLOOR PERCENTAGE OF ESTIMATED COST - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

* Subsection (e)(1)(A)(iii) is not effective until FEMA issues regulations required by subsection (e)(5)(A).

** Cost estimation procedures are not effective until FEMA issues regulations required by subsection (e)(3).

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- (C) NO EFFECT ON APPEALS PROCESS - Nothing in this paragraph affects any right of appeal under section 5189a of this title [Section 423].
- (3) EXPERT PANEL -
- (A) ESTABLISHMENT - Not later than 18 months after October 30, 2000, the President, acting through the Administrator of [FEMA], shall establish an expert panel, which shall include representatives from the construction industry and State and local government.
- (B) DUTIES - The expert panel shall develop recommendations concerning -
- (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and
- (ii) the ceiling and floor percentages referred to in paragraph (2).
- (C) REGULATIONS - Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish -
- (i) cost estimation procedures described in subparagraph (B)(i); and
- (ii) the ceiling and floor percentages referred to in paragraph (2).
- (D) REVIEW BY PRESIDENT - Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.
- (E) REPORT TO CONGRESS - Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.
- (4) SPECIAL RULE - In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.
- (5) NEW RULES—
- (A) IN GENERAL - Not later than [April 5, 2020], the President, acting through the Administrator of [FEMA], and in consultation with the heads of relevant Federal departments and agencies, shall issue a final rulemaking that defines the terms “resilient” and “resiliency” for purposes of this subsection.
- (B) INTERIM GUIDANCE - Not later than [Dec. 4, 2018], the Administrator shall issue interim guidance to implement this subsection. Such interim guidance shall expire 18 months after the date of enactment of this paragraph or upon issuance of final regulations pursuant to subparagraph (A), whichever occurs first.
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- (C) GUIDANCE - Not later than 90 days after the date on which the Administrator issues the final rulemaking under this paragraph, the Administrator shall issue any necessary guidance related to the rulemaking.
- (D) REPORT - Not later than [Oct. 5, 2020], the Administrator shall submit to Congress a report summarizing the regulations and guidance issued pursuant to this paragraph.

Sec. 407. Debris Removal (42 U.S.C. 5173)

- (a) PRESIDENTIAL AUTHORITY - The President, whenever he determines it to be in the public interest, is authorized -
 - (1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and
 - (2) to make grants to any State or local government or owner or operator of a private non-profit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.
- (b) AUTHORIZATION BY STATE OR LOCAL GOVERNMENT; INDEMNIFICATION AGREEMENT - No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.
- (c) RULES RELATING TO LARGE LOTS - The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.
- (d) FEDERAL SHARE - The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.
- (e) EXPEDITED PAYMENTS -
 - (1) GRANT ASSISTANCE - In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President's initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).
 - (2) DATE OF PAYMENT - Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

Sec. 408. Federal Assistance to Individuals and Households (42 U.S.C. 5174)

- (a) IN GENERAL -
 - (1) PROVISION OF ASSISTANCE - In accordance with this section, the President, in
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- consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.*
- (2) RELATIONSHIP TO OTHER ASSISTANCE - Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) of this section solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.
- (b) HOUSING ASSISTANCE -
- (1) ELIGIBILITY - The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster.
- (2) DETERMINATION OF APPROPRIATE TYPES OF ASSISTANCE -
- (A) IN GENERAL - The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.
- (B) MULTIPLE TYPES OF ASSISTANCE - One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.
- (c) TYPES OF HOUSING ASSISTANCE -

* Sec. 1216 of DRRA provides debt waiver authority as follows: “(a) WAIVER AUTHORITY.—(1) DEFINITION.—In this subsection, the term “covered assistance” means assistance provided—(A) under section 408 of the [Stafford Act] (42 U.S.C. 5174); and (B) in relation to a major disaster or emergency declared by the President under section 401 or 501, respectively, of the [Stafford Act] (42 U.S.C. 5170, 5191) on or after October 28, 2012. (2) AUTHORITY. - Notwithstanding section 3716(e) of title 31, United States Code, the Administrator—(A) subject to subparagraph (B), may waive a debt owed to the United States related to covered assistance provided to an individual or household if—(i) the covered assistance was distributed based on an error by the Agency; (ii) there was no fault on behalf of the debtor; and (iii) the collection of the debt would be against equity and good conscience; and (B) may not waive a debt under subparagraph (A) if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim.” This waiver authority will not apply to any major disaster or emergency declared after the OIG publishes a determination of excessive error rate.

Sec. 1216(b)(1) of DRRA provides “Notwithstanding [31 U.S.C. 3716(e)] and unless there is evidence of civil or criminal fraud, the Agency may not take any action to recoup covered assistance from the recipient of such assistance if the receipt of such assistance occurred on a date that is more than 3 years before the date on which the Agency first provides to the recipient written notification of an intent to recoup.”

- (1) TEMPORARY HOUSING -
 - (A) FINANCIAL ASSISTANCE -
 - (i) IN GENERAL - The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. Such assistance may include the payment of the cost of utilities, excluding telephone service.
 - (ii) AMOUNT - The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or unit installation not provided directly by the President.
 - (B) DIRECT ASSISTANCE -
 - (i) IN GENERAL - The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).
 - (ii) LEASE AND REPAIR OF RENTAL UNITS FOR TEMPORARY HOUSING -
 - (I) IN GENERAL - The President, to the extent the President determines it would be a cost-effective alternative to other temporary housing options, may -
 - (aa) enter into lease agreements with owners of multifamily rental property impacted by a major disaster or located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under this section; and
 - (bb) make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as safe and adequate temporary housing.
 - (II) IMPROVEMENTS OR REPAIRS - Under the terms of any lease agreement for property entered into under this subsection, the value of the improvements or repairs shall be deducted from the value of the lease agreement.
 - (iii) PERIOD OF ASSISTANCE - The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.
 - (iv) COLLECTION OF RENTAL CHARGES - After the end of the 18-month period referred to in clause (iii), the President may charge fair market rent for each temporary housing unit provided.

-
- (2) REPAIRS -
- (A) IN GENERAL - The President may provide financial assistance for -
- (i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and
 - (ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.
- (B) RELATIONSHIP TO OTHER ASSISTANCE - A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.
- (3) REPLACEMENT -
- (A) IN GENERAL - The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.
- (B) APPLICABILITY OF FLOOD INSURANCE REQUIREMENT - With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.
- (4) PERMANENT HOUSING CONSTRUCTION - The President may provide financial assistance or direct assistance to individuals or households to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations in cases in which -
- (A) no alternative housing resources are available; and
 - (B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.
- (d) TERMS AND CONDITIONS RELATING TO HOUSING ASSISTANCE -
- (1) SITES -
- (A) IN GENERAL - Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that -
- (i) is complete with utilities;
 - (ii) meets the physical accessibility requirements for individuals with disabilities; and
 - (iii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.
- (B) SITES PROVIDED BY THE PRESIDENT - A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.
- (2) DISPOSAL OF UNITS -
- (A) SALE TO OCCUPANTS -
-

- (i) IN GENERAL - Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.
 - (ii) SALE PRICE - A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.
 - (iii) DEPOSIT OF PROCEEDS - Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.
 - (iv) HAZARD AND FLOOD INSURANCE - A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.
 - (v) USE OF GSA SERVICES - The President may use the services of the General Services Administration to accomplish a sale under clause (i).
- (B) OTHER METHODS OF DISPOSAL - If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims -
- (i) may be sold to any person; or
 - (ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees -
 - (I) to comply with the nondiscrimination provisions of section 5151 of this title [Section 308]; and
 - (II) to obtain and maintain hazard and flood insurance on the housing unit.
- (e) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS⁺ -
- (1) MEDICAL, DENTAL, CHILD CARE, AND FUNERAL EXPENSES - The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, child care, and funeral expenses.
 - (2) PERSONAL PROPERTY, TRANSPORTATION, AND OTHER EXPENSES - The President, in consultation with the Governor of a State, may provide financial assistance under

* Sec. 1238 of DRRA provides that, notwithstanding section 1 of the Passport Act of 1920 or any other provision of law, the President, in consultation with the Governor of a State, may waive document replacement fees as specified in that provision for an individual or household described in sec. 408(e)(1). This assistance is not subject to assistance limits in sec. 408(h).

this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

(f) STATE ROLE -

(1) STATE- OR INDIAN TRIBAL GOVERNMENT-ADMINISTERED ASSISTANCE AND OTHER NEEDS ASSISTANCE -

(A) GRANT TO STATE* - Subject to subsection (g) of this section, a Governor may request a grant from the President to provide assistance to individuals and households in the State under subsections (c)(1)(B), (c)(4), and (e) if the President and the State or Indian tribal government comply, as determined by the Administrator, with paragraph (3) of this section.

(B) ADMINISTRATIVE COSTS - A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing assistance to individuals and households in the State under subsections (c)(1)(B), (c)(4), and (e) of this section.

(2) ACCESS TO RECORDS - In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(3) REQUIREMENTS -

(A) APPLICATION - A State or Indian tribal government desiring to provide assistance under subsection (c)(1)(B), (c)(4), or (e) shall submit to the President an application for a grant to provide financial assistance under the program.

(B) CRITERIA - The President, in consultation and coordination with State and Indian tribal governments, shall establish criteria for the approval of applications submitted under subparagraph (A). The criteria shall include, at a minimum—

- (i) a requirement that the State or Indian tribal government submit a housing strategy under subparagraph (C);
- (ii) the demonstrated ability of the State or Indian tribal government to manage the program under this section;
- (iii) there being in effect a plan approved by the President as to how the State or Indian tribal government will comply with applicable Federal

* Sec. 1211(b) of DRRRA provides that FEMA shall reimburse State and local units of government "for requests received within a period of 3 years after the declaration of a major disaster" upon a determination that a locally implemented housing solution, implemented by State or local units of government: (1) costs 50 percent of comparable FEMA solution or whatever the locally implemented solution costs, whichever is lower; (2) complies with local housing regulations and ordinances; and (3) the housing solution was implemented within 90 days of the disaster.

laws and regulations and how the State or Indian tribal government will provide assistance under its plan;

- (iv) a requirement that the State or Indian tribal government comply with rules and regulations established pursuant to subsection (j); and
- (v) a requirement that the President, or the designee of the President, comply with subsection (i).

(C) REQUIREMENT OF HOUSING STRATEGY -

- (i) IN GENERAL—A State or Indian tribal government submitting an application under this paragraph shall have an approved housing strategy, which shall be developed and submitted to the President for approval.
- (ii) REQUIREMENTS—The housing strategy required under clause (i) shall—
 - (I) outline the approach of the State in working with Federal partners, Indian tribal governments, local communities, nongovernmental organizations, and individual disaster survivors to meet disaster-related sheltering and housing needs; and
 - (II) include the establishment of an activation plan for a State Disaster Housing Task Force, as outlined in the National Disaster Housing Strategy, to bring together State, tribal, local, Federal, nongovernmental, and private sector expertise to evaluate housing requirements, consider potential solutions, recognize special needs populations, and propose recommendations.

(D) QUALITY ASSURANCE - Before approving an application submitted under this section, the President, or the designee of the President, shall institute adequate policies, procedures, and internal controls to prevent waste, fraud, abuse, and program mismanagement for this program and for programs under subsections (c)(1)(B), (c)(4), and (e). The President shall monitor and conduct quality assurance activities on a State or Indian tribal government's implementation of programs under subsections (c)(1)(B), (c)(4), and (e). If, after approving an application of a State or Indian tribal government submitted under this paragraph, the President determines that the State or Indian tribal government is not administering the program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(E) AUDITS - The Inspector General of the Department of Homeland Security shall provide for periodic audits of the programs administered by States and Indian tribal governments under this subsection.

(F) APPLICABLE LAWS - All Federal laws applicable to the management, administration, or contracting of the programs by [FEMA] under this section shall be applicable to the management, administration, or contracting by a non-Federal entity under this section.

(G) REPORT ON EFFECTIVENESS - Not later than 18 months after the date of enactment of this paragraph, the Inspector General of the Department of

Homeland Security shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the State or Indian tribal government's role to provide assistance under this section. The report shall contain an assessment of the effectiveness of the State or Indian tribal government's role in providing assistance under this section, including—

- (i) whether the State or Indian tribal government's role helped to improve the general speed of disaster recovery;
- (ii) whether the State or Indian tribal government providing assistance under this section had the capacity to administer this section; and
- (iii) recommendations for changes to improve the program if the State or Indian tribal government's role to administer the programs should be continued.

(H) REPORT ON INCENTIVES—Not later than 12 months after the date of enactment of this paragraph, the Administrator of [FEMA] shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on a potential incentive structure for awards made under this section to encourage participation by eligible States and Indian tribal governments. In developing this report, the Administrator of [FEMA] shall consult with State, local, and Indian tribal entities to gain their input on any such incentive structure to encourage participation and shall include this information in the report. This report should address, among other options, potential adjustments to the cost-share requirement and management costs to State and Indian tribal governments.

(I) PROHIBITION - The President may not condition the provision of Federal assistance under this Act on a State or Indian tribal government requesting a grant under this section.

(J) MISCELLANEOUS -

(i) NOTICE AND COMMENT - The Administrator of [FEMA] may waive notice and comment rulemaking with respect to rules to carry out this section, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program until such regulations are promulgated.

(ii) FINAL RULE - Not later than 2 years after the date of enactment of this paragraph, the Administrator of [FEMA] shall issue final regulations to implement this subsection as amended by [DRRA].

(iii) WAIVER AND EXPIRATION - The authority under clause (i) and any pilot program implemented pursuant to such clause shall expire 2 years after the date of enactment of this paragraph or upon issuance of final regulations pursuant to clause (ii), whichever occurs sooner.

(g) COST SHARING -

- (1) FEDERAL SHARE - Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.
- (2) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS - In the case of financial assistance provided under subsection (e) of this section -
 - (A) the Federal share shall be 75 percent; and
 - (B) the non-Federal share shall be paid from funds made available by the State.
- (h) MAXIMUM AMOUNT OF ASSISTANCE -
 - (1) IN GENERAL - No individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster, excluding financial assistance to rent alternate housing accommodations under subsection (c)(1)(A)(i) and financial assistance to address other needs under subsection (e).
 - (2) OTHER NEEDS ASSISTANCE - The maximum financial assistance any individual or household may receive under subsection (e) shall be equivalent to the amount set forth in paragraph (1) with respect to a single major disaster.
 - (3) ADJUSTMENT OF LIMIT - The limit established under paragraphs (1) and (2) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
 - (4) EXCLUSION OF NECESSARY EXPENSES FOR INDIVIDUALS WITH DISABILITIES -
 - (A) IN GENERAL - The maximum amount of assistance established under paragraph (1) shall exclude expenses to repair or replace damaged accessibility-related improvements under paragraphs (2), (3), and (4) of subsection (c) for individuals with disabilities.
 - (B) OTHER NEEDS ASSISTANCE - The maximum amount of assistance established under paragraph (2) shall exclude expenses to repair or replace accessibility-related personal property under subsection (e)(2) for individuals with disabilities.
- (i) VERIFICATION MEASURES - In carrying out this section, the President shall develop a system, including an electronic database, that shall allow the President, or the designee of the President, to -
 - (1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;
 - (2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;
 - (3) collect any duplicate payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;
 - (4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and
 - (5) conduct an expedited and simplified review and appeal process for an individual

or household whose application for assistance under this section is denied.

- (j) RULES AND REGULATIONS - The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

Sec. 410. Unemployment Assistance (42 U.S.C. 5177)

- (a) BENEFIT ASSISTANCE - The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in [the Internal Revenue Code of 1986, 26 U.S.C. § 85(b)]) or a waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.
- (b) REEMPLOYMENT ASSISTANCE
- (1) STATE ASSISTANCE - A State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.
- (2) FEDERAL ASSISTANCE - The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

Emergency Grants to Assist Low-Income Migrant and Seasonal Farmworkers
(42 U.S.C. 5177a)*

- (a) IN GENERAL - The Secretary of Agriculture may make grants to public agencies or private organizations with tax exempt status under section 501(c)(3) of title 26, that have experience in providing emergency services to low-income migrant and seasonal farmworkers where the Secretary determines that a local, State or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home or return home in anticipation of work shortages. Emergency services to be provided with assistance received under this section may include such types of assistance as the Secretary of Agriculture determines to be necessary and appropriate.
- (b) "LOW-INCOME MIGRANT OR SEASONAL FARMWORKER" DEFINED - For the purposes of this section, the term "low-income migrant or seasonal farmworker" means an individual -
- (1) who has, during any consecutive 12 month period within the preceding 24 month period, performed farm work for wages;

* This section was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990.

- (2) who has received not less than one-half of such individual's total income, or been employed at least one-half of total work time in farm work; and
 - (3) whose annual family income within the 12 month period referred to in paragraph (1) does not exceed the higher of the poverty level or 70 percent of the lower living standard income level.
- (c) AUTHORIZATION OF APPROPRIATIONS - There are authorized to be appropriated such sums as may be necessary to carry out this section.

Sec. 412. Benefits and Distribution (42 U.S.C. 5179)

- (a) PERSONS ELIGIBLE; TERMS AND CONDITIONS - Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies benefit allotments to such households pursuant to the provisions of the Food and Nutrition Act of 2008 of 1964* (P.L. 91-671; 84 Stat. 2048) [7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this Act.
- (b) DURATION OF ASSISTANCE; FACTORS CONSIDERED - The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such benefit allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.
- (c) FOOD AND NUTRITION ACT PROVISIONS UNAFFECTED - Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food and Nutrition Act of 2008 of 1964* [7 U.S.C. 2011 et seq.] except as they relate to the availability of supplemental nutrition assistance program benefits in an area affected by a major disaster.

Sec. 413. Food Commodities (42 U.S.C. 5180)

- (a) EMERGENCY MASS FEEDING - The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.
- (b) FUNDS FOR PURCHASE OF FOOD COMMODITIES - The Secretary of Agriculture shall utilize funds appropriated under section 612c of title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

Sec. 414. Relocation Assistance (42 U.S.C. 5181)

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such

* *Typographical error in original.*

eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

Sec. 415. Legal Services (42 U.S.C. 5182)

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

Sec. 416. Crisis Counseling Assistance and Training (42 U.S.C. 5183)

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

Sec. 417. Community Disaster Loans (42 U.S.C. 5184)

- (a) **IN GENERAL** - The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.
- (b) **AMOUNT** - The amount of any such loan shall be based on need, shall not exceed -
 - (1) 25 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000; or
 - (2) if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000.
- (c) **REPAYMENT** -
 - (1) **CANCELLATION** - Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.
 - (2) **CONDITION ON CONTINUING ELIGIBILITY** - A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.
- (d) **EFFECT ON OTHER ASSISTANCE** - Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this Act.

Sec. 418. Emergency Communications (42 U.S.C. 5185)

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

Sec. 419. Emergency Public Transportation (42 U.S.C. 5186)

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

Sec. 420. Fire Management Assistance (42 U.S.C. 5187)

- (a) **IN GENERAL** - The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.
- (b) **COORDINATION WITH STATE AND TRIBAL DEPARTMENTS OF FORESTRY** - In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.
- (c) **ESSENTIAL ASSISTANCE** - In providing assistance under this section, the President may use the authority provided under section 5170b of this title [Section 403].
- (d) **HAZARD MITIGATION ASSISTANCE** - Whether or not a major disaster is declared, the President may provide hazard mitigation assistance in accordance with section 404 in any area affected by a fire for which assistance was provided under this section.
- (e) **RULES AND REGULATIONS** - The President shall prescribe such rules and regulations as are necessary to carry out this section.

Sec. 421. Timber Sale Contracts (42 U.S.C. 5188)

- (a) **COST-SHARING ARRANGEMENT** - Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$ 1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.
- (b) **CANCELLATION OF AUTHORITY** - If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary

provisions therein.

- (c) PUBLIC NOTICE OF SALE - The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 of title 16* in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.
- (d) STATE GRANTS FOR REMOVAL OF DAMAGED TIMBER; REIMBURSEMENT OF EXPENSES LIMITED TO SALVAGE VALUE OF REMOVED TIMBER - The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

Sec. 422. Simplified Procedure (42 U.S.C. 5189)

- (a) IN GENERAL - If the Federal estimate of the cost of -
 - (1) Repairing, restoring, reconstructing, or replacing under section 5172 of this title [Section 406] any damaged or destroyed public facility or private nonprofit facility,
 - (2) emergency assistance under section 5170b or 5192 of this title [Section 403 or 502], or
 - (3) debris removed under section 5173 of this title [Section 407],
 is less than \$35,000 (or, if the Administrator has established a threshold under subsection (b), the amount established under subsection (b)), the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title [Section 403, 406, 407, or 502], as the case may be, on the basis of such Federal estimate. Such \$35,000 amount or, if applicable, the amount established under subsection (b), shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
- (b) THRESHOLD -
 - (1) REPORT - Not later than 1 year after January 29, 2013, the President, acting through the Administrator of [FEMA] (in this section referred to as the "Administrator"), shall -
 - (A) complete an analysis to determine whether an increase in the threshold for eligibility under subsection (a) is appropriate, which shall include consideration of cost-effectiveness, speed of recovery, capacity of grantees, past performance, and accountability measures; and
 - (B) submit to the Committee on Transportation and Infrastructure of the

House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report regarding the analysis conducted under subparagraph (A).

- (2) AMOUNT - After the Administrator submits the report required under paragraph (1), the President shall direct the Administrator to -
 - (A) immediately establish a threshold for eligibility under this section in an appropriate count, without regard to chapter 5 of title 5; and
 - (B) adjust the threshold annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor.
- (3) REVIEW - Not later than 3 years after the date on which the Administrator establishes a threshold under paragraph (2), and every 3 years thereafter, the President, acting through the Administrator, shall review the threshold for eligibility under this section.

Sec. 423. Appeals of Assistance Decisions (42 U.S.C. 5189a)

- (a) RIGHT OF APPEAL - Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.
- (b) PERIOD FOR DECISION - A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.
- (c) RULES - The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.
- (d) RIGHT OF ARBITRATION -
 - (1) IN GENERAL - Notwithstanding this section, an applicant for assistance under this title may request arbitration to dispute the eligibility for assistance or repayment of assistance provided for a dispute of more than \$500,000 for any disaster that occurred after January 1, 2016. Such arbitration shall be conducted by the Civilian Board of Contract Appeals and the decision of such Board shall be binding.
 - (2) REVIEW - The Civilian Board of Contract Appeals shall consider from the applicant all original and additional documentation, testimony, or other such evidence supporting the applicant's position at any time during arbitration.
 - (3) RURAL AREAS - For an applicant for assistance in a rural area under this title, the assistance amount eligible for arbitration pursuant to this subsection shall be \$100,000.
 - (4) RURAL AREA DEFINED - For the purposes of this subsection, the term "rural area" means an area with a population of less than 200,000 outside an urbanized area.
 - (5) ELIGIBILITY - To participate in arbitration under this subsection, an applicant—
 - (A) shall submit the dispute to the arbitration process established under the authority granted under section 601 of Public Law 111–5; and

* Section 476 of Title 16 was repealed by Pub. L. 94-588, § 13, Oct. 22, 1976, 90 Stat. 2958.

- (B) may submit a request for arbitration after the completion of the first appeal under subsection (a) at any time before the Administrator of [FEMA] has issued a final agency determination or 180 days after the Administrator's receipt of the appeal if the Administrator has not provided the applicant with a final determination on the appeal. The applicant's request shall contain documentation from the administrative record for the first appeal and may contain additional documentation supporting the applicant's position.

Sec. 424. Date of Eligibility; Expenses Incurred Before Date of Disaster
(42 U.S.C. 5189b)

Eligibility for Federal assistance under this title shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this Act.

Sec. 425. Transportation Assistance to Individuals and Households
(42 U.S.C. 5189c)

The President may provide transportation assistance to relocate individuals displaced from their predisaster primary residences as a result of an incident declared under this Act or otherwise transported from their predisaster primary residences under section 5170b(a)(3) or 5192 of this title [Sections 403(a)(3) or 502], to and from alternative locations for short or long-term accommodation or to return an individual or household to their predisaster primary residence or alternative location, as determined necessary by the President.

Sec. 426. Case Management Services (42 U.S.C. 5189d)

The President may provide case management services, including financial assistance, to State or local government agencies or qualified private organizations to provide such services, to victims of major disasters to identify and address unmet needs.

Sec. 427. Essential Service Providers (42 U.S.C. 5189e)

(a) DEFINITION - In this section, the term "essential service provider" means an entity that -

- (1) (A) provides -
- (i) wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service;
 - (ii) electrical power;
 - (iii) natural gas;
 - (iv) water and sewer services; or
 - (v) any other essential service, as determined by the President; or
- (B) is a tower owner or operator.

(2) is -

- (A) a municipal entity;

- (B) a nonprofit entity; or
- (C) a private, for profit entity; and
- (3) is contributing to efforts to respond to an emergency or major disaster.
- (b) AUTHORIZATION FOR ACCESSIBILITY - Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not -
 - (1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or
 - (2) impede the restoration or repair of the services described in subsection (a)(1).
- (c) IMPLEMENTATION - In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulation, and policies.

Sec. 428. Public Assistance Program Alternative Procedures (42 U.S.C. 5189f)

- (a) APPROVAL OF PROJECTS - The President, acting through the Administrator of [FEMA], may approve projects under the alternative procedures adopted under this section for any major disaster or emergency declared on or after January 29, 2013. The Administrator may also apply the alternate procedures adopted under this section to a major disaster or emergency declared before [Jan. 29, 2013] for which construction has not begun as [Jan. 29, 2013].
- (b) ADOPTION - The Administrator, in coordination with States, tribal and local governments, and owners or operators of private nonprofit facilities, may adopt alternative procedures to administer assistance provided under sections 5170b(a)(3)(A), 5172, 5173, and 5192(a)(5) of this title [Sections 403(a)(3)(A), 406, 407, and 502(a)(5)].
- (c) GOALS OF PROCEDURES - The alternative procedures adopted under subsection (a) shall further the goals of -
 - (1) reducing the costs to the Federal Government of providing such assistance;
 - (2) increasing flexibility in the administration of such assistance;
 - (3) expediting the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and
 - (4) providing financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.
- (d) PARTICIPATION -
 - (1) IN GENERAL - Participation in the alternative procedures adopted under this section shall be at the election of a State, tribal or local government, or owner or operator of a private nonprofit facility consistent with procedures determined by the Administrator.
 - (2) NO CONDITIONS - The President may not condition the provision of Federal assistance under this Act on the election by a State, local, or Indian tribal government, or owner or operator of a private nonprofit facility to participate in the alternative procedures adopted under this section.

- (e) MINIMUM PROCEDURES - The alternative procedures adopted under this section shall include the following:
- (1) For repair, restoration, and replacement of damaged facilities under section 5172 of this title [Section 406] -
 - (A) making grants on the basis of fixed estimates, if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible for any actual costs that exceed the estimate;
 - (B) providing an option for a State, tribal or local government, or owner or operator of a private nonprofit facility to elect to receive an in-lieu contribution, without reduction, on the basis of estimates of -
 - (i) the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State, tribal or local government or owner or operator of a private nonprofit facility; and
 - (ii) management expenses;
 - (C) consolidating, to the extent determined appropriate by the Administrator, the facilities of a State, tribal, or local government, or owner or operator of a private nonprofit facility as a single project based upon the estimates adopted under the procedures;
 - (D) if the actual costs of a project completed under the procedures are less than the estimated costs thereof, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for -
 - (i) cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and
 - (ii) other activities to improve future Public Assistance operations or planning;
 - (E) in determining eligible costs under section 5172 of this title [Section 406], the Administrator shall make available, at an applicant's request and where the Administrator or the certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5,000,000, an independent expert panel to validate the estimated eligible cost consistent with applicable regulations and policies implementing this section;
 - (F) in determining eligible costs under section 5172 of this title [Section 406], the Administrator shall, at the applicant's request, consider properly conducted and certified cost estimates prepared by professionally licensed engineers (mutually agreed upon by the Administrator and the applicant), to the extent that such estimates comply with applicable regulations, policy, and guidance; and
 - (G) once certified by a professionally licensed engineer and accepted by the Administrator, the estimates on which grants made pursuant to this section are based shall be presumed to be reasonable and eligible costs, as long as

there is no evidence of fraud.

- (2) For debris removal under sections 5170b(a)(3)(A), 5173, and 5192(a)(5) of this title [Sections 403(a)(3)(A), 407, and 502(a)(5)] -
 - (A) making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;
 - (B) using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;
 - (C) allowing use of program income from recycled debris without offset to the grant amount;
 - (D) reimbursing base and overtime wages for employees and extra hires of a State, tribal or local government, or owner or operator of a private nonprofit facility performing or administering debris and wreckage removal;
 - (E) providing incentives to a State or tribal government to have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster; and
 - (F) if the actual costs of projects under subparagraph (A) are less than the estimated costs of the project, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for -
 - (i) debris management planning;
 - (ii) acquisition of debris management equipment for current or future use; and
 - (iii) other activities to improve future debris removal operations, as determined by the Administrator.
- (f) WAIVER AUTHORITY - Until such time as the Administrator promulgates regulations to implement this section, the Administrator may -
 - (1) waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this section; and
 - (2) carry out the alternative procedures under this section as a pilot program.
- (g) OVERTIME PAYMENTS - The guidelines for reimbursement for costs under subsection (e)(2)(D) shall ensure that no State or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).
- (h) REPORT -
 - (1) IN GENERAL - Not earlier than 3 years, and not later than 5 years, after January 29, 2013, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the

Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the alternative procedures for the repair, restoration, and replacement of damaged facilities under section 5172 of this title [Section 406] authorized under this section.

- (2) CONTENTS - The report shall contain an assessment of the effectiveness of the alternative procedures, including -
- (A) whether the alternative procedures helped to improve the general speed of disaster recovery;
 - (B) the accuracy of the estimates relied upon;
 - (C) whether the financial incentives and disincentives were effective;
 - (D) whether the alternative procedures were cost effective;
 - (E) whether the independent expert panel described in subsection (e)(1)(E) was effective; and
 - (F) recommendations for whether the alternative procedures should be continued and any recommendations for changes to the alternative procedures.

Sec. 429. Unified Federal Review (42 U.S.C. 5189g)

- (a) IN GENERAL - Not later than 18 months after January 29, 2013, and in consultation with the Council on Environmental Quality and the Advisory Council on Historic Preservation, the President shall establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.
- (b) CONTENTS - The review process established under this section shall include mechanisms to expeditiously address delays that may occur during the recovery from a major disaster and be updated, as appropriate, consistent with a applicable law.

Sec. 430. Agency Accountability.

- (a) PUBLIC ASSISTANCE—Not later than 5 days after an award of a public assistance grant is made under section 406 that is in excess of \$1,000,000, the Administrator of [FEMA] shall publish on the website of [FEMA] the specifics of each such grant award, including—
- (1) identifying the [FEMA] Region;
 - (2) the disaster or emergency declaration number;
 - (3) the State, county, and applicant name;
 - (4) if the applicant is a private nonprofit organization;
 - (5) the damage category code;
 - (6) the amount of the Federal share obligated; and
 - (7) the date of the award.
- (b) MISSION ASSIGNMENTS—

- (1) IN GENERAL - Not later than 5 days after the issuance of a mission assignment or mission assignment task order, the Administrator of [FEMA] shall publish on the website of [FEMA] any mission assignment or mission assignment task order to another Federal department or agency regarding a major disaster in excess of \$1,000,000, including—
 - (A) the name of the impacted State or Indian Tribe;
 - (B) the disaster declaration for such State or Indian Tribe;
 - (C) the assigned agency;
 - (D) the assistance requested;
 - (E) a description of the disaster;
 - (F) the total cost estimate;
 - (G) the amount obligated;
 - (H) the State or Indian tribal government cost share, if applicable;
 - (I) the authority under which the mission assignment or mission assignment task order was directed; and
 - (J) if applicable, the date a State or Indian Tribe requested the mission assignment.
- (2) RECORDING CHANGES - Not later than 10 days after the last day of each month until a mission assignment or mission assignment task order described in paragraph (1) is completed and closed out, the Administrator of [FEMA] shall update any changes to the total cost estimate and the amount obligated.
- (c) DISASTER RELIEF MONTHLY REPORT—Not later than 10 days after the first day of each month, the Administrator of [FEMA] shall publish on the website of [FEMA] reports, including a specific description of the methodology and the source data used in developing such reports, including—
 - (1) an estimate of the amounts for the fiscal year covered by the President’s most recent budget pursuant to section 1105(a) of title 31, United States Code, including—
 - (A) the unobligated balance of funds to be carried over from the prior fiscal year to the budget year;
 - (B) the unobligated balance of funds to be carried over from the budget year to the budget year plus 1;
 - (C) the amount of obligations for noncatastrophic events for the budget year;
 - (D) the amount of obligations for the budget year for catastrophic events delineated by event and by State;
 - (E) the total amount that has been previously obligated or will be required for catastrophic events delineated by event and by State for all prior years, the current fiscal year, the budget year, and each fiscal year thereafter;
 - (F) the amount of previously obligated funds that will be recovered for the budget year;

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- (G) the amount that will be required for obligations for emergencies, as described in section 102(1), major disasters, as described in section 102(2), fire management assistance grants, as described in section 420, surge activities, and disaster readiness and support activities; and
 - (H) the amount required for activities not covered under section 251(b)(2)(D)(iii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(iii)); and
- (2) an estimate or actual amounts, if available, of the following for the current fiscal year, which shall be submitted not later than the fifth day of each month, published by the Administrator of [FEMA] on the website of [FEMA] not later than the fifth day of each month:
- (A) A summary of the amount of appropriations made available by source, the transfers executed, the previously allocated funds recovered, and the commitments, allocations, and obligations made.
 - (B) A table of disaster relief activity delineated by month, including—
 - (i) the beginning and ending balances;
 - (ii) the total obligations to include amounts obligated for fire assistance, emergencies, surge, and disaster support activities;
 - (iii) the obligations for catastrophic events delineated by event and by State; and
 - (iv) the amount of previously obligated funds that are recovered.
 - (C) A summary of allocations, obligations, and expenditures for catastrophic events delineated by event.
 - (D) The cost of the following categories of spending:
 - (i) Public assistance.
 - (ii) Individual assistance.
 - (iii) Mitigation.
 - (iv) Administrative.
 - (v) Operations.
 - (vi) Any other relevant category (including emergency measures and disaster resources) delineated by disaster.
 - (E) The date on which funds appropriated will be exhausted.
- (d) CONTRACTS*—
- (1) INFORMATION - Not later than 10 days after the first day of each month, the Administrator of [FEMA] shall publish on the website of [FEMA] the specifics of

* Sec. 1225 of DRRA provides, "Notwithstanding any other provision of law, [FEMA] shall not reimburse a State or local government, an Indian tribal government [...] or the owner or operator of a private non-profit [...] for any activities made pursuant to a contract entered into after August 1, 2017, that prohibits the Administrator or the Comptroller General of the United States from auditing or otherwise reviewing all aspects relating to the contract."

each contract in excess of \$1,000,000 that [FEMA] enters into, including—

- (A) the name of the party;
- (B) the date the contract was awarded;
- (C) the amount and scope of the contract;
- (D) if the contract was awarded through a competitive bidding process;
- (E) if no competitive bidding process was used, the reason why competitive bidding was not used; and
- (F) the authority used to bypass the competitive bidding process.

The information shall be delineated by disaster, if applicable, and specify the damage category code, if applicable.

- (2) REPORT - Not later than 10 days after the last day of the fiscal year, the Administrator of [FEMA] shall provide a report to the appropriate committees of Congress summarizing the following information for the preceding fiscal year:
 - (A) The number of contracts awarded without competitive bidding.
 - (B) The reasons why a competitive bidding process was not used.
 - (C) The total amount of contracts awarded with no competitive bidding.
 - (D) The damage category codes, if applicable, for contracts awarded without competitive bidding.

(e) COLLECTION OF PUBLIC ASSISTANCE RECIPIENT AND SUBRECIPIENT CONTRACTS—

- (1) IN GENERAL—Not later than 180 days after the date of enactment of this subsection, the Administrator of [FEMA] shall initiate and maintain an effort to collect and store information, prior to the project closeout phase on any contract entered into by a public assistance recipient or subrecipient that through the base award, available options, or any subsequent modifications has an estimated value of more than \$1,000,000 and is funded through section 324, 403, 404, 406, 407, 428, or 502, including—
 - (A) the disaster number, project worksheet number, and the category of work associated with each contract;
 - (B) the name of each party;
 - (C) the date the contract was awarded;
 - (D) the amount of the contract;
 - (E) the scope of the contract;
 - (F) the period of performance for the contract; and
 - (G) whether the contract was awarded through a competitive bidding process.
- (2) AVAILABILITY OF INFORMATION COLLECTED - The Administrator of [FEMA] shall make the information collected and stored under paragraph (1) available to the Inspector General of the Department of Homeland Security, the Government Accountability Office, and appropriate committees of Congress, upon request.

- (3) REPORT - Not later than 365 days after the date of enactment of this subsection, the Administrator of [FEMA] shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the efforts of [FEMA] to collect the information described in paragraph (1).

Title V – Emergency Assistance Programs

Sec. 501. Procedure for Declaration (42 U.S.C. 5191)

- (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 Act, 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 [Sections 502 or 503] 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.
- (c) **INDIAN TRIBAL GOVERNMENT REQUESTS** -
 - (1) **IN GENERAL** - The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that an emergency exists consistent with the requirements of subsection (a).
 - (2) **REFERENCES** - In implementing assistance authorized by the President under this subchapter in response to a request of the Chief Executive of an affected Indian tribal government for an emergency declaration, any reference in this subchapter or subchapter III (except sections 5153 and 5165d of this title [Sections 310 and 326]) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.
 - (3) **SAVINGS PROVISION** - Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this subchapter through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

Sec. 502. Federal Emergency Assistance (42 U.S.C. 5192)

- (a) **SPECIFIED** - In any emergency, the President may -
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- (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, including precautionary evacuations;
 - (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 [Section 407];
 - (6) provide assistance in accordance with section 5174 of this title [Section 408];
 - (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and
 - (8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President -
 - (A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and
 - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.
- (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, including precautionary evacuations.
- (c) **GUIDELINES** - The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.
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Sec. 503. Amount of Assistance (42 U.S.C. 5193)

- (a) FEDERAL SHARE - The Federal share for assistance provided under this title shall be equal to not less than 75 percent of the eligible costs.
- (b) LIMIT ON AMOUNT OF ASSISTANCE –
 - (1) IN GENERAL - Except as provided in paragraph (2), total assistance provided under this title for a single emergency shall not exceed \$5,000,000.
 - (2) ADDITIONAL ASSISTANCE - The limitation described in paragraph (1) may be exceeded when the President determines that -
 - (A) continued emergency assistance is immediately required;
 - (B) there is a continuing and immediate risk to lives, property, public health or safety; and
 - (C) necessary assistance will not otherwise be provided on a timely basis.
 - (3) REPORT - Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

Title VI -- Emergency Preparedness

Sec. 601. Declaration of policy (42 U.S.C. 5195)

The purpose of this title is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this title so that a comprehensive emergency preparedness system exists for all hazards.

Sec. 602. Definitions (42 U.S.C. 5195a)

- (a) DEFINITIONS - For purposes of this title only:
- (1) HAZARD - The term "hazard" means an emergency or disaster resulting from—
 - (A) a natural disaster; or
 - (B) an accidental or man-caused event.
 - (2) NATURAL DISASTER - The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.
 - (3) EMERGENCY PREPAREDNESS - The term "emergency preparedness" means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:
 - (A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).
 - (B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).
 - (C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services,

monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

- (4) ORGANIZATIONAL EQUIPMENT - The term “organizational equipment” means equipment determined by the Administrator to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.
 - (5) MATERIALS - The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.
 - (6) FACILITIES - The term “facilities”, except as otherwise provided in this title, includes buildings, shelters, utilities, and land.
 - (7) ADMINISTRATOR - The term “Administrator” means the Administrator of [FEMA].
 - (8) NEIGHBORING COUNTRIES - The term “neighboring countries” includes Canada and Mexico.
 - (9) UNITED STATES AND STATES - The terms “United States “ and “States” includ[e] the several States, the District of Columbia, and territories and possessions of the United States.
 - (10) STATE - The term “State” includes interstate emergency preparedness authorities established under section 5196(h) of this title [Section 611(h)].
- (b) CROSS REFERENCE - The terms “national defense” and “defense”, as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes emergency preparedness activities conducted pursuant to this title.

Sec. 603. Administration of Title (42 U.S.C. 5195b)

This title shall be carried out by the Administrator of [FEMA].

*Critical Infrastructures Protection (42 U.S.C. 5195c)**

- (a) SHORT TITLE - This section may be cited as the “Critical Infrastructures Protection Act of 2001”.
- (b) FINDINGS - Congress makes the following findings:
 - (1) The information revolution has transformed the conduct of business and the operations of government as well as the infrastructure relied upon for the defense and national security of the United States.

* This section was enacted as the Critical Infrastructures Protection Act of 2001 and also as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act.

- (2) Private business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors.
 - (3) A continuous national effort is required to ensure the reliable provision of cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States.
 - (4) This national effort requires extensive modeling and analytic capabilities for purposes of evaluating appropriate mechanisms to ensure the stability of these complex and interdependent systems, and to underpin policy recommendations, so as to achieve the continuous viability and adequate protection of the critical infrastructure of the Nation.
- (c) POLICY OF THE UNITED STATES - It is the policy of the United States -
- (1) that any physical or virtual disruption of the operation of the critical infrastructure of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States;
 - (2) that actions necessary to achieve the policy stated in paragraph (1) be carried out in a public-private partnership involving corporate and non-governmental organizations; and
 - (3) to have in place a comprehensive and effective program to ensure the continuity of essential Federal Government functions under all circumstances.
- (d) ESTABLISHMENT OF NATIONAL COMPETENCE FOR CRITICAL INFRASTRUCTURE PROTECTION
- (1) SUPPORT OF CRITICAL INFRASTRUCTURE PROTECTION AND CONTINUITY BY NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS CENTER - There shall be established the National Infrastructure Simulation and Analysis Center (NISAC) to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation.
 - (2) PARTICULAR SUPPORT - The support provided under paragraph (1) shall include the following:
 - (A) Modeling, simulation, and analysis of the systems comprising critical infrastructures, including cyber infrastructure, telecommunications infrastructure, and physical infrastructure, in order to enhance understanding of the large-scale complexity of such systems and to facilitate modification of such systems to mitigate the threats to such systems and to critical infrastructure generally.
 - (B) Acquisition from State and local governments and the private sector of data necessary to create and maintain models of such systems and of critical infrastructures generally.
 - (C) Utilization of modeling, simulation, and analysis under subparagraph (A) to

- provide education and training to policymakers on matters relating to -
- (i) the analysis conducted under that subparagraph;
 - (ii) the implications of unintended or unintentional disturbances to critical infrastructures; and
 - (iii) responses to incidents or crises involving critical infrastructures, including the continuity of government and private sector activities through and after such incidents or crises.
- (D) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide recommendations to policymakers, and to departments and agencies of the Federal Government and private sector persons and entities upon request, regarding means of enhancing the stability of, and preserving, critical infrastructures.
- (3) RECIPIENT OF CERTAIN SUPPORT - Modeling, simulation, and analysis provided under this subsection shall be provided, in particular, to relevant Federal, State, and local entities responsible for critical infrastructure protection and policy.
- (e) CRITICAL INFRASTRUCTURE DEFINED - In this section, the term “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.
- (f) AUTHORIZATION OF APPROPRIATIONS - There is hereby authorized for the Department of Defense for fiscal year 2002, \$20,000,000 for the Defense Threat Reduction Agency for activities of the National Infrastructure Simulation and Analysis Center under this section in that fiscal year.

SUBTITLE A – POWERS AND DUTIES

Sec. 611. Detailed Functions of Administration (42 U.S.C. 5196)

- (a) IN GENERAL - In order to carry out the policy described in section 5195 of this title [Section 601], the Administrator shall have the authorities provided in this section.
- (b) FEDERAL EMERGENCY RESPONSE PLANS AND PROGRAMS - The Administrator may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Administrator may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.
- (c) DELEGATION OF EMERGENCY PREPAREDNESS RESPONSIBILITIES - With the approval of the President, the Administrator may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review

and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.

- (d) COMMUNICATIONS AND WARNINGS - The Administrator may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.
- (e) EMERGENCY PREPAREDNESS MEASURES - The Administrator may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including -
 - (1) research and studies as to the best methods of treating the effects of hazards;
 - (2) developing shelter designs and materials for protective covering or construction;
 - (3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements; and
 - (4) plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency.
- (f) TRAINING PROGRAMS -
 - (1) The Administrator may -
 - (A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;
 - (B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of title 5 and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Administrator; and
 - (C) provide instructors and training aids as necessary.
 - (2) The terms prescribed by the Administrator for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.
 - (3) The Administrator may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.
- (g) PUBLIC DISSEMINATION OF EMERGENCY PREPAREDNESS INFORMATION - The Administrator may publicly disseminate appropriate emergency preparedness information by all appropriate means.
- (h) EMERGENCY PREPAREDNESS COMPACTS -
 - (1) The Administrator shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by -

- (A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;
 - (B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and
 - (C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.
- (2) The Administrator may -
- (A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;
 - (B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;
 - (C) assist and coordinate the activities under such compacts; and
 - (D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.
- (3) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress.
- (4) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.
- (i) MATERIALS AND FACILITIES -
- (1) The Administrator may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.
 - (2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this title before the approval of title by the Attorney General as required by sections 3111 and 3112 of title 40.
 - (3) The Administrator may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.
 - (4) The Administrator may procure and maintain under this subsection radiological,

chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Administrator shall prescribe.

(j) FINANCIAL CONTRIBUTIONS -

- (1) The Administrator may make financial contributions, on the basis of programs or projects approved by the Administrator, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Administrator shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.
- (2) The Administrator may make financial contributions, on the basis of programs or projects approved by the Administrator, to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.
- (3) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.
- (4) The amounts authorized to be contributed by the Administrator to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.
- (5) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Administrator for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Administrator) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.
- (6) The amounts authorized to be contributed by the Administrator to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Administrator may reallocate such amounts to other States under the formula described in paragraph (4).* The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.
- (7) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Administrator.

* This was redesignated paragraph (5) by Pub. L. 109-308, § 3(2), Oct. 6, 2006, 120 Stat. 1725.

The Administrator shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Administrator, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Administrator may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Administrator determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Administrator necessary for the use of such facility for emergency preparedness purposes.

- (8) The Administrator shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.
- (9) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and 1/2 times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.
- (k) SALE OR DISPOSAL OF CERTAIN MATERIALS AND FACILITIES - The Administrator may arrange for the sale or disposal of materials and facilities found by the Administrator to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 4710, and 4711) of subtitle I of title 41. Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

Sec. 612. Mutual Aid Pacts Between States and Neighboring Countries
(42 U.S.C. 5196a)

The Administrator shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

Sec. 613. Contributions for Personnel and Administrative Expenses
(42 U.S.C. 5196b)

- (a) GENERAL AUTHORITY - To further assist in carrying out the purposes of this title, the Administrator may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title [Section 611(h)]) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.
- (b) PLAN REQUIREMENTS - A plan submitted under this section shall* -
- (1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;
 - (2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;
 - (3) provide for the development of State and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by the Administrator;
 - (4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;
 - (5) provide that the State shall make such reports in such form and content as the Administrator may require;
 - (6) make available to duly authorized representatives of the Administrator and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section; and
 - (7) include a plan for providing information to the public in a coordinated manner.
- (c) CATASTROPHIC INCIDENT ANNEX -
- (1) CONSISTENCY - A catastrophic incident annex submitted under subsection (b)(3) shall be -
 - (A) modeled after the catastrophic incident annex of the National Response Plan; and
 - (B) consistent with the national preparedness goal established under [Sec. 643

* Sec. 536 of PKEMRA provides "The Department of Homeland Security shall, in approving standards for State and local emergency preparedness operational plans under section 613(b)(3) of the [Stafford Act] (42 U.S.C. 5196b(b)(3)), account for the needs of individuals with household pets and service animals before, during, and following a major disaster or emergency: Provided, That Federal agencies may provide assistance as described in section 403(a) of the [Stafford Act] (42 U.S.C. 5170b(a)) to carry out the plans described in the previous proviso."

of PKEMRA, 6 USC § 743], the National Incident Management System, the National Response Plan, and other related plans and strategies.

- (2) CONSULTATION - In developing a catastrophic incident annex submitted under subsection (b)(3), a State shall consult with and seek appropriate comments from local governments, emergency response providers, locally governed multijurisdictional councils of government, and regional planning commissions.
- (d) TERMS AND CONDITIONS - The Administrator shall establish such other terms and conditions as the Administrator considers necessary and proper to carry out this section.
- (e) APPLICATION OF OTHER PROVISIONS - In carrying out this section, the provisions of section[s] 5196(h) and 5197(h) of this title [Sections 611(h) and 621(h)] shall apply.
- (f) ALLOCATION OF FUNDS - For each fiscal year concerned, the Administrator shall allocate to each State, in accordance with regulations and the total sum appropriated under this title, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Administrator shall prescribe. The Administrator may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.
- (g) STANDARDS FOR STATE AND LOCAL EMERGENCY PREPAREDNESS OPERATIONAL PLANS - In approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), the Administrator shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.
- (h) SUBMISSION OF PLAN - If a State fails to submit a plan for approval as required by this section within 60 days after the Administrator notifies the States of the allocations under this section, the Administrator may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Administrator, will best assure the adequate development of the emergency preparedness capability of the United States.
- (h) ANNUAL REPORTS - The Administrator shall report annually to the Congress all contributions made pursuant to this section.*

Sec. 614. Grants for Construction of Emergency Operations Centers
(42 U.S.C. 5196c)

- (a) GRANTS - The Administrator of [FEMA] may make grants to States under this subchapter for equipping, upgrading, and constructing State and local emergency operations centers.
- (b) FEDERAL SHARE - Notwithstanding any other provision of this subchapter, the Federal

* *Typographical error in original; two sections "(h)" have been enacted.*

share of the cost of an activity carried out using amounts from grants made under this section shall not exceed 75 percent.

Sec. 615. Use of Funds to Prepare for and Respond to Hazards
(42 U.S.C. 5196d)

Funds made available to the States under this title may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this title for emergency preparedness activities and measures related to hazards.

Radiological Emergency Preparedness Fund (42 U.S.C. 5196e)*

There is hereby established in the Treasury a Radiological Emergency Preparedness Fund, which shall be available under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, and Executive Order 12657, for offsite radiological emergency planning, preparedness, and response. Beginning in fiscal year 1999 and thereafter, the Administrator of [FEMA] shall promulgate through rulemaking fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The aggregate charges assessed pursuant to this section during fiscal year 1999 shall not be less than 100 percent of the amounts anticipated by FEMA necessary for its radiological emergency preparedness program for such fiscal year. The methodology for assessment and collection of fees shall be fair and equitable; and shall reflect costs of providing such services, including administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the Fund as offsetting collections and will become available for authorized purposes on October 1, 1999, and remain available until expended.

Sec. 616. Disaster Related Information Services (42 U.S.C. 5196f)

- (a) IN GENERAL - Consistent with section 5151(a) of this title [Section 308(a)], the Administrator of [FEMA] shall -
- (1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster;
 - (2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by -
 - (A) population groups identified under paragraph (1); and
 - (B) individuals with disabilities or other special needs; and
 - (3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for State and local governments in providing services related to a major disaster or emergency.

* This section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999.

- (b) **GROUP SIZE** - For purposes of subsection (a), the Administrator of [FEMA] shall define the size of a population group.

SUBTITLE B – GENERAL PROVISIONS

Sec. 621. Administrative Authority (42 U.S.C. 5197)

- (a) **IN GENERAL** - For the purpose of carrying out the powers and duties assigned to the Administrator under this title, the Administrator may exercise the administrative authorities provided under this section.
- (b) **ADVISORY PERSONNEL** -
 - (1) The Administrator may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Administrator considers to be necessary in carrying out the provisions of this title.
 - (2) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Administrator.
- (c) **SERVICES OF OTHER AGENCY PERSONNEL AND VOLUNTEERS** - The Administrator may -
 - (1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;
 - (2) establish and use such regional and other offices as may be necessary; and
 - (3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.
- (d) **GIFTS** - Notwithstanding any other provision of law, the Administrator may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this title.
- (e) **REIMBURSEMENT** - The Administrator may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this title to the extent funds are available.
- (f) **PRINTING** - The Administrator may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Administrator considers necessary upon orders placed by the Director of the Government Printing Office or upon waivers issued in accordance with section 504 of title 44.
- (g) **RULES AND REGULATIONS** - The Administrator may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this title and perform

any of the powers and duties provided by this title. The Administrator may perform any of the powers and duties provided by this title through or with the aid of such officials of [FEMA] as the Administrator may designate.

- (h) FAILURE TO EXPEND CONTRIBUTIONS CORRECTLY -
- (1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Administrator finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this title for approved emergency preparedness plans, programs, or projects, the Administrator may notify such State or person that further payments will not be made to the State or person from appropriations under this title (or from funds otherwise available for the purposes of this title for any approved plan, program, or project with respect to which there is such failure to comply) until the Administrator is satisfied that there will no longer be any such failure.
 - (2) Until so satisfied, the Administrator shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.
 - (3) As used in this subsection, the term "person" means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

Sec. 622. Security Regulations (42 U.S.C. 5197a)

- (a) ESTABLISHMENT - The Administrator shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Administrator considers necessary.
- (b) LIMITATION ON EMPLOYEE ACCESS TO INFORMATION - No employee of [FEMA] shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Administrator.
- (c) NATIONAL SECURITY POSITIONS - No employee of [FEMA] shall occupy any position determined by the Administrator to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Administrator of [FEMA]. In the event such full field investigation by the Director of the Office of Personnel Management

develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Administrator of [FEMA] for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Administrator of [FEMA] for evaluation in writing. Thereafter, the Administrator of [FEMA] may refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Administrator of [FEMA] for action.

- (d) **EMPLOYEE OATHS** - Each Federal employee of [FEMA] acting under the authority of this title, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title [Section 621(b)], shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

“I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of _____ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”

After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of title 18.

Sec. 623. Use of Existing Facilities (42 U.S.C. 5197b)

In performing duties under this title, the Administrator -

- (1) shall cooperate with the various departments and agencies of the Federal Government;
 - (2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and
 - (3) shall refrain from engaging in any form of activity which would duplicate or parallel
-

activity of any other Federal department or agency unless the Administrator, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this title.

Sec. 624. Annual Report to Congress (42 U.S.C. 5197c)

The Administrator shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of [FEMA] pursuant to this title, accompanied by such recommendations as the Administrator considers appropriate.

Sec. 625. Applicability of Subchapter (42 U.S.C. 5197d)

The provisions of this title shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

Sec. 626. Authorization of Appropriation and Transfers of Funds
(42 U.S.C. 5197e)

- (a) *AUTHORIZATION OF APPROPRIATIONS* - There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.
- (b) *TRANSFER AUTHORITY* - Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this title. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

Sec. 627. Relation to Atomic Energy Act of 1954 (42 U.S.C. 5197f)

Nothing in this title shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

Sec. 628. Federal Bureau of Investigation (42 U.S.C. 5197g)

Nothing in this title shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

Title VII -- Miscellaneous

Sec. 701. Rules and Regulations (42 U.S.C. 5201)

(a) RULES AND REGULATIONS

- (1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency or agencies as he may designate.
 - (2) Deadline for payment of assistance - Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this Act to a State shall be completed within 60 days after the date of approval of such assistance.
- (b) In furtherance of the purposes of this Act, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

Insular Areas Disaster Survival and Recovery; Definitions (42 U.S.C. 5204)*

As used in sections 5204 to 5204c of this title -

- (1) the term “insular area” means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands,** and the Virgin Islands;
- (2) the term “disaster” means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 5170 of this title [Section 401]; and
- (3) the term “Secretary” means the Secretary of the Interior.

Technical Assistance for Insular Areas (42 U.S.C. 5204b)***

- (a) Upon the declaration by the President of a disaster in an insular area, the President, acting through the Administrator of [FEMA], shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly [FEMA]; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate

* This section was enacted as part of the Omnibus Insular Areas Act of 1992.

** The Trust Territory of the Pacific Islands has been terminated. See note preceding 48 U.S.C. 1681.

*** This section was enacted as part of the Omnibus Insular Areas Act of 1992.

and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

- (b) One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Administrator of [FEMA], shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

Sec. 705. Disaster Grant Closeout Procedures (42 U.S.C. 5205)

(a) STATUTE OF LIMITATIONS -

(1) IN GENERAL - Notwithstanding section 3716(e) of title 31, United States Code, and except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee.*

(2) FRAUD EXCEPTION - The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

(b) REBUTTAL OF PRESUMPTION OF RECORD MAINTENANCE -

(1) IN GENERAL - In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) AFFIRMATIVE EVIDENCE - The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) INABILITY TO PRODUCE DOCUMENTATION - The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee shall not constitute evidence to rebut the presumption described in paragraph (1).

* Sec. 1216(c)(2) of DRRRA provides that (A) "With respect to disaster or emergency assistance provided to a State or local government on or after January 1, 2004 (i) no administrative action may be taken to recover a payment of such assistance after [October 5, 2018] if the action is prohibited under [this paragraph] section, and (ii) any administrative action to recover a payment of such assistance that is pending on such date of enactment shall be terminated if the action is prohibited under [this paragraph]." and (B) Such provision "may not be construed to invalidate or otherwise affect any administration action completed before [October 5, 2018]."

- (4) RIGHT OF ACCESS - The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.
- (c) BINDING NATURE OF GRANT REQUIREMENTS* - A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if -
 - (1) the payment was authorized by an approved agreement specifying the costs;
 - (2) the costs were reasonable; and
 - (3) the purpose of the grant was accomplished.
- (d) FACILITATING CLOSEOUT—
 - (1) INCENTIVES - The Administrator of [FEMA] may develop incentives and penalties that encourage State, local, or Indian tribal governments to close out expenditures and activities on a timely basis related to disaster or emergency assistance.
 - (2) AGENCY REQUIREMENTS - [FEMA] shall, consistent with applicable regulations and required procedures, meet its responsibilities to improve closeout practices and reduce the time to close disaster program awards.

*Buy American (42 U.S.C. 5206)***

- (a) COMPLIANCE WITH CHAPTER 83 OF TITLE 41 - No funds authorized to be appropriated under [the Disaster Mitigation Act of 2000] or any amendment made by this [the Disaster Mitigation Act of 2000]* may be expended by an entity unless the entity, in expending the funds, complies with chapter 83 of title 41.
- (b) DEBARMENT OF PERSONS CONVICTED OF FRAUDULENT USE OF “MADE IN AMERICA” LABELS -
 - (1) IN GENERAL - If the Administrator of [FEMA] determines that a person has been convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that is not made in America, the Administrator shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from

* Sec. 1237 of DRRA provides: “Certain Recoupment Prohibited. (a) IN GENERAL.—Notwithstanding any other provision of law, the Agency shall deem any covered disaster assistance to have been properly procured, provided, and utilized, and shall restore any funding of covered disaster assistance previously provided but subsequently withdrawn or deobligated. (b) COVERED DISASTER ASSISTANCE DEFINED.—In this section, the term “covered disaster assistance” means assistance—(1) provided to a local government pursuant to section 403, 406, or 407 of the [Stafford Act] (42 U.S.C. 5170b, 5172, or 5173); and (2) with respect to which the inspector general of the Department of Homeland Security has determined, after an audit, that (A) the Agency deployed to the local government a Technical Assistance Contractor to review field operations, provide eligibility advice, and assist with day-to-day decisions; (B) the Technical Assistance Contractor provided inaccurate information to the local government; and (C) the local government relied on the inaccurate information to determine that relevant contracts were eligible, reasonable, and reimbursable.”

** This section was enacted as part of the Disaster Mitigation Act of 2000, Pub. L. No. 106-390.

contracting under the [Stafford Act] (42 U.S.C. 5121 et seq.).

- (2) DEFINITION OF DEBAR - In this subsection, the term “debar” has the meaning given the term in section 2393(c) of title 10.

Sec. 706. Firearms Policies (42 U.S.C. 5207)

- (a) PROHIBITION ON CONFISCATION OF FIREARMS - No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee, or other person, while acting in support of relief from a major disaster or emergency, may -
 - (1) temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Federal, State, or local law, other than for forfeiture in compliance with Federal law or as evidence in a criminal investigation;
 - (2) require registration of any firearm for which registration is not required by Federal, State, or local law;
 - (3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal, State, or local law; or
 - (4) prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Federal, State, or local law, solely because such person is operating under the direction, control, or supervision of a Federal agency in support of relief from the major disaster or emergency.
 - (b) LIMITATION - Nothing in this section shall be construed to prohibit any person in subsection (a) from requiring the temporary surrender of a firearm as a condition for entry into any mode of transportation used for rescue or evacuation during a major disaster or emergency, provided that such temporarily surrendered firearm is returned at the completion of such rescue or evacuation.
 - (c) PRIVATE RIGHTS OF ACTION -
 - (1) IN GENERAL - Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities secured by this section.
 - (2) REMEDIES - In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.
 - (3) ATTORNEY FEES - In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.
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Selected statutes from
Title 6 U.S. Code—
Domestic Security

§ 101. Definitions

In this chapter, the following definitions apply:

(1) Each of the terms “American homeland” and “homeland” means the United States.

(2) The term “appropriate congressional committee” means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term “assets” includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term “critical infrastructure” has the meaning given that term in section 5195c(e) of title 42.

(5) The term “Department” means the Department of Homeland Security.

(6) The term “emergency response providers” includes Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term “executive agency” means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5.

(8) The term “functions” includes authorities, powers, rights, privileges, immunities, programs, projects, activi-

ties, duties, and responsibilities.

(9) [*Defining “intelligence component of the Department”*]

(10) The term “key resources” means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(11) The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(12) The term “major disaster” has the meaning given in section 5122(2) of title 42.

(13) The term “personnel” means officers and employees.

(14) The term “Secretary” means the Secretary of Homeland Security.

(15) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(16) [*Defining “terrorism”*]

(17)(A) The term “United States”, when used in a geographic sense, means any

State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this chapter shall be construed to modify the definition of “United States” for the purposes of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] or any other immigration or nationality law.

(18) The term “voluntary preparedness standards” means a common set of criteria for preparedness, disaster management, emergency management, and business continuity programs, such as the American National Standards Institute’s National Fire Protection Association Standard on Disaster/Emergency Management and Business Continuity Programs (ANSI/NFPA 1600).

§111. Executive department; mission

(a) Establishment—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5.

(b) Mission

(1) IN GENERAL—The primary mission of the Department is to—

- (A) prevent terrorist attacks within the United States;
- (B) reduce the vulnerability of the United States to terrorism;
- (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;

(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and

(H) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) [*Responsibility for investigating and prosecuting terrorism*]

§112. Secretary; functions

(a) Secretary

(1) IN GENERAL—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY—All functions of all officers,

employees, and organizational units of the Department are vested in the Secretary.

(b) Functions—The Secretary—

(1) except as otherwise provided by this chapter, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this chapter or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) Coordination with non-Federal entities—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination* (established under section 361 of this title) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) [*Meetings of National Security Council*]

(e) Issuance of regulations—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.

(f) Special Assistant to the Secretary—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and

* *So in original. Probably should be "Office of State and Local Government Coordination."*

associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges;

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations; and

(C) advise the Secretary on private sector preparedness issues, including effective methods for—

(i) promoting voluntary preparedness standards to the private sector; and

(ii) assisting the private sector in adopting voluntary preparedness standards;

(5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges;

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure;

(8) providing information to the private sector regarding voluntary preparedness standards and the business justification for preparedness and promoting to the private sector the adoption of voluntary preparedness standards;

(9) coordinating industry efforts, with

respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;

(10) coordinating with the Directorate of Border and Transportation Security and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and

(11) consulting with the Office of State and Local Government Coordination and Preparedness on all matters of concern to the private sector, including the tourism industry.

(g) [*Standards policy*]

§113. Other officers

(a) Deputy Secretary; Under Secretaries—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

[(1) to (3) *Deputy Secretary of Homeland Security; Under Secretary for Science and Technology; Under Secretary for Border and Transportation Security*]

(4) An Administrator of the Federal Emergency Management Agency.

[(5) to (9) *Director of the Bureau of Citizenship and Immigration Services; Under Secretary for Management; Director of the Office of Counternarcotics Enforcement; Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department; not more than 12 Assistant Secretaries*]

(10) A General Counsel, who shall

be the chief legal officer of the Department.

(b) Inspector General—There shall be in the Department an Office of Inspector General and an Inspector General at the head of such office, as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(c) [*Commandant of the Coast Guard*]

(d) [*Other officers*]

(e) [*Chief Financial Officer*]

(f) Performance of specific functions—Subject to the provisions of this chapter, every officer of the Department shall perform the functions specified by law for the official’s office or prescribed by the Secretary.

§238. Office for Domestic Preparedness

(a) In general—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) [*Director*]

(c) Responsibilities—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate;

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section; and

(9) helping to ensure the acquisition

of interoperable communication technology by State and local governments and emergency response providers.

(d) [*Fiscal years 2003 and 2004*]

§311. Definitions

In this subchapter—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “catastrophic incident” means 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;

(4) the terms “credentialed” and “credentialing” mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 320 of this title;

(5) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of title 42;

(6) the term “interoperable” has the meaning given the term “interoperable communications” under section 194(g)(1) of this title;*

(7) the term “National Incident Management System” means a system to enable effective, efficient, and collab-

orative incident management;

(8) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6) 1 of this title;

(9) the term “Regional Administrator” means a Regional Administrator appointed under section 317 of this title;

(10) the term “Regional Office” means a Regional Office established under section 317 of this title;

(11) the term “resources” means personnel and major items of equipment, supplies, and facilities available or potentially available for responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident;

(13) the term “tribal government” means the government of any entity described in section 101(11)(B) of this title; and

(14) the terms “typed” and “typing” mean having evaluated, or evaluating, respectively, a resource in accordance with standards created under section 320 of this title.

* Section 7303(g)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)(1)).

§312. Definition

In this subchapter, the term “Nuclear Incident Response Team” means a resource that includes—

- (1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and
- (2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

§313. Federal Emergency Management Agency

(a) In general—There is in the Department the Federal Emergency Management Agency, headed by an Administrator.

(b) Mission

(1) **PRIMARY MISSION**—The primary mission of the Agency is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.

(2) **SPECIFIC ACTIVITIES**—In support of the primary mission of the Agency, the Administrator shall—

- (A) lead the Nation’s efforts to prepare for, protect against, re-

spond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

(B) partner with State, local, and tribal governments and emergency response providers, with other Federal agencies, with the private sector, and with nongovernmental organizations to build a national system of emergency management that can effectively and efficiently utilize the full measure of the Nation’s resources to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

(C) develop a Federal response capability that, when necessary and appropriate, can act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other man-made disaster;

(D) integrate the Agency’s emergency preparedness, protection, response, recovery, and mitigation responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other man-made disaster;

(E) develop and maintain robust Regional Offices that will work with State, local, and tribal governments, emergency response providers, and other appropriate entities to identify and address regional priorities;

(F) under the leadership of the Secretary, coordinate with the Commandant of the Coast Guard, the Director of Customs and Bor-

der Protection, the Director of Immigration and Customs Enforcement, the National Operations Center, and other agencies and offices in the Department to take full advantage of the substantial range of resources in the Department;

(G) provide funding, training, exercises, technical assistance, planning, and other assistance to build tribal, local, State, regional, and national capabilities (including communications capabilities), necessary to respond to a natural disaster, act of terrorism, or other man-made disaster; and

(H) develop and coordinate the implementation of a risk-based, all-hazards strategy for preparedness that builds those common capabilities necessary to respond to natural disasters, acts of terrorism, and other man-made disasters while also building the unique capabilities necessary to respond to specific types of incidents that pose the greatest risk to our Nation.

(c) Administrator

(1) **IN GENERAL**—The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(2) **QUALIFICATIONS**—The Administrator shall be appointed from among individuals who have—

(A) a demonstrated ability in and knowledge of emergency management and homeland security; and

(B) not less than 5 years of executive leadership and management experience in the public or private sector.

(3) **REPORTING**—The Administrator shall report to the Secretary, without being required to report through any other official of the Department.

(4) PRINCIPAL ADVISOR ON EMERGENCY MANAGEMENT—

(A) **IN GENERAL**—The Administrator is the principal advisor to the President, the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States.

(B) ADVICE AND RECOMMENDATIONS—

(i) **IN GENERAL**—In presenting advice with respect to any matter to the President, the Homeland Security Council, or the Secretary, the Administrator shall, as the Administrator considers appropriate, inform the President, the Homeland Security Council, or the Secretary, as the case may be, of the range of emergency preparedness, protection, response, recovery, and mitigation options with respect to that matter.

(ii) **ADVICE ON REQUEST**—The Administrator, as the principal advisor on emergency management, shall provide advice to the President, the Homeland Security Council, or the Secretary on a particular matter when the President, the Homeland Security Council, or the Secretary requests such advice.

(iii) **RECOMMENDATIONS TO CONGRESS**—After informing the Secretary, the Administrator may make such recommendations to Congress relating to emergency management as the

Administrator considers appropriate.

(5) CABINET STATUS

(A) IN GENERAL—The President may designate the Administrator to serve as a member of the Cabinet in the event of natural disasters, acts of terrorism, or other man-made disasters.

(B) RETENTION OF AUTHORITY—Nothing in this paragraph shall be construed as affecting the authority of the Secretary under this chapter.

§314. Authority and responsibilities

(a) In general—The Administrator shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this subchapter)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team and (when operating as an organizational unit of the Department pursuant to this subchapter) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan;

(7) helping ensure the acquisition of operable and interoperable communications capabilities by Federal, State, local, and tribal governments and emergency response providers;

(8) assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and carrying out all functions and authorities given to the Administrator under that Act;

(9) carrying out the mission of the Agency to reduce the loss of life and property and protect the Nation from

all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—

- (A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;
- (B) preparedness, by planning, training, and building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
- (C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and
- (D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;
- (10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;
- (11) helping to ensure the effectiveness of emergency response providers in responding to a natural disaster, act of terrorism, or other man-made disaster;
- (12) supervising grant programs administered by the Agency;
- (13) administering and ensuring the implementation of the National Response Plan, including coordinating

and ensuring the readiness of each emergency support function under the National Response Plan;

- (14) coordinating with the National Advisory Council established under section 318 of this title;
- (15) preparing and implementing the plans and programs of the Federal Government for—
 - (A) continuity of operations;
 - (B) continuity of government; and
 - (C) continuity of plans;
- (16) minimizing, to the extent practicable, overlapping planning and reporting requirements applicable to State, local, and tribal governments and the private sector;
- (17) maintaining and operating within the Agency the National Response Coordination Center or its successor;
- (18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents;
- (19) assisting the President in carrying out the functions under the national preparedness goal and the national preparedness system and carrying out all functions and authorities of the Administrator under the national preparedness System;
- (20) carrying out all authorities of the Federal Emergency Management Agency and the Directorate of Preparedness of the Department as transferred under section 315 of this title; and
- (21) otherwise carrying out the mission of the Agency as described in section 313(b) of this title.

(b) All-hazards approach—In carrying out the responsibilities under this section, the Administrator shall coordinate the implementation of a risk-based, all-hazards strategy that builds those common capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, and other man-made disasters, while also building the unique capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against the risks of specific types of incidents that pose the greatest risk to the Nation.

§314a. FEMA programs

Notwithstanding any other provision of Federal law, as of April 1, 2007, the Director of the Federal Emergency Management Agency shall be responsible for the radiological emergency preparedness program and the chemical stockpile emergency preparedness program.

§315. Functions transferred

(a) In general—Except as provided in subsection (b), there are transferred to the Agency the following:

- (1) All functions of the Federal Emergency Management Agency, including existing responsibilities for emergency alert systems and continuity of operations and continuity of government plans and programs as constituted on June 1, 2006, including all of its personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Federal Emergency Management relating thereto.
- (2) The Directorate of Preparedness, as constituted on June 1, 2006, in-

cluding all of its functions, personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Preparedness relating thereto.

(b) Exceptions—The following within the Preparedness Directorate shall not be transferred:

- (1) The Office of Infrastructure Protection.
- (2) The National Communications System.
- (3) The National Cybersecurity Division.
- (4) The Office of the Chief Medical Officer.
- (5) The functions, personnel, assets, components, authorities, and liabilities of each component described under paragraphs (1) through (4).

§316. Preserving the Federal Emergency Management Agency

(a) Distinct entity—The Agency shall be maintained as a distinct entity within the Department.

(b) Reorganization—Section 452 of this title shall not apply to the Agency, including any function or organizational unit of the Agency.

(c) Prohibition on changes to missions

- (1) **IN GENERAL**—The Secretary may not substantially or significantly reduce the authorities, responsibilities, or functions of the Agency or the capability of the Agency to perform those missions, authorities, responsibilities, except as otherwise specifically provided in an Act enacted after October 4, 2006.
- (2) **CERTAIN TRANSFERS PROHIBITED**—No asset, function, or mission of

the Agency may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the capability of the Agency to perform its missions.

(d) Reprogramming and transfer of funds—In reprogramming or transferring funds, the Secretary shall comply with any applicable provisions of any Act making appropriations for the Department for fiscal year 2007, or any succeeding fiscal year, relating to the reprogramming or transfer of funds.

§317. Regional offices

(a) In general—There are in the Agency 10 regional offices, as identified by the Administrator.

(b) Management of regional offices

(1) **REGIONAL ADMINISTRATOR**—Each Regional Office shall be headed by a Regional Administrator who shall be appointed by the Administrator, after consulting with State, local, and tribal government officials in the region. Each Regional Administrator shall report directly to the Administrator and be in the Senior Executive Service.

(2) QUALIFICATIONS

(A) **IN GENERAL**—Each Regional Administrator shall be appointed from among individuals who have a demonstrated ability in and knowledge of emergency management and homeland security.

(B) **CONSIDERATIONS**—In selecting a Regional Administrator for a Regional Office, the Administrator shall consider the familiarity of an individual with the geographical area and demographic characteristics of the population

served by such Regional Office.

(c) Responsibilities

(1) **IN GENERAL**—The Regional Administrator shall work in partnership with State, local, and tribal governments, emergency managers, emergency response providers, medical providers, the private sector, nongovernmental organizations, multijurisdictional councils of governments, and regional planning commissions and organizations in the geographical area served by the Regional Office to carry out the responsibilities of a Regional Administrator under this section.

(2) **RESPONSIBILITIES**—The responsibilities of a Regional Administrator include—

(A) ensuring effective, coordinated, and integrated regional preparedness, protection, response, recovery, and mitigation activities and programs for natural disasters, acts of terrorism, and other man-made disasters (including planning, training, exercises, and professional development);

(B) assisting in the development of regional capabilities needed for a national catastrophic response system;

(C) coordinating the establishment of effective regional operable and interoperable emergency communications capabilities;

(D) staffing and overseeing 1 or more strike teams within the region under subsection (f), to serve as the focal point of the Federal Government's initial response efforts for natural disasters, acts of terrorism, and other man-made disasters within that region, and otherwise building Federal re-

sponse capabilities to respond to natural disasters, acts of terrorism, and other man-made disasters within that region;

(E) designating an individual responsible for the development of strategic and operational regional plans in support of the National Response Plan;

(F) fostering the development of mutual aid and other cooperative agreements;

(G) identifying critical gaps in regional capabilities to respond to populations with special needs;

(H) maintaining and operating a Regional Response Coordination Center or its successor;

(I) coordinating with the private sector to help ensure private sector preparedness for natural disasters, acts of terrorism, and other man-made disasters;

(J) assisting State, local, and tribal governments, where appropriate, to preidentify and evaluate suitable sites where a multijurisdictional incident command system may quickly be established and operated from, if the need for such a system arises; and

(K) performing such other duties relating to such responsibilities as the Administrator may require.

(3) TRAINING AND EXERCISE REQUIREMENTS

(A) **TRAINING**—The Administrator shall require each Regional Administrator to undergo specific training periodically to complement the qualifications of the Regional Administrator. Such training, as appropriate, shall include training with respect to the National Incident Management

System, the National Response Plan, and such other subjects as determined by the Administrator.

(B) **EXERCISES**. The Administrator shall require each Regional Administrator to participate as appropriate in regional and national exercises.

(d) Area offices

(1) **IN GENERAL**—There is an Area Office for the Pacific and an Area Office for the Caribbean, as components in the appropriate Regional Offices.

(2) **ALASKA**—The Administrator shall establish an Area Office in Alaska, as a component in the appropriate Regional Office.

(e) Regional Advisory Council

(1) **ESTABLISHMENT**—Each Regional Administrator shall establish a Regional Advisory Council.

(2) **NOMINATIONS**—A State, local, or tribal government located within the geographic area served by the Regional Office may nominate officials, including Adjutants General and emergency managers, to serve as members of the Regional Advisory Council for that region.

(3) **RESPONSIBILITIES**—Each Regional Advisory Council shall—

(A) advise the Regional Administrator on emergency management issues specific to that region;

(B) identify any geographic, demographic, or other characteristics peculiar to any State, local, or tribal government within the region that might make preparedness, protection, response, recovery, or mitigation more complicated or difficult; and

(C) advise the Regional Admin-

istrator of any weaknesses or deficiencies in preparedness, protection, response, recovery, and mitigation for any State, local, and tribal government within the region of which the Regional Advisory Council is aware.

(f) Regional Office strike teams

(1) **IN GENERAL**—In coordination with other relevant Federal agencies, each Regional Administrator shall oversee multi-agency strike teams authorized under section 5144 of title 42 that shall consist of—

- (A) a designated Federal coordinating officer;
- (B) personnel trained in incident management;
- (C) public affairs, response and recovery, and communications support personnel;
- (D) a defense coordinating officer;
- (E) liaisons to other Federal agencies;
- (F) such other personnel as the Administrator or Regional Administrator determines appropriate; and
- (G) individuals from the agencies with primary responsibility for each of the emergency support functions in the National Response Plan.

(2) **OTHER DUTIES**—The duties of an individual assigned to a Regional Office strike team from another relevant agency when such individual is not functioning as a member of the strike team shall be consistent with the emergency preparedness activities of the agency that employs such individual.

(3) **LOCATION OF MEMBERS**—The

members of each Regional Office strike team, including representatives from agencies other than the Department, shall be based primarily within the region that corresponds to that strike team.

(4) **COORDINATION**—Each Regional Office strike team shall coordinate the training and exercises of that strike team with the State, local, and tribal governments and private sector and nongovernmental entities which the strike team shall support when a natural disaster, act of terrorism, or other man-made disaster occurs.

(5) **PREPAREDNESS**—Each Regional Office strike team shall be trained as a unit on a regular basis and equipped and staffed to be well prepared to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.

(6) **AUTHORITIES**—If the Administrator determines that statutory authority is inadequate for the preparedness and deployment of individuals in strike teams under this subsection, the Administrator shall report to Congress regarding the additional statutory authorities that the Administrator determines are necessary.

§318. National Advisory Council

(a) Establishment—Not later than 60 days after October 4, 2006, the Secretary shall establish an advisory body under section 451(a) of this title to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters, to be known as the National Advisory Council.

(b) Responsibilities

(1) **IN GENERAL**—The National Advisory Council shall advise the Administrator on all aspects of emergency management. The National Advisory Council shall incorporate State, local, and tribal government and private sector input in the development and revision of the national preparedness goal, the national preparedness system, the National Incident Management System, the National Response Plan, and other related plans and strategies.

(2) **CONSULTATION ON GRANTS**—To ensure input from and coordination with State, local, and tribal governments and emergency response providers, the Administrator shall regularly consult and work with the National Advisory Council on the administration and assessment of grant programs administered by the Department, including with respect to the development of program guidance and the development and evaluation of risk-assessment methodologies, as appropriate.

(c) Membership

(1) **IN GENERAL**—The members of the National Advisory Council shall be appointed by the Administrator, and shall, to the extent practicable, represent a geographic (including urban and rural) and substantive cross section of officials, emergency managers, and emergency response providers from State, local, and tribal governments, the private sector, and nongovernmental organizations, including as appropriate—

(A) members selected from the emergency management field and emergency response providers, including fire service, law enforcement, hazardous materi-

als response, emergency medical services, and emergency management personnel, or organizations representing such individuals;

(B) health scientists, emergency and inpatient medical providers, and public health professionals;

(C) experts from Federal, State, local, and tribal governments, and the private sector, representing standards-setting and accrediting organizations, including representatives from the voluntary consensus codes and standards development community, particularly those with expertise in the emergency preparedness and response field;

(D) State, local, and tribal government officials with expertise in preparedness, protection, response, recovery, and mitigation, including Adjutants General;

(E) elected State, local, and tribal government executives;

(F) experts in public and private sector infrastructure protection, cybersecurity, and communications;

(G) representatives of individuals with disabilities and other populations with special needs; and

(H) such other individuals as the Administrator determines to be appropriate.

(2) **COORDINATION WITH THE DEPARTMENTS OF HEALTH AND HUMAN SERVICES AND TRANSPORTATION**—In the selection of members of the National Advisory Council who are health or emergency medical services professionals, the Administrator shall work with the Secretary of Health and Human Services and the Secretary of Transportation.

(3) **EX OFFICIO MEMBERS**—The Administrator shall designate 1 or more officers of the Federal Government to serve as ex officio members of the National Advisory Council.

(4) **TERMS OF OFFICE**—

(A) **IN GENERAL**—Except as provided in subparagraph (B), the term of office of each member of the National Advisory Council shall be 3 years.

(B) **INITIAL APPOINTMENTS**—Of the members initially appointed to the National Advisory Council—

(i) one-third shall be appointed for a term of 1 year; and

(ii) one-third shall be appointed for a term of 2 years.

(d) Applicability of Federal Advisory Committee Act

(1) **IN GENERAL**—Notwithstanding section 451(a) of this title and subject to paragraph (2), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5 shall apply to the National Advisory Council.

(2) **TERMINATION**—Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Advisory Council.

§319. National Integration Center

(a) In general—There is established in the Agency a National Integration Center.

(b) Responsibilities

(1) **IN GENERAL**—The Administrator, through the National Integration Center, and in consultation with other Federal departments and agencies and the National Advisory Council,

shall ensure ongoing management and maintenance of the National Incident Management System, the National Response Plan, and any successor to such system or plan.

(2) **SPECIFIC RESPONSIBILITIES**—The National Integration Center shall periodically review, and revise as appropriate, the National Incident Management System and the National Response Plan, including—

(A) establishing, in consultation with the Director of the Corporation for National and Community Service, a process to better use volunteers and donations;

(B) improving the use of Federal, State, local, and tribal resources and ensuring the effective use of emergency response providers at emergency scenes; and

(C) revising the Catastrophic Incident Annex, finalizing and releasing the Catastrophic Incident Supplement to the National Response Plan, and ensuring that both effectively address response requirements in the event of a catastrophic incident.

(c) Incident management

(1) **IN GENERAL**—

(A) **NATIONAL RESPONSE PLAN**—The Secretary, acting through the Administrator, shall ensure that the National Response Plan provides for a clear chain of command to lead and coordinate the Federal response to any natural disaster, act of terrorism, or other man-made disaster.

(B) **ADMINISTRATOR**—The chain of the command specified in the National Response Plan shall—

(i) provide for a role for the Administrator consistent with the

role of the Administrator as the principal emergency management advisor to the President, the Homeland Security Council, and the Secretary under section 313(c)(4) of this title and the responsibility of the Administrator under the Post-Katrina Emergency Management Reform Act of 2006, and the amendments made by that Act, relating to natural disasters, acts of terrorism, and other man-made disasters; and

(ii) provide for a role for the Federal Coordinating Officer consistent with the responsibilities under section 5143(b) of title 42.

(2) **PRINCIPAL FEDERAL OFFICIAL**—The Principal Federal Official (or the successor thereto) shall not—

(A) direct or replace the incident command structure established at the incident; or

(B) have directive authority over the Senior Federal Law Enforcement Official, Federal Coordinating Officer, or other Federal and State officials.

§320. Credentialing and typing

(a) **In general**—The Administrator shall enter into a memorandum of understanding with the administrators of the Emergency Management Assistance Compact, State, local, and tribal governments, and organizations that represent emergency response providers, to collaborate on developing standards for deployment capabilities, including for credentialing and typing of incident management personnel, emergency response providers, and other personnel (including temporary

personnel) and resources likely needed to respond to natural disasters, acts of terrorism, and other man-made disasters.

(b) Distribution

(1) **IN GENERAL**—Not later than 1 year after August 3, 2007, the Administrator shall provide the standards developed under subsection (a), including detailed written guidance, to—

(A) each Federal agency that has responsibilities under the National Response Plan to aid that agency with credentialing and typing incident management personnel, emergency response providers, and other personnel (including temporary personnel) and resources likely needed to respond to a natural disaster, act of terrorism, or other man-made disaster; and

(B) State, local, and tribal governments, to aid such governments with credentialing and typing of State, local, and tribal incident management personnel, emergency response providers, and other personnel (including temporary personnel) and resources likely needed to respond to a natural disaster, act of terrorism, or other man-made disaster.

(2) **ASSISTANCE**—The Administrator shall provide expertise and technical assistance to aid Federal, State, local, and tribal government agencies with credentialing and typing incident management personnel, emergency response providers, and other personnel (including temporary personnel) and resources likely needed to respond to a natural disaster, act of terrorism, or other man-made disaster.

(c) Credentialing and typing of personnel—Not later than 6 months after receiving the standards provided under subsection (b), each Federal agency with responsibilities under the National Response Plan shall ensure that incident management personnel, emergency response providers, and other personnel (including temporary personnel) and resources likely needed to respond to a natural disaster, act of terrorism, or other manmade disaster are credentialed and typed in accordance with this section.

(d) Consultation on health care standards—In developing standards for credentialing health care professionals under this section, the Administrator shall consult with the Secretary of Health and Human Services.

§321. The National Infrastructure Simulation and Analysis Center

(a) Definition—In this section, the term “National Infrastructure Simulation and Analysis Center” means the National Infrastructure Simulation and Analysis Center established under section 5195c(d) of title 42.

(b) Authority

(1) **IN GENERAL**—There is in the Department the National Infrastructure Simulation and Analysis Center which shall serve as a source of national expertise to address critical infrastructure protection and continuity through support for activities related to—

- (A) counterterrorism, threat assessment, and risk mitigation; and
- (B) a natural disaster, act of terrorism, or other man-made disaster.

(2) **INFRASTRUCTURE MODELING**—

- (A) **PARTICULAR SUPPORT**—The support provided under paragraph

(1) shall include modeling, simulation, and analysis of the systems and assets comprising critical infrastructure, in order to enhance preparedness, protection, response, recovery, and mitigation activities.

(B) **RELATIONSHIP WITH OTHER AGENCIES**—Each Federal agency and department with critical infrastructure responsibilities under Homeland Security Presidential Directive 7, or any successor to such directive, shall establish a formal relationship, including an agreement regarding information sharing, between the elements of such agency or department and the National Infrastructure Simulation and Analysis Center, through the Department.

(C) **PURPOSE**—

(i) **IN GENERAL**—The purpose of the relationship under subparagraph (B) shall be to permit each Federal agency and department described in subparagraph (B) to take full advantage of the capabilities of the National Infrastructure Simulation and Analysis Center (particularly vulnerability and consequence analysis), consistent with its work load capacity and priorities, for real-time response to reported and projected natural disasters, acts of terrorism, and other man-made disasters.

(ii) **RECIPIENT OF CERTAIN SUPPORT**—Modeling, simulation, and analysis provided under this subsection shall be provided to relevant Federal agencies and departments, including Federal agencies and departments with critical infrastructure re-

sponsibilities under Homeland Security Presidential Directive 7, or any successor to such directive.

§321a. Evacuation plans and exercises

(a) In general—Notwithstanding any other provision of law, and subject to subsection (d), grants made to States or local or tribal governments by the Department through the State Homeland Security Grant Program or the Urban Area Security Initiative may be used to—

- (1) establish programs for the development and maintenance of mass evacuation plans under subsection (b) in the event of a natural disaster, act of terrorism, or other man-made disaster;
- (2) prepare for the execution of such plans, including the development of evacuation routes and the purchase and stockpiling of necessary supplies and shelters; and
- (3) conduct exercises of such plans.

(b) Plan development—In developing the mass evacuation plans authorized under subsection (a), each State, local, or tribal government shall, to the maximum extent practicable—

- (1) establish incident command and decision making processes;
- (2) ensure that State, local, and tribal government plans, including evacuation routes, are coordinated and integrated;
- (3) identify primary and alternative evacuation routes and methods to increase evacuation capabilities along such routes such as conversion of two-way traffic to one-way evacuation routes;

(4) identify evacuation transportation modes and capabilities, including the use of mass and public transit capabilities, and coordinating and integrating evacuation plans for all populations including for those individuals located in hospitals, nursing homes, and other institutional living facilities;

(5) develop procedures for informing the public of evacuation plans before and during an evacuation, including individuals—

- (A) with disabilities or other special needs, including the elderly;
- (B) with limited English proficiency; or
- (C) who might otherwise have difficulty in obtaining such information; and

(6) identify shelter locations and capabilities.

(c) Assistance

(1) **IN GENERAL**—The Administrator may establish any guidelines, standards, or requirements determined appropriate to administer this section and to ensure effective mass evacuation planning for State, local, and tribal areas.

(2) **REQUESTED ASSISTANCE**—The Administrator shall make assistance available upon request of a State, local, or tribal government to assist hospitals, nursing homes, and other institutions that house individuals with special needs to establish, maintain, and exercise mass evacuation plans that are coordinated and integrated into the plans developed by that State, local, or tribal government under this section.

(d) Multipurpose funds—Nothing in this section may be construed to preclude a State, local, or tribal govern-

ment from using grant funds in a manner that enhances preparedness for a natural or man-made disaster unrelated to an act of terrorism, if such use assists such government in building capabilities for terrorism preparedness.

§321b. Disability Coordinator

(a) In general—After consultation with organizations representing individuals with disabilities, the National Council on Disabilities, and the Interagency Coordinating Council on Preparedness and Individuals with Disabilities, established under Executive Order No. 13347, the Administrator shall appoint a Disability Coordinator. The Disability Coordinator shall report directly to the Administrator, in order to ensure that the needs of individuals with disabilities are being properly addressed in emergency preparedness and disaster relief.

(b) Responsibilities—The Disability Coordinator shall be responsible for—

(1) providing guidance and coordination on matters related to individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;

(2) interacting with the staff of the Agency, the National Council on Disabilities, the Interagency Coordinating Council on Preparedness and Individuals with Disabilities established under Executive Order No. 13347, other agencies of the Federal Government, and State, local, and tribal government authorities regarding the needs of individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act

of terrorism, or other man-made disaster;

(3) consulting with organizations that represent the interests and rights of individuals with disabilities about the needs of individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;

(4) ensuring the coordination and dissemination of best practices and model evacuation plans for individuals with disabilities;

(5) ensuring the development of training materials and a curriculum for training of emergency response providers, State, local, and tribal government officials, and others on the needs of individuals with disabilities;

(6) promoting the accessibility of telephone hotlines and websites regarding emergency preparedness, evacuations, and disaster relief;

(7) working to ensure that video programming distributors, including broadcasters, cable operators, and satellite television services, make emergency information accessible to individuals with hearing and vision disabilities;

(8) ensuring the availability of accessible transportation options for individuals with disabilities in the event of an evacuation;

(9) providing guidance and implementing policies to ensure that the rights and wishes of individuals with disabilities regarding post-evacuation residency and relocation are respected;

(10) ensuring that meeting the needs of individuals with disabilities are included in the components of the

national preparedness system established under section 744 of this title;* and

(11) any other duties as assigned by the Administrator.

§321c. Department and Agency officials

(a) Deputy Administrators—The President may appoint, by and with the advice and consent of the Senate, not more than 4 Deputy Administrators to assist the Administrator in carrying out this subchapter.

(b) Cybersecurity and communications—There is in the Department an Assistant Secretary for Cybersecurity and Communications.

(c) United States Fire Administration—The Administrator of the United States Fire Administration shall have a rank equivalent to an assistant secretary of the Department.

§321d. National Operations Center

(a) Definition—In this section, the term “situational awareness” means information gathered from a variety of sources that, when communicated to emergency managers and decision makers, can form the basis for incident management decisionmaking.

(b) Establishment—The National Operations Center is the principal operations center for the Department and shall—

(1) provide situational awareness and a common operating picture for the entire Federal Government, and for State, local, and tribal governments as appropriate, in the event of a natural disaster, act of terrorism, or

other man-made disaster; and

(2) ensure that critical terrorism and disaster-related information reaches government decision-makers.

(c) State and local fire service representation—

(1) ESTABLISHMENT OF POSITION—The Secretary shall, in consultation with the Administrator of the United States Fire Administration, establish a fire service position at the National Operations Center established under subsection (b) to ensure the effective sharing of information between the Federal Government and State and local fire services.

(2) DESIGNATION OF POSITION—The Secretary shall designate, on a rotating basis, a State or local fire service official for the position described in paragraph (1).

(3) MANAGEMENT—The Secretary shall manage the position established pursuant to paragraph (1) in accordance with such rules, regulations, and practices as govern other similar rotating positions at the National Operations Center.

§321e. Chief Medical Officer

(a) In general—There is in the Department a Chief Medical Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Qualifications—The individual appointed as Chief Medical Officer shall possess a demonstrated ability in and knowledge of medicine and public health.

(c) Responsibilities—The Chief Medical Officer shall have the primary responsibility within the Department for medical issues related to natural disasters, acts of terrorism, and other

* Section 644 of PKEMRA.

man-made disasters, including—

- (1) serving as the principal advisor to the Secretary and the Administrator on medical and public health issues;
- (2) coordinating the biodefense activities of the Department;
- (3) ensuring internal and external coordination of all medical preparedness and response activities of the Department, including training, exercises, and equipment support;
- (4) serving as the Department's primary point of contact with the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Transportation, the Department of Veterans Affairs, and other Federal departments or agencies, on medical and public health issues;
- (5) serving as the Department's primary point of contact for State, local, and tribal governments, the medical community, and others within and outside the Department, with respect to medical and public health matters;
- (6) discharging, in coordination with the Under Secretary for Science and Technology, the responsibilities of the Department related to Project Bioshield; and
- (7) performing such other duties relating to such responsibilities as the Secretary may require.

§321f. Nuclear incident response

(a) In general—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an

organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) Rule of construction—Nothing in this subchapter shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this subchapter) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

§321g. Conduct of certain public health-related activities

(a) In general—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) Evaluation of progress—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

§321h. Use of national private sector networks in emergency response

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

§321i. Use of commercially available technology, goods, and services

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department’s information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

§321j. Procurement of security countermeasures for Strategic National Stockpile

(a) Authorization of appropriations—For the procurement of security countermeasures under section 247d–6b(c) of title 42 (referred to in this section as the “security countermeasures program”), there is authorized to be appropriated up to \$5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to exceed \$3,418,000,000 may be obligated during the fiscal years 2004 through 2008,

of which not to exceed \$890,000,000 may be obligated during fiscal year 2004. None of the funds made available under this subsection shall be used to procure countermeasures to diagnose, mitigate, prevent, or treat harm resulting from any naturally occurring infectious disease or other public health threat that are not security countermeasures under section 247d–6b(c)(1)(B) of title 42.

(b) Special reserve fund—For purposes of the security countermeasures program, the term “special reserve fund” means the “Biodefense Countermeasures” appropriations account or any other appropriation made under subsection (a).

(c) Availability—Amounts appropriated under subsection (a) become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

(d) Related authorizations of appropriations

(1) **THREAT ASSESSMENT CAPABILITIES**—For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Office of Intelligence and Analysis, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear agents, the means by which such agents could

be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 403-4* of title 50.

(2) **INTELLIGENCE SHARING INFRASTRUCTURE**—For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or permanent) sufficient to permit the Secretary to receive, not later than 180 days after July 21, 2004, all classified information and products to which the Under Secretary for Intelligence and Analysis is entitled under part A of subchapter II of this chapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.

§321k. Model standards and guidelines for critical infrastructure workers

(a) **In general**—Not later than 12 months after August 3, 2007, and in coordination with appropriate national professional organizations, Federal, State, local, and tribal government agencies, and private-sector and non-governmental entities, the Administrator shall establish model standards and guidelines for credentialing critical

infrastructure workers that may be used by a State to credential critical infrastructure workers that may respond to a natural disaster, act of terrorism, or other man-made disaster.

(b) **Distribution and assistance**—The Administrator shall provide the standards developed under subsection (a), including detailed written guidance, to State, local, and tribal governments, and provide expertise and technical assistance to aid such governments with credentialing critical infrastructure workers that may respond to a natural disaster, act of terrorism, or other man-made disaster.

§321l. Guidance and recommendations

(a) **In general**—Consistent with their responsibilities and authorities under law, as of the day before August 3, 2007, the Administrator and the Assistant Secretary for Infrastructure Protection, in consultation with the private sector, may develop guidance or recommendations and identify best practices to assist or foster action by the private sector in—

- (1) identifying potential hazards and assessing risks and impacts;
- (2) mitigating the impact of a wide variety of hazards, including weapons of mass destruction;
- (3) managing necessary emergency preparedness and response resources;
- (4) developing mutual aid agreements;
- (5) developing and maintaining emergency preparedness and response plans, and associated operational procedures;
- (6) developing and conducting training and exercises to support and

* Section 403-4 of title 50 was repealed and new section 403-4 enacted; as so enacted, section 403-4 no longer relates to the promulgation of standards and qualifications for the performance of intelligence activities.

evaluate emergency preparedness and response plans and operational procedures;

(7) developing and conducting training programs for security guards to implement emergency preparedness and response plans and operations procedures; and

(8) developing procedures to respond to requests for information from the media or the public.

(b) Issuance and promotion—Any guidance or recommendations developed or best practices identified under subsection (a) shall be—

(1) issued through the Administrator; and

(2) promoted by the Secretary to the private sector.

(c) Small business concerns—In developing guidance or recommendations or identifying best practices under subsection (a), the Administrator and the Assistant Secretary for Infrastructure Protection shall take into consideration small business concerns (under the meaning given that term in section 632 of title 15), including any need for separate guidance or recommendations or best practices, as necessary and appropriate.

(d) Rule of construction—Nothing in this section may be construed to supersede any requirement established under any other provision of law.

§321m. Voluntary private sector preparedness accreditation and certification program

(a) Establishment

(1) **IN GENERAL**—The Secretary, acting through the officer designated under paragraph (2), shall establish and implement the voluntary private

sector preparedness accreditation and certification program in accordance with this section.

(2) **DESIGNATION OF OFFICER**—The Secretary shall designate an officer responsible for the accreditation and certification program under this section. Such officer (hereinafter referred to in this section as the “designated officer”) shall be one of the following:

(A) The Administrator, based on consideration of—

(i) the expertise of the Administrator in emergency management and preparedness in the United States; and

(ii) the responsibilities of the Administrator as the principal advisor to the President for all matters relating to emergency management in the United States.

(B) The Assistant Secretary for Infrastructure Protection, based on consideration of the expertise of the Assistant Secretary in, and responsibilities for—

(i) protection of critical infrastructure;

(ii) risk assessment methodologies; and

(iii) interacting with the private sector on the issues described in clauses (i) and (ii).

(C) The Under Secretary for Science and Technology, based on consideration of the expertise of the Under Secretary in, and responsibilities associated with, standards.

(3) **COORDINATION**—In carrying out the accreditation and certification program under this section, the designated officer shall coordinate with—

(A) the other officers of the Department referred to in paragraph (2), using the expertise and responsibilities of such officers; and

(B) the Special Assistant to the Secretary for the Private Sector, based on consideration of the expertise of the Special Assistant in, and responsibilities for, interacting with the private sector.

(b) Voluntary private sector preparedness standards; voluntary accreditation and certification program for the private sector

(1) ACCREDITATION AND CERTIFICATION PROGRAM—Not later than 210 days after August 3, 2007, the designated officer shall—

(A) begin supporting the development and updating, as necessary, of voluntary preparedness standards through appropriate organizations that coordinate or facilitate the development and use of voluntary consensus standards and voluntary consensus standards development organizations; and

(B) in consultation with representatives of appropriate organizations that coordinate or facilitate the development and use of voluntary consensus standards, appropriate voluntary consensus standards development organizations, each private sector advisory council created under section 112(f)(4) of this title, appropriate representatives of State and local governments, including emergency management officials, and appropriate private sector advisory groups, such as sector coordinating councils and information sharing and analysis centers—

(i) develop and promote a program to certify the preparedness of private sector entities that voluntarily choose to seek certification under the program; and

(ii) implement the program under this subsection through any entity with which the designated officer enters into an agreement under paragraph (3)(A), which shall accredit third parties to carry out the certification process under this section.

(2) PROGRAM ELEMENTS—

(A) IN GENERAL—

(i) PROGRAM—The program developed and implemented under this subsection shall assess whether a private sector entity complies with voluntary preparedness standards.

(ii) GUIDELINES—In developing the program under this subsection, the designated officer shall develop guidelines for the accreditation and certification processes established under this subsection.

(B) STANDARDS—The designated officer, in consultation with representatives of appropriate organizations that coordinate or facilitate the development and use of voluntary consensus standards, representatives of appropriate voluntary consensus standards development organizations, each private sector advisory council created under section 112(f)(4) of this title, appropriate representatives of State and local governments, including emergency management officials, and appropriate private sector advisory groups

such as sector coordinating councils and information sharing and analysis centers—

(i) shall adopt one or more appropriate voluntary preparedness standards that promote preparedness, which may be tailored to address the unique nature of various sectors within the private sector, as necessary and appropriate, that shall be used in the accreditation and certification program under this subsection; and

(ii) after the adoption of one or more standards under clause (i), may adopt additional voluntary preparedness standards or modify or discontinue the use of voluntary preparedness standards for the accreditation and certification program, as necessary and appropriate to promote preparedness.

(C) **SUBMISSION OF RECOMMENDATIONS**—In adopting one or more standards under subparagraph (B), the designated officer may receive recommendations from any entity described in that subparagraph relating to appropriate voluntary preparedness standards, including appropriate sector specific standards, for adoption in the program.

(D) **SMALL BUSINESS CONCERNS**—The designated officer and any entity with which the designated officer enters into an agreement under paragraph (3)(A) shall establish separate classifications and methods of certification for small business concerns (under the meaning given that term in section 632 of title 15) for the program under this subsection.

(E) **CONSIDERATIONS**—In developing and implementing the program under this subsection, the designated officer shall—

(i) consider the unique nature of various sectors within the private sector, including preparedness standards, business continuity standards, or best practices, established—

(I) under any other provision of Federal law; or

(II) by any sector-specific agency, as defined under Homeland Security Presidential Directive-7; and

(ii) coordinate the program, as appropriate, with—

(I) other Department private sector related programs; and

(II) preparedness and business continuity programs in other Federal agencies.

(3) **ACCREDITATION AND CERTIFICATION PROCESSES**—

(A) **AGREEMENT**—

(i) **IN GENERAL**—Not later than 210 days after August 3, 2007, the designated officer shall enter into one or more agreements with a highly qualified nongovernmental entity with experience or expertise in coordinating and facilitating the development and use of voluntary consensus standards and in managing or implementing accreditation and certification programs for voluntary consensus standards, or a similarly qualified private sector entity, to carry out accreditations and oversee the certification process under this subsection. An entity entering into an agree-

ment with the designated officer under this clause (hereinafter referred to in this section as a “selected entity”) shall not perform certifications under this subsection.

(ii) **CONTENTS**—A selected entity shall manage the accreditation process and oversee the certification process in accordance with the program established under this subsection and accredit qualified third parties to carry out the certification program established under this subsection.

(B) PROCEDURES AND REQUIREMENTS FOR ACCREDITATION AND CERTIFICATION—

(i) **IN GENERAL**—Any selected entity shall collaborate to develop procedures and requirements for the accreditation and certification processes under this subsection, in accordance with the program established under this subsection and guidelines developed under paragraph (2)(A)(ii).

(ii) **CONTENTS AND USE**—The procedures and requirements developed under clause (i) shall—

(I) ensure reasonable uniformity in any accreditation and certification processes if there is more than one selected entity; and

(II) be used by any selected entity in conducting accreditations and overseeing the certification process under this subsection.

(iii) **DISAGREEMENT**—Any disagreement among selected

entities in developing procedures under clause (i) shall be resolved by the designated officer.

(C) **DESIGNATION**—A selected entity may accredit any qualified third party to carry out the certification process under this subsection.

(D) **DISADVANTAGED BUSINESS INVOLVEMENT**—In accrediting qualified third parties to carry out the certification process under this subsection, a selected entity shall ensure, to the extent practicable, that the third parties include qualified small, minority, women-owned, or disadvantaged business concerns when appropriate. The term “disadvantaged business concern” means a small business that is owned and controlled by socially and economically disadvantaged individuals, as defined in section 124 of title 13, United States Code of Federal Regulations.

(E) **TREATMENT OF OTHER CERTIFICATIONS**—At the request of any entity seeking certification, any selected entity may consider, as appropriate, other relevant certifications acquired by the entity seeking certification. If the selected entity determines that such other certifications are sufficient to meet the certification requirement or aspects of the certification requirement under this section, the selected entity may give credit to the entity seeking certification, as appropriate, to avoid unnecessarily duplicative certification requirements.

(F) **THIRD PARTIES**—To be accredited under subparagraph (C), a third party shall—

(i) demonstrate that the third party has the ability to certify private sector entities in accordance with the procedures and requirements developed under subparagraph (B);

(ii) agree to perform certifications in accordance with such procedures and requirements;

(iii) agree not to have any beneficial interest in or any direct or indirect control over—

(I) a private sector entity for which that third party conducts a certification under this subsection; or

(II) any organization that provides preparedness consulting services to private sector entities;

(iv) agree not to have any other conflict of interest with respect to any private sector entity for which that third party conducts a certification under this subsection;

(v) maintain liability insurance coverage at policy limits in accordance with the requirements developed under subparagraph (B); and

(vi) enter into an agreement with the selected entity accrediting that third party to protect any proprietary information of a private sector entity obtained under this subsection.

(G) MONITORING—

(i) IN GENERAL—The designated officer and any selected entity shall regularly monitor and inspect the operations of any third party conducting certifications under this subsection to ensure that the third party is

complying with the procedures and requirements established under subparagraph (B) and all other applicable requirements.

(ii) REVOCATION—If the designated officer or any selected entity determines that a third party is not meeting the procedures or requirements established under subparagraph (B), the selected entity shall—

(I) revoke the accreditation of that third party to conduct certifications under this subsection; and

(II) review any certification conducted by that third party, as necessary and appropriate.

(4) ANNUAL REVIEW—

(A) IN GENERAL—The designated officer, in consultation with representatives of appropriate organizations that coordinate or facilitate the development and use of voluntary consensus standards, appropriate voluntary consensus standards development organizations, appropriate representatives of State and local governments, including emergency management officials, and each private sector advisory council created under section 112(f)(4) of this title, shall annually review the voluntary accreditation and certification program established under this subsection to ensure the effectiveness of such program (including the operations and management of such program by any selected entity and the selected entity's inclusion of qualified disadvantaged business concerns under paragraph (3)(D)) and make improvements and adjustments to

the program as necessary and appropriate.

(B) **REVIEW OF STANDARDS**—Each review under subparagraph (A) shall include an assessment of the voluntary preparedness standard or standards used in the program under this subsection.

(5) **VOLUNTARY PARTICIPATION**—Certification under this subsection shall be voluntary for any private sector entity.

(6) **PUBLIC LISTING**—The designated officer shall maintain and make public a listing of any private sector entity certified as being in compliance with the program established under this subsection, if that private sector entity consents to such listing.

(c) Rule of construction—Nothing in this section may be construed as—

(1) a requirement to replace any preparedness, emergency response, or business continuity standards, requirements, or best practices established—

(A) under any other provision of federal law; or

(B) by any sector-specific agency, as those agencies are defined under Homeland Security Presidential Directive-7; or

(2) exempting any private sector entity seeking certification or meeting certification requirements under subsection (b) from compliance with all applicable statutes, regulations, directives, policies, and industry codes of practice.

services, including from guest lecturers, for otherwise authorized activities of the Center for Domestic Preparedness that are related to efforts to prevent, prepare for, protect against, or respond to a natural disaster, act of terrorism, or other man-made disaster, including the use of a weapon of mass destruction.

(b) Prohibition—The Secretary may not accept a gift under this section if the Secretary determines that the use of the property or services would compromise the integrity or appearance of integrity of—

- (1) a program of the Department; or
- (2) an individual involved in a program of the Department.

(c) Report

(1) **IN GENERAL**—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report disclosing—

(A) any gifts that were accepted under this section during the year covered by the report;

(B) how the gifts contribute to the mission of the Center for Domestic Preparedness; and

(C) the amount of Federal savings that were generated from the acceptance of the gifts.

(2) **PUBLICATION**—Each report required under paragraph (1) shall be made publically* available.

§321n. Acceptance of gifts

(a) Authority—The Secretary may accept and use gifts of property, both real and personal, and may accept gifts of

* So in original. Probably should be “publicly.”

§347. Quadrennial homeland security review

(a) Requirement

(1) **QUADRENNIAL REVIEWS REQUIRED**—In fiscal year 2009, and every 4 years thereafter, the Secretary shall conduct a review of the homeland security of the Nation (in this section referred to as a “quadrennial homeland security review”).

(2) **SCOPE OF REVIEWS**—Each quadrennial homeland security review shall be a comprehensive examination of the homeland security strategy of the Nation, including recommendations regarding the long-term strategy and priorities of the Nation for homeland security and guidance on the programs, assets, capabilities, budget, policies, and authorities of the Department.

(3) **CONSULTATION**—The Secretary shall conduct each quadrennial homeland security review under this subsection in consultation with—

(A) the heads of other Federal agencies, including the Attorney General, the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of the Treasury, the Secretary of Agriculture, and the Director of National Intelligence;

(B) key officials of the Department; and

(C) other relevant governmental and nongovernmental entities, including State, local, and tribal government officials, members of Congress, private sector representatives, academics, and other policy experts.

(4) **RELATIONSHIP WITH FUTURE YEARS HOMELAND SECURITY PRO-**

GRAM—The Secretary shall ensure that each review conducted under this section is coordinated with the Future Years Homeland Security Program required under section 454 of this title.

(b) **Contents of review**—In each quadrennial homeland security review, the Secretary shall—

(1) delineate and update, as appropriate, the national homeland security strategy, consistent with appropriate national and Department strategies, strategic plans, and Homeland Security Presidential Directives, including the National Strategy for Homeland Security, the National Response Plan, and the Department Security Strategic Plan;

(2) outline and prioritize the full range of the critical homeland security mission areas of the Nation;

(3) describe the interagency cooperation, preparedness of Federal response assets, infrastructure, budget plan, and other elements of the homeland security program and policies of the Nation associated with the national homeland security strategy, required to execute successfully the full range of missions called for in the national homeland security strategy described in paragraph (1) and the homeland security mission areas outlined under paragraph (2);

(4) identify the budget plan required to provide sufficient resources to successfully execute the full range of missions called for in the national homeland security strategy described in paragraph (1) and the homeland security mission areas outlined under paragraph (2);

(5) include an assessment of the organizational alignment of the De-

partment with the national homeland security strategy referred to in paragraph (1) and the homeland security mission areas outlined under paragraph (2); and

(6) review and assess the effectiveness of the mechanisms of the Department for executing the process of turning the requirements developed in the quadrennial homeland security review into an acquisition strategy and expenditure plan within the Department.

(c) Reporting

(1) **IN GENERAL**—Not later than December 31 of the year in which a quadrennial homeland security review is conducted, the Secretary shall submit to Congress a report regarding that quadrennial homeland security review.

(2) **CONTENTS OF REPORT**—Each report submitted under paragraph (1) shall include—

(A) the results of the quadrennial homeland security review;

(B) a description of the threats to the assumed or defined national homeland security interests of the Nation that were examined for the purposes of that review;

(C) the national homeland security strategy, including a prioritized list of the critical homeland security missions of the Nation;

(D) a description of the interagency cooperation, preparedness of Federal response assets, infrastructure, budget plan, and other elements of the homeland security program and policies of the Nation associated with the national homeland security strategy, required to execute successfully the full range of missions called

for in the applicable national homeland security strategy referred to in subsection (b)(1) and the homeland security mission areas outlined under subsection (b)(2);

(E) an assessment of the organizational alignment of the Department with the applicable national homeland security strategy referred to in subsection (b)(1) and the homeland security mission areas outlined under subsection (b)(2), including the Department's organizational structure, management systems, budget and accounting systems, human resources systems, procurement systems, and physical and technical infrastructure;

(F) a discussion of the status of cooperation among Federal agencies in the effort to promote national homeland security;

(G) a discussion of the status of cooperation between the Federal Government and State, local, and tribal governments in preventing terrorist attacks and preparing for emergency response to threats to national homeland security;

(H) an explanation of any underlying assumptions used in conducting the review; and

(I) any other matter the Secretary considers appropriate.

(3) **PUBLIC AVAILABILITY**—The Secretary shall, consistent with the protection of national security and other sensitive matters, make each report submitted under paragraph (1) publicly available on the Internet website of the Department.

(d) [*Authorization of appropriations*]

§462. Office of National Capital Region Coordination

(a) Establishment

(1) **IN GENERAL**—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10.

(2) **DIRECTOR**—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) **COOPERATION**—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) Responsibilities—The Office established under subsection (a)(1) of this section shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information,

research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) Annual report—The Office established under subsection (a) of this section shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Re-

gion in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) Limitation—Nothing contained in this section shall be construed as limiting the power of State and local governments.

§466. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act

(a) Findings—Congress finds the following:

(1) Section 1385 of title 18 (commonly known as the “Posse Comitatus Act”) prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed

Forces is required to fulfill the President’s obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10 (commonly known as the “Insurrection Act”), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) Sense of Congress—Congress reaffirms the continued importance of section 1385 of title 18, and it is the sense of Congress that nothing in this chapter should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

§470. Disclosures regarding homeland security grants

(a) Definitions—In this section:

(1) **HOMELAND SECURITY GRANT**—The term “homeland security grant” means any grant made or administered by the Department, including—

(A) the State Homeland Security Grant Program;

(B) the Urban Area Security Initiative Grant Program;

(C) the Law Enforcement Terrorism Prevention Program;

(D) the Citizen Corps; and

(E) the Metropolitan Medical Re-

sponse System.

(2) **LOCAL GOVERNMENT**—The term “local government” has the meaning given the term in section 101 of this title.

(b) Required disclosures—Each State or local government that receives a homeland security grant shall, not later than 12 months after the later of October 13, 2006, and the date of receipt of such grant, and every 12 months thereafter until all funds provided under such grant are expended, submit a report to the Secretary that contains a list of all expenditures made by such State or local government using funds from such grant.

§ 526. Integrated Public Alert and Warning System Modernization

(a) In General.—To provide timely and effective warnings regarding natural disasters, acts of terrorism, and other man-made disasters or threats to public safety, the Administrator shall—

(1) modernize the integrated public alert and warning system of the United States (in this section referred to as the “public alert and warning system”) to help ensure that under all conditions the President and, except to the extent the public alert and warning system is in use by the President, Federal agencies and State, tribal, and local governments can alert and warn the civilian population in areas endangered by natural disasters, acts of terrorism, and other man-made disasters or threats to public safety; and

(2) implement the public alert and warning system to disseminate timely and effective warnings regarding natural disasters, acts of terrorism,

and other man-made disasters or threats to public safety.

(b) Implementation Requirements.—In carrying out subsection (a) the Administrator shall—

(1) establish or adopt, as appropriate, common alerting and warning protocols, standards, terminology, and operating procedures for the public alert and warning system;

(2) include in the public alert and warning system the capability to adapt the distribution and content of communications on the basis of geographic location, risks, and multiple communication systems and technologies, as appropriate and to the extent technically feasible;

(3) include in the public alert and warning system the capability to alert, warn, and provide equivalent information to individuals with disabilities, individuals with access and functional needs, and individuals with limited-English proficiency, to the extent technically feasible;

(4) ensure that training, tests, and exercises are conducted for the public alert and warning system, including by—

(A) incorporating the public alert and warning system into other training and exercise programs of the Department, as appropriate;

(B) establishing and integrating into the National Incident Management System a comprehensive and periodic training program to instruct and educate Federal, State, tribal, and local government officials in the use of the Common Alerting Protocol enabled Emergency Alert System; and

(C) Time period. conducting, not

less than once every 3 years, periodic nationwide tests of the public alert and warning system;

(5) to the extent practicable, ensure that the public alert and warning system is resilient and secure and can withstand acts of terrorism and other external attacks;

(6) conduct public education efforts so that State, tribal, and local governments, private entities, and the people of the United States reasonably understand the functions of the public alert and warning system and how to access, use, and respond to information from the public alert and warning system through a general market awareness campaign;

(7) **CONSULTATION. COORDINATION.** consult, coordinate, and cooperate with the appropriate private sector entities and Federal, State, tribal, and local governmental authorities, including the Regional Administrators and emergency response providers;

(8) **CONSULTATION. COORDINATION.** consult and coordinate with the Federal Communications Commission, taking into account rules and regulations promulgated by the Federal Communications Commission; and

(9) coordinate with and consider the recommendations of the Integrated Public Alert and Warning System Subcommittee established under section 2(b) of the Integrated Public Alert and Warning System Modernization Act of 2015.

(c) System Requirements.—The public alert and warning system shall—

(1) to the extent determined appropriate by the Administrator, incorporate multiple communications technologies;

(2) be designed to adapt to, and incorporate, future technologies for communicating directly with the public;

(3) to the extent technically feasible, be designed—

(A) to provide alerts to the largest portion of the affected population feasible, including nonresident visitors and tourists, individuals with disabilities, individuals with access and functional needs, and individuals with limited-English proficiency; and

(B) to improve the ability of remote areas to receive alerts;

(4) promote local and regional public and private partnerships to enhance community preparedness and response;

(5) provide redundant alert mechanisms where practicable so as to reach the greatest number of people; and

(6) to the extent feasible, include a mechanism to ensure the protection of individual privacy.

(d) Use of System.—Except to the extent necessary for testing the public alert and warning system, the public alert and warning system shall not be used to transmit a message that does not relate to a natural disaster, act of terrorism, or other man-made disaster or threat to public safety.

(e) Performance Reports. [Requires reports to congress and on website]

(b) Integrated Public Alert and Warning System Subcommittee. [Creates NAC Subcommittee chaired by the Deputy Administrator for Protection and National Preparedness; expires after 3 years]

(c) Authorization of Appropriations. [Authorizes appropriations through 2018]

(d) Limitations on Statutory Construction.—[Preserves other Departments and Agency Authorities]

§571. Office of Emergency Communications

(a) [*In general*].

(b) [*Director*]

(c) Responsibilities—The Director for Emergency Communications shall—

(1) assist the Secretary in developing and implementing the program described in section 194(a)(1) of this title, except as provided in section 195 of this title;

(2) administer the Department's responsibilities and authorities relating to the SAFECOM Program, excluding elements related to research, development, testing, and evaluation and standards;

(3) administer the Department's responsibilities and authorities relating to the Integrated Wireless Network program;

(4) conduct extensive, nationwide outreach to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of natural disasters, acts of terrorism, and other man-made disasters;

(5) conduct extensive, nationwide outreach and foster the development of interoperable emergency communications capabilities by State, regional, local, and tribal governments and public safety agencies, and by regional consortia thereof;

(6) provide technical assistance to State, regional, local, and tribal gov-

ernment officials with respect to use of interoperable emergency communications capabilities;

(7) coordinate with the Regional Administrators regarding the activities of Regional Emergency Communications Coordination Working Groups under section 575 of this title;

(8) promote the development of standard operating procedures and best practices with respect to use of interoperable emergency communications capabilities for incident response, and facilitate the sharing of information on such best practices for achieving, maintaining, and enhancing interoperable emergency communications capabilities for such response;

(9) coordinate, in cooperation with the National Communications System, the establishment of a national response capability with initial and ongoing planning, implementation, and training for the deployment of communications equipment for relevant State, local, and tribal governments and emergency response providers in the event of a catastrophic loss of local and regional emergency communications services;

(10) assist the President, the National Security Council, the Homeland Security Council, and the Director of the Office of Management and Budget in ensuring the continued operation of the telecommunications functions and responsibilities of the Federal Government, excluding spectrum management;

(11) establish, in coordination with the Director of the Office for Interoperability and Compatibility, requirements for interoperable emergency communications capabilities,

which shall be nonproprietary where standards for such capabilities exist, for all public safety radio and data communications systems and equipment purchased using homeland security assistance administered by the Department, excluding any alert and warning device, technology, or system;

(12) review, in consultation with the Assistant Secretary for Grants and Training, all interoperable emergency communications plans of Federal, State, local, and tribal governments, including Statewide and tactical interoperability plans, developed pursuant to homeland security assistance administered by the Department, but excluding spectrum allocation and management related to such plans;

(13) develop and update periodically, as appropriate, a National Emergency Communications Plan under section 572 of this title;

(14) perform such other duties of the Department necessary to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of natural disasters, acts of terrorism, and other man-made disasters; and

(15) perform other duties of the Department necessary to achieve the goal of and maintain and enhance interoperable emergency communications capabilities.

(d) [*Performance of previously transferred functions*]

(e) Coordination—The Director for Emergency Communications shall coordinate—

(1) as appropriate, with the Director of the Office for Interoperability and

Compatibility with respect to the responsibilities described in section 195 of this title; and

(2) with the Administrator of the Federal Emergency Management Agency with respect to the responsibilities described in this subchapter.

(f) [*Sufficiency of resources plan*]

§579. Interoperable Emergency Communications Grant Program

(a) Establishment—The Secretary shall establish the Interoperable Emergency Communications Grant Program to make grants to States to carry out initiatives to improve local, tribal, statewide, regional, national and, where appropriate, international interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism, and other man-made disasters.

(b) Policy—The Director for Emergency Communications shall ensure that a grant awarded to a State under this section is consistent with the policies established pursuant to the responsibilities and authorities of the Office of Emergency Communications under this subchapter, including ensuring that activities funded by the grant—

(1) comply with the statewide plan for that State required by section 194(f) of this title; and

(2) comply with the National Emergency Communications Plan under section 572 of this title, when completed.

(c) Administration

(1) **IN GENERAL**—The Administrator of the Federal Emergency Management Agency shall administer the Interoperable Emergency Communications Grant Program pursuant to the responsibilities and authorities

of the Administrator under subchapter V.

(2) **GUIDANCE**—In administering the grant program, the Administrator shall ensure that the use of grants is consistent with guidance established by the Director of Emergency Communications pursuant to section 194(a)(1)(H) of this title.

(d) Use of funds—A State that receives a grant under this section shall use the grant to implement that State’s Statewide Interoperability Plan required under section 194(f) of this title and approved under subsection (e), and to assist with activities determined by the Secretary to be integral to interoperable emergency communications.

(e) Approval of plans

(1) **APPROVAL AS CONDITION OF GRANT**—Before a State may receive a grant under this section, the Director of Emergency Communications shall approve the State’s Statewide Interoperable Communications Plan required under section 194(f) of this title.

(2) **PLAN REQUIREMENTS**—In approving a plan under this subsection, the Director of Emergency Communications shall ensure that the plan—

(A) is designed to improve interoperability at the city, county, regional, State and interstate level;

(B) considers any applicable local or regional plan; and

(C) complies, to the maximum extent practicable, with the National Emergency Communications Plan under section 572 of this title.

(3) **APPROVAL OF REVISIONS**—The Director of Emergency Communications may approve revisions to a State’s plan if the Director determines that doing so

is likely to further interoperability.

(f) Limitations on uses of funds

(1) **IN GENERAL**—The recipient of a grant under this section may not use the grant—

(A) to supplant State or local funds;

(B) for any State or local government cost-sharing contribution; or

(C) for recreational or social purposes.

(2) **PENALTIES**—In addition to other remedies currently available, the Secretary may take such actions as necessary to ensure that recipients of grant funds are using the funds for the purpose for which they were intended.

(g) Limitations on award of grants

(1) **NATIONALEMERGENCYCOMMUNICATIONSPLANREQUIRED**—The Secretary may not award a grant under this section before the date on which the Secretary completes and submits to Congress the National Emergency Communications Plan required under section 572 of this title.

(2) **VOLUNTARY CONSENSUS STANDARDS**—The Secretary may not award a grant to a State under this section for the purchase of equipment that does not meet applicable voluntary consensus standards, unless the State demonstrates that there are compelling reasons for such purchase.

(h) Award of grants—In approving applications and awarding grants under this section, the Secretary shall consider—

(1) the risk posed to each State by natural disasters, acts of terrorism, or other manmade disasters, including—

(A) the likely need of a jurisdiction within the State to respond to such risk in nearby jurisdictions;

(B) the degree of threat, vulnerability, and consequences related to critical infrastructure (from all critical infrastructure sectors) or key resources identified by the Administrator or the State homeland security and emergency management plans, including threats to, vulnerabilities of, and consequences from damage to critical infrastructure and key resources in nearby jurisdictions;

(C) the size of the population and density of the population of the State, including appropriate consideration of military, tourist, and commuter populations;

(D) whether the State is on or near an international border;

(E) whether the State encompasses an economically significant border crossing; and

(F) whether the State has a coastline bordering an ocean, a major waterway used for interstate commerce, or international waters; and

(2) the anticipated effectiveness of the State's proposed use of grant funds to improve interoperability.

(i) Opportunity to amend applications—In considering applications for grants under this section, the Administrator shall provide applicants with a reasonable opportunity to correct defects in the application, if any, before making final awards.

(j) Minimum grant amounts

(1) STATES—In awarding grants under this section, the Secretary shall ensure that for each fiscal year, except as provided in paragraph (2), no

State receives a grant in an amount that is less than the following percentage of the total amount appropriated for grants under this section for that fiscal year:

(A) For fiscal year 2008, 0.50 percent.

(B) For fiscal year 2009, 0.50 percent.

(C) For fiscal year 2010, 0.45 percent.

(D) For fiscal year 2011, 0.40 percent.

(E) For fiscal year 2012 and each subsequent fiscal year, 0.35 percent.

(2) TERRITORIES AND POSSESSIONS—In awarding grants under this section, the Secretary shall ensure that for each fiscal year, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands each receive grants in amounts that are not less than 0.08 percent of the total amount appropriated for grants under this section for that fiscal year.

(k) Certification—Each State that receives a grant under this section shall certify that the grant is used for the purpose for which the funds were intended and in compliance with the State's approved Statewide Interoperable Communications Plan.

(l) State responsibilities

(1) AVAILABILITY OF FUNDS TO LOCAL AND TRIBAL GOVERNMENTS—Not later than 45 days after receiving grant funds, any State that receives a grant under this section shall obligate or otherwise make available to local and tribal governments—

(A) not less than 80 percent of the grant funds;

(B) with the consent of local and tribal governments, eligible expenditures having a value of not less than 80 percent of the amount of the grant; or

(C) grant funds combined with other eligible expenditures having a total value of not less than 80 percent of the amount of the grant.

(2) **ALLOCATION OF FUNDS**—A State that receives a grant under this section shall allocate grant funds to tribal governments in the State to assist tribal communities in improving interoperable communications, in a manner consistent with the Statewide Interoperable Communications Plan. A State may not impose unreasonable or unduly burdensome requirements on a tribal government as a condition of providing grant funds or resources to the tribal government.

(3) **PENALTIES**—If a State violates the requirements of this subsection, in addition to other remedies available to the Secretary, the Secretary may terminate or reduce the amount of the grant awarded to that State or transfer grant funds previously awarded to the State directly to the appropriate local or tribal government.

(m) Reports

(1) **ANNUAL REPORTS BY STATE GRANT RECIPIENTS**—A State that receives a grant under this section shall annually submit to the Director of Emergency Communications a report on the progress of the State in implementing that State’s Statewide Interoperable Communications Plans required under section 194(f) of this title and achieving interoperability at the city, county, regional, State, and

interstate levels. The Director shall make the reports publicly available, including by making them available on the Internet website of the Office of Emergency Communications, subject to any redactions that the Director determines are necessary to protect classified or other sensitive information.

(2) **ANNUAL REPORTS TO CONGRESS**—At least once each year, the Director of Emergency Communications shall submit to Congress a report on the use of grants awarded under this section and any progress in implementing Statewide Interoperable Communications Plans and improving interoperability at the city, county, regional, State, and interstate level, as a result of the award of such grants.

(n) Rule of construction—Nothing in this section shall be construed or interpreted to preclude a State from using a grant awarded under this section for interim or long-term Internet Protocol-based interoperable solutions.

(o) Authorization of appropriations—There are authorized to be appropriated for grants under this section—

- (1) for fiscal year 2008, such sums as may be necessary;
- (2) for each of fiscal years 2009 through 2012, \$400,000,000; and
- (3) for each subsequent fiscal year, such sums as may be necessary.

§601. Definitions

In this subchapter, the following definitions shall apply:

(1) **ADMINISTRATOR**—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) **APPROPRIATE COMMITTEES OF CONGRESS**—The term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) those committees of the House of Representatives that the Speaker of the House of Representatives determines appropriate.

(3) **CRITICAL INFRASTRUCTURE SECTORS**—The term “critical infrastructure sectors” means the following sectors, in both urban and rural areas:

(A) Agriculture and food.

(B) Banking and finance.

(C) Chemical industries.

(D) Commercial facilities.

(E) Commercial nuclear reactors, materials, and waste.

(F) Dams.

(G) The defense industrial base.

(H) Emergency services.

(I) Energy.

(J) Government facilities.

(K) Information technology.

(L) National monuments and icons.

(M) Postal and shipping.

(N) Public health and health care.

(O) Telecommunications.

(P) Transportation systems.

(Q) Water.

(4) **DIRECTLY ELIGIBLE TRIBE**—The term “directly eligible tribe” means—

(A) any Indian tribe—

(i) that is located in the continental United States;

(ii) that operates a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services;

(iii)(I) that is located on or near an international border or a coastline bordering an ocean (including the Gulf of Mexico) or international waters;

(II) that is located within 10 miles of a system or asset included on the prioritized critical infrastructure list established under section 1241(a)(2) of this title or has such a system or asset within its territory;

(III) that is located within or contiguous to 1 of the 50 most populous metropolitan statistical areas in the United States; or

(IV) the jurisdiction of which includes not less than 1,000 square miles of Indian country, as that term is defined in section 1151 of title 18; and

(iv) that certifies to the Secretary that a State has not provided funds under section 604 or 605 of this title to the Indian tribe or consortium of Indian tribes for the purpose for which direct funding is sought; and

(B) a consortium of Indian tribes, if each tribe satisfies the requirements of subparagraph (A).

(5) **ELIGIBLE METROPOLITAN AREA**—The term “eligible metropolitan area” means any of the 100 most populous metropolitan statistical areas in the United States.

(6) **HIGH-RISK URBAN AREA**—The term “high-risk urban area” means a high-risk urban area designated under section 604(b)(3)(A) of this title.

(7) **INDIAN TRIBE**—The term “Indian tribe” has the meaning given that term in section 450b(e) of title 25.

(8) **METROPOLITAN STATISTICAL AREA**—

The term “metropolitan statistical area” means a metropolitan statistical area, as defined by the Office of Management and Budget.

(9) NATIONAL SPECIAL SECURITY EVENT—The term “National Special Security Event” means a designated event that, by virtue of its political, economic, social, or religious significance, may be the target of terrorism or other criminal activity.

(10) POPULATION—The term “population” means population according to the most recent United States census population estimates available at the start of the relevant fiscal year.

(11) POPULATION DENSITY—The term “population density” means population divided by land area in square miles.

(12) QUALIFIED INTELLIGENCE ANALYST—The term “qualified intelligence analyst” means an intelligence analyst (as that term is defined in section 124h(j) of this title), including law enforcement personnel—

(A) who has successfully completed training to ensure baseline proficiency in intelligence analysis and production, as determined by the Secretary, which may include training using a curriculum developed under section 124f of this title; or

(B) whose experience ensures baseline proficiency in intelligence analysis and production equivalent to the training required under subparagraph (A), as determined by the Secretary.

(13) TARGET CAPABILITIES—The term “target capabilities” means the target capabilities for Federal, State, local, and tribal government preparedness for which guidelines are required to be established under section 746(a) of this title.

(14) TRIBAL GOVERNMENT—The term “tribal government” means the government of an Indian tribe.

§603. Homeland security grant programs

(a) **Grants authorized**—The Secretary, through the Administrator, may award grants under sections 604 and 605 of this title to State, local, and tribal governments.

(b) **Programs not affected**—This part shall not be construed to affect any of the following Federal programs:

(1) Firefighter and other assistance programs authorized under the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.).

(2) Grants authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(3) Emergency Management Performance Grants under the amendments made by title II of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(4) Grants to protect critical infrastructure, including port security grants authorized under section 70107 of title 46 and the grants authorized under title¹ XIV and XV of the Implementing Recommendations of the 9/11 Commission Act of 2007 [6 U.S.C. 1131 et seq., 1151 et seq.] and the amendments made by such titles.

(5) The Metropolitan Medical Response System authorized under section 723 of this title.

(6) The Interoperable Emergency Communications Grant Program authorized under subchapter XIII.

1. So in original. Probably should be “titles.”

(7) Grant programs other than those administered by the Department.

(c) Relationship to other laws

(1) **IN GENERAL**—The grant programs authorized under sections 604 and 605 of this title shall supercede all grant programs authorized under section 3714 of title 42.

(2) **ALLOCATION**—The allocation of grants authorized under section 604 or 605 of this title shall be governed by the terms of this part and not by any other provision of law.

§604. Urban Area Security Initiative

(a) Establishment—There is established an Urban Area Security Initiative to provide grants to assist high-risk urban areas in preventing, preparing for, protecting against, and responding to acts of terrorism.

(b) Assessment and designation of high-risk urban areas

(1) **IN GENERAL**—The Administrator shall designate high-risk urban areas to receive grants under this section based on procedures under this subsection.

(2) INITIAL ASSESSMENT—

(A) IN GENERAL—For each fiscal year, the Administrator shall conduct an initial assessment of the relative threat, vulnerability, and consequences from acts of terrorism faced by each eligible metropolitan area, including consideration of—

- (i) the factors set forth in subparagraphs (A) through (H) and (K) of section 608(a)(1) of this title; and
- (ii) information and materials submitted under subparagraph (B).

(B) SUBMISSION OF INFORMATION BY ELIGIBLE METROPOLITAN AREAS—Prior to conducting each initial assessment under subparagraph (A), the Administrator shall provide each eligible metropolitan area with, and shall notify each eligible metropolitan area of, the opportunity to—

(i) submit information that the eligible metropolitan area believes to be relevant to the determination of the threat, vulnerability, and consequences it faces from acts of terrorism; and

(ii) review the risk assessment conducted by the Department of that eligible metropolitan area, including the bases for the assessment by the Department of the threat, vulnerability, and consequences from acts of terrorism faced by that eligible metropolitan area, and remedy erroneous or incomplete information.

(3) DESIGNATION OF HIGH-RISK URBAN AREAS—

(A) DESIGNATION—

(i) **IN GENERAL**—For each fiscal year, after conducting the initial assessment under paragraph (2), and based on that assessment, the Administrator shall designate high-risk urban areas that may submit applications for grants under this section.

(ii) **ADDITIONAL AREAS**—Notwithstanding paragraph (2), the Administrator may—

- (I) in any case where an eligible metropolitan area consists of more than 1 met-

ropolitan division (as that term is defined by the Office of Management and Budget) designate more than 1 high-risk urban area within a single eligible metropolitan area; and

(II) designate an area that is not an eligible metropolitan area as a high-risk urban area based on the assessment by the Administrator of the relative threat, vulnerability, and consequences from acts of terrorism faced by the area.

(iii) **RULE OF CONSTRUCTION**—Nothing in this subsection may be construed to require the Administrator to—

(I) designate all eligible metropolitan areas that submit information to the Administrator under paragraph (2)(B)(i) as high-risk urban areas; or

(II) designate all areas within an eligible metropolitan area as part of the high-risk urban area.

(B) JURISDICTIONS INCLUDED IN HIGH-RISK URBAN AREAS—

(i) **IN GENERAL**—In designating high-risk urban areas under subparagraph (A), the Administrator shall determine which jurisdictions, at a minimum, shall be included in each high-risk urban area.

(ii) **ADDITIONAL JURISDICTIONS**—A high-risk urban area designated by the Administrator may, in consultation with the State or States in which such high-risk urban area is located, add additional jurisdictions to

the high-risk urban area.

(c) Application

(1) **IN GENERAL**—An area designated as a high-risk urban area under subsection (b) may apply for a grant under this section.

(2) **MINIMUM CONTENTS OF APPLICATION**—In an application for a grant under this section, a high-risk urban area shall submit—

(A) a plan describing the proposed division of responsibilities and distribution of funding among the local and tribal governments in the high-risk urban area;

(B) the name of an individual to serve as a high-risk urban area liaison with the Department and among the various jurisdictions in the high-risk urban area; and

(C) such information in support of the application as the Administrator may reasonably require.

(3) **ANNUAL APPLICATIONS**—Applicants for grants under this section shall apply or reapply on an annual basis.

(4) **STATE REVIEW AND TRANSMISSION**—

(A) **IN GENERAL**—To ensure consistency with State homeland security plans, a high-risk urban area applying for a grant under this section shall submit its application to each State within which any part of that high-risk urban area is located for review before submission of such application to the Department.

(B) **DEADLINE**—Not later than 30 days after receiving an application from a high-risk urban area under subparagraph (A), a State shall transmit the application to the Department.

(C) **OPPORTUNITY FOR STATE COMMENT**—If the Governor of a State determines that an application of a high-risk urban area is inconsistent with the State homeland security plan of that State, or otherwise does not support the application, the Governor shall—

(i) notify the Administrator, in writing, of that fact; and

(ii) provide an explanation of the reason for not supporting the application at the time of transmission of the application.

(5) **OPPORTUNITY TO AMEND**—In considering applications for grants under this section, the Administrator shall provide applicants with a reasonable opportunity to correct defects in the application, if any, before making final awards.

(d) Distribution of awards

(1) **IN GENERAL**—If the Administrator approves the application of a high-risk urban area for a grant under this section, the Administrator shall distribute the grant funds to the State or States in which that high-risk urban area is located.

(2) **STATE DISTRIBUTION OF FUNDS**—

(A) **IN GENERAL**—Not later than 45 days after the date that a State receives grant funds under paragraph (1), that State shall provide the high-risk urban area awarded that grant not less than 80 percent of the grant funds. Any funds retained by a State shall be expended on items, services, or activities that benefit the high-risk urban area.

(B) **FUNDS RETAINED**—A State shall provide each relevant high-risk urban area with an accounting of

the items, services, or activities on which any funds retained by the State under subparagraph (A) were expended.

(3) **INTERSTATE URBAN AREAS**—If parts of a high-risk urban area awarded a grant under this section are located in 2 or more States, the Administrator shall distribute to each such State—

(A) a portion of the grant funds in accordance with the proposed distribution set forth in the application; or

(B) if no agreement on distribution has been reached, a portion of the grant funds determined by the Administrator to be appropriate.

(4) **CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO HIGH-RISK URBAN AREAS**—A State that receives grant funds under paragraph (1) shall certify to the Administrator that the State has made available to the applicable high-risk urban area the required funds under paragraph (2).

(e) Authorization of appropriations—There are authorized to be appropriated for grants under this section—

(1) \$850,000,000 for fiscal year 2008;

(2) \$950,000,000 for fiscal year 2009;

(3) \$1,050,000,000 for fiscal year 2010;

(4) \$1,150,000,000 for fiscal year 2011;

(5) \$1,300,000,000 for fiscal year 2012; and

(6) such sums as are necessary for fiscal year 2013, and each fiscal year

thereafter.

§605. State Homeland Security Grant Program

(a) Establishment—There is established a State Homeland Security Grant Program to assist State, local, and tribal governments in preventing, preparing for, protecting against, and responding to acts of terrorism.

(b) Application

(1) **IN GENERAL**—Each State may apply for a grant under this section, and shall submit such information in support of the application as the Administrator may reasonably require.

(2) **MINIMUM CONTENTS OF APPLICATION**—The Administrator shall require that each State include in its application, at a minimum—

(A) the purpose for which the State seeks grant funds and the reasons why the State needs the grant to meet the target capabilities of that State;

(B) a description of how the State plans to allocate the grant funds to local governments and Indian tribes; and

(C) a budget showing how the State intends to expend the grant funds.

(3) **ANNUAL APPLICATIONS**—Applicants for grants under this section shall apply or reapply on an annual basis.

(c) Distribution to local and tribal governments

(1) **IN GENERAL**—Not later than 45 days after receiving grant funds, any State receiving a grant under this section shall make available to local and tribal governments, consistent with the applicable State homeland

security plan—

(A) not less than 80 percent of the grant funds;

(B) with the consent of local and tribal governments, items, services, or activities having a value of not less than 80 percent of the amount of the grant; or

(C) with the consent of local and tribal governments, grant funds combined with other items, services, or activities having a total value of not less than 80 percent of the amount of the grant.

(2) **CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS**—A State shall certify to the Administrator that the State has made the distribution to local and tribal governments required under paragraph (1).

(3) **EXTENSION OF PERIOD**—The Governor of a State may request in writing that the Administrator extend the period under paragraph (1) for an additional period of time. The Administrator may approve such a request if the Administrator determines that the resulting delay in providing grant funding to the local and tribal governments is necessary to promote effective investments to prevent, prepare for, protect against, or respond to acts of terrorism.

(4) **EXCEPTION**—Paragraph (1) shall not apply to the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands.

(5) **DIRECT FUNDING**—If a State fails to make the distribution to local or tribal governments required under paragraph (1) in a timely fashion, a

local or tribal government entitled to receive such distribution may petition the Administrator to request that grant funds be provided directly to the local or tribal government.

(d) Multistate applications

(1) *IN GENERAL*—Instead of, or in addition to, any application for a grant under subsection (b), 2 or more States may submit an application for a grant under this section in support of multistate efforts to prevent, prepare for, protect against, and respond to acts of terrorism.

(2) *ADMINISTRATION OF GRANT*—If a group of States applies for a grant under this section, such States shall submit to the Administrator at the time of application a plan describing—

(A) the division of responsibilities for administering the grant; and

(B) the distribution of funding among the States that are parties to the application.

(e) Minimum allocation

(1) *IN GENERAL*—In allocating funds under this section, the Administrator shall ensure that—

(A) except as provided in subparagraph (B), each State receives, from the funds appropriated for the State Homeland Security Grant Program established under this section, not less than an amount equal to—

(i) 0.375 percent of the total funds appropriated for grants under this section and section 604 of this title in fiscal year 2008;

(ii) 0.365 percent of the total funds appropriated for grants under this section and section 604 of this title in fiscal year

2009;

(iii) 0.36 percent of the total funds appropriated for grants under this section and section 604 of this title in fiscal year 2010;

(iv) 0.355 percent of the total funds appropriated for grants under this section and section 604 of this title in fiscal year 2011; and

(v) 0.35 percent of the total funds appropriated for grants under this section and section 604 of this title in fiscal year 2012 and in each fiscal year thereafter; and

(B) for each fiscal year, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands each receive, from the funds appropriated for the State Homeland Security Grant Program established under this section, not less than an amount equal to 0.08 percent of the total funds appropriated for grants under this section and section 604 of this title.

(2) *EFFECT OF MULTISTATE AWARD ON STATE MINIMUM*—Any portion of a multistate award provided to a State under subsection (d) shall be considered in calculating the minimum State allocation under this subsection.

(f) Authorization of appropriations—There are authorized to be appropriated for grants under this section—

(1) \$950,000,000 for each of fiscal years 2008 through 2012; and

(2) such sums as are necessary for fiscal year 2013, and each fiscal year thereafter.

§606. Grants to directly eligible tribes

(a) In general—Notwithstanding section 605(b) of this title, the Administrator may award grants to directly eligible tribes under section 605 of this title.

(b) Tribal applications—A directly eligible tribe may apply for a grant under section 605 of this title by submitting an application to the Administrator that includes, as appropriate, the information required for an application by a State under section 605(b) of this title.

(c) Consistency with State plans

(1) **IN GENERAL**—To ensure consistency with any applicable State homeland security plan, a directly eligible tribe applying for a grant under section 605 of this title shall provide a copy of its application to each State within which any part of the tribe is located for review before the tribe submits such application to the Department.

(2) **OPPORTUNITY FOR COMMENT**—If the Governor of a State determines that the application of a directly eligible tribe is inconsistent with the State homeland security plan of that State, or otherwise does not support the application, not later than 30 days after the date of receipt of that application the Governor shall—

(A) notify the Administrator, in writing, of that fact; and

(B) provide an explanation of the reason for not supporting the application.

(d) Final authority—The Administrator shall have final authority to approve any application of a directly eligible tribe. The Administrator shall notify each State within the boundaries

of which any part of a directly eligible tribe is located of the approval of an application by the tribe.

(e) Prioritization—The Administrator shall allocate funds to directly eligible tribes in accordance with the factors applicable to allocating funds among States under section 608 of this title.

(f) Distribution of awards to directly eligible tribes—If the Administrator awards funds to a directly eligible tribe under this section, the Administrator shall distribute the grant funds directly to the tribe and not through any State.

(g) Minimum allocation

(1) **IN GENERAL**—In allocating funds under this section, the Administrator shall ensure that, for each fiscal year, directly eligible tribes collectively receive, from the funds appropriated for the State Homeland Security Grant Program established under section 605 of this title, not less than an amount equal to 0.1 percent of the total funds appropriated for grants under sections 604 and 605 of this title.

(2) **EXCEPTION**—This subsection shall not apply in any fiscal year in which the Administrator—

(A) receives fewer than 5 applications under this section; or

(B) does not approve at least 2 applications under this section.

(h) Tribal liaison—A directly eligible tribe applying for a grant under section 605 of this title shall designate an individual to serve as a tribal liaison with the Department and other Federal, State, local, and regional government officials concerning preventing, preparing for, protecting against, and responding to acts of terrorism.

(i) Eligibility for other funds—A directly eligible tribe that receives a grant

under section 605 of this title may receive funds for other purposes under a grant from the State or States within the boundaries of which any part of such tribe is located and from any high-risk urban area of which it is a part, consistent with the homeland security plan of the State or high-risk urban area.

(j) State obligations

(1) **IN GENERAL**—States shall be responsible for allocating grant funds received under section 605 of this title to tribal governments in order to help those tribal communities achieve target capabilities not achieved through grants to directly eligible tribes.

(2) **DISTRIBUTION OF GRANT FUNDS**—With respect to a grant to a State under section 605 of this title, an Indian tribe shall be eligible for funding directly from that State, and shall not be required to seek funding from any local government.

(3) **IMPOSITION OF REQUIREMENTS**—A State may not impose unreasonable or unduly burdensome requirements on an Indian tribe as a condition of providing the Indian tribe with grant funds or resources under section 605 of this title.

(k) Rule of construction—Nothing in this section shall be construed to affect the authority of an Indian tribe that receives funds under this part.

§607. Terrorism prevention

(a) Law enforcement terrorism prevention program

(1) **IN GENERAL**—The Administrator shall ensure that not less than 25 percent of the total combined funds appropriated for grants under sections 604 and 605 of this title is used for law enforcement terrorism preven-

tion activities.

(2) **LAW ENFORCEMENT TERRORISM PREVENTION ACTIVITIES**—Law enforcement terrorism prevention activities include—

(A) information sharing and analysis;

(B) target hardening;

(C) threat recognition;

(D) terrorist interdiction;

(E) training exercises to enhance preparedness for and response to mass casualty and active shooter incidents and security events at public locations, including airports and mass transit systems;

(F) overtime expenses consistent with a State homeland security plan, including for the provision of enhanced law enforcement operations in support of Federal agencies, including for increased border security and border crossing enforcement;

(G) establishing, enhancing, and staffing with appropriately qualified personnel State, local, and regional fusion centers that comply with the guidelines established under section 124h(i) of this title;

(H) paying salaries and benefits for personnel, including individuals employed by the grant recipient on the date of the relevant grant application, to serve as qualified intelligence analysts;

(I) any other activity permitted under the Fiscal Year 2007 Program Guidance of the Department for the Law Enforcement Terrorism Prevention Program; and

(J) any other terrorism prevention activity authorized by the Administrator.

(3) PARTICIPATION OF UNDERREPRESENTED COMMUNITIES IN FUSION CENTERS—The Administrator shall ensure that grant funds described in paragraph (1) are used to support the participation, as appropriate, of law enforcement and other emergency response providers from rural and other underrepresented communities at risk from acts of terrorism in fusion centers.

(b) Office for State and Local Law Enforcement

(1) ESTABLISHMENT—There is established in the Policy Directorate of the Department an Office for State and Local Law Enforcement, which shall be headed by an Assistant Secretary for State and Local Law Enforcement.

(2) QUALIFICATIONS—The Assistant Secretary for State and Local Law Enforcement shall have an appropriate background with experience in law enforcement, intelligence, and other counterterrorism functions.

(3) ASSIGNMENT OF PERSONNEL—The Secretary shall assign to the Office for State and Local Law Enforcement permanent staff and, as appropriate and consistent with sections 316(c)(2), 381, and 468(d) of this title, other appropriate personnel detailed from other components of the Department to carry out the responsibilities under this subsection.

(4) RESPONSIBILITIES—The Assistant Secretary for State and Local Law Enforcement shall—

(A) lead the coordination of Department-wide policies relating to the role of State and local law enforcement in preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-

made disasters within the United States;

(B) serve as a liaison between State, local, and tribal law enforcement agencies and the Department;

(C) coordinate with the Office of Intelligence and Analysis to ensure the intelligence and information sharing requirements of State, local, and tribal law enforcement agencies are being addressed;

(D) work with the Administrator to ensure that law enforcement and terrorism-focused grants to State, local, and tribal government agencies, including grants under sections 604 and 605 of this title, the Commercial Equipment Direct Assistance Program, and other grants administered by the Department to support fusion centers and law enforcement-oriented programs, are appropriately focused on terrorism prevention activities;

(E) coordinate with the Science and Technology Directorate, the Federal Emergency Management Agency, the Department of Justice, the National Institute of Justice, law enforcement organizations, and other appropriate entities to support the development, promulgation, and updating, as necessary, of national voluntary consensus standards for training and personal protective equipment to be used in a tactical environment by law enforcement officers; and

(F) conduct, jointly with the Administrator, a study to determine the efficacy and feasibility of establishing specialized law enforcement deployment teams to

assist State, local, and tribal governments in responding to natural disasters, acts of terrorism, or other man-made disasters and report on the results of that study to the appropriate committees of Congress.

(5) **RULE OF CONSTRUCTION**—Nothing in this subsection shall be construed to diminish, supercede, or replace the responsibilities, authorities, or role of the Administrator.

§608. Prioritization

(a) In general—In allocating funds among States and high-risk urban areas applying for grants under section 604 or 605 of this title, the Administrator shall consider, for each State or high-risk urban area—

(1) its relative threat, vulnerability, and consequences from acts of terrorism, including consideration of—

(A) its population, including appropriate consideration of military, tourist, and commuter populations;

(B) its population density;

(C) its history of threats, including whether it has been the target of a prior act of terrorism;

(D) its degree of threat, vulnerability, and consequences related to critical infrastructure (for all critical infrastructure sectors) or key resources identified by the Administrator or the State homeland security plan, including threats, vulnerabilities, and consequences related to critical infrastructure or key resources in nearby jurisdictions;

(E) the most current threat assessments available to the Depart-

ment;

(F) whether the State has, or the high-risk urban area is located at or near, an international border;

(G) whether it has a coastline bordering an ocean (including the Gulf of Mexico) or international waters;

(H) its likely need to respond to acts of terrorism occurring in nearby jurisdictions;

(I) the extent to which it has unmet target capabilities;

(J) in the case of a high-risk urban area, the extent to which that high-risk urban area includes—

(i) those incorporated municipalities, counties, parishes, and Indian tribes within the relevant eligible metropolitan area, the inclusion of which will enhance regional efforts to prevent, prepare for, protect against, and respond to acts of terrorism; and

(ii) other local and tribal governments in the surrounding area that are likely to be called upon to respond to acts of terrorism within the high-risk urban area; and

(K) such other factors as are specified in writing by the Administrator; and

(2) the anticipated effectiveness of the proposed use of the grant by the State or high-risk urban area in increasing the ability of that State or high-risk urban area to prevent, prepare for, protect against, and respond to acts of terrorism, to meet its target capabilities, and to otherwise reduce the overall risk to the high-risk urban area, the State, or the Nation.

(b) Types of threat—In assessing

threat under this section, the Administrator shall consider the following types of threat to critical infrastructure sectors and to populations in all areas of the United States, urban and rural:

- (1) Biological.
- (2) Chemical.
- (3) Cyber.
- (4) Explosives.
- (5) Incendiary.
- (6) Nuclear.
- (7) Radiological.
- (8) Suicide bombers.
- (9) Such other types of threat determined relevant by the Administrator.

§609. Use of funds

(a) Permitted uses—The Administrator shall permit the recipient of a grant under section 604 or 605 of this title to use grant funds to achieve target capabilities related to preventing, preparing for, protecting against, and responding to acts of terrorism, consistent with a State homeland security plan and relevant local, tribal, and regional homeland security plans, including by working in conjunction with a National Laboratory (as defined in section 15801(3) of title 42), through—

- (1) developing and enhancing homeland security, emergency management, or other relevant plans, assessments, or mutual aid agreements;
- (2) designing, conducting, and evaluating training and exercises, including training and exercises conducted under section 321a of this title and section 748 of this title;
- (3) protecting a system or asset included on the prioritized critical infrastructure list established under section 1241(a)(2) of this title;

- (4) purchasing, upgrading, storing, or maintaining equipment, including computer hardware and software;
- (5) ensuring operability and achieving interoperability of emergency communications;
- (6) responding to an increase in the threat level under the Homeland Security Advisory System, or to the needs resulting from a National Special Security Event;
- (7) establishing, enhancing, and staffing with appropriately qualified personnel State, local, and regional fusion centers that comply with the guidelines established under section 124h(i) of this title;
- (8) enhancing school preparedness;
- (9) enhancing the security and preparedness of secure and nonsecure areas of eligible airports and surface transportation systems;
- (10) supporting public safety answering points;
- (11) paying salaries and benefits for personnel, including individuals employed by the grant recipient on the date of the relevant grant application, to serve as qualified intelligence analysts, regardless of whether such analysts are current or new full-time employees or contract employees;
- (12) paying expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant;
- (13) any activity permitted under the Fiscal Year 2007 Program Guidance of the Department for the State Homeland Security Grant Program, the Urban Area Security Initiative (including activities permitted under the full-time counterterrorism staff-

ing pilot), or the Law Enforcement Terrorism Prevention Program; and
 (14) any other appropriate activity, as determined by the Administrator.

(b) Limitations on use of funds

(1) **IN GENERAL**—Funds provided under section 604 or 605 of this title may not be used—

(A) to supplant State or local funds, except that nothing in this paragraph shall prohibit the use of grant funds provided to a State or high-risk urban area for otherwise permissible uses under subsection (a) on the basis that a State or high-risk urban area has previously used State or local funds to support the same or similar uses; or

(B) for any State or local government cost-sharing contribution.

(2) **PERSONNEL**—

(A) **IN GENERAL**—Not more than 50 percent of the amount awarded to a grant recipient under section 604 or 605 of this title in any fiscal year may be used to pay for personnel, including overtime and backfill costs, in support of the permitted uses under subsection (a).

(B) **WAIVER**—At the request of the recipient of a grant under section 604 or 605 of this title, the Administrator may grant a waiver of the limitation under subparagraph (A).

(3) **LIMITATIONS ON DISCRETION**—

(A) **IN GENERAL**—With respect to the use of amounts awarded to a grant recipient under section 604 or 605 of this title for personnel costs in accordance with paragraph (2) of this subsection, the Administrator may not—

(i) impose a limit on the amount of the award that may be used to pay for personnel, or personnel-related, costs that is higher or lower than the percent limit imposed in paragraph (2)(A); or

(ii) impose any additional limitation on the portion of the funds of a recipient that may be used for a specific type, purpose, or category of personnel, or personnel-related, costs.

(B) **ANALYSTS**—If amounts awarded to a grant recipient under section 604 or 605 of this title are used for paying salary or benefits of a qualified intelligence analyst under subsection (a)(10), the Administrator shall make such amounts available without time limitations placed on the period of time that the analyst can serve under the grant.

(4) **CONSTRUCTION**—

(A) **IN GENERAL**—A grant awarded under section 604 or 605 of this title may not be used to acquire land or to construct buildings or other physical facilities.

(B) **EXCEPTIONS**—

(i) **IN GENERAL**—Notwithstanding subparagraph (A), nothing in this paragraph shall prohibit the use of a grant awarded under section 604 or 605 of this title to achieve target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism, including through the alteration or remodeling of existing buildings for the purpose of making such buildings secure against acts of terrorism.

(ii) **REQUIREMENTS FOR EXCEPTION**—No grant awarded under section 604 or 605 of this title may be used for a purpose described in clause (i) unless—

(I) specifically approved by the Administrator;

(II) any construction work occurs under terms and conditions consistent with the requirements under section 5196(j)(9) of title 42; and

(III) the amount allocated for purposes under clause (i) does not exceed the greater of \$1,000,000 or 15 percent of the grant award.

(5) **RECREATION**—Grants awarded under this part may not be used for recreational or social purposes.

(c) Multiple-purpose funds—Nothing in this part shall be construed to prohibit State, local, or tribal governments from using grant funds under sections 604 and 605 of this title in a manner that enhances preparedness for disasters unrelated to acts of terrorism, if such use assists such governments in achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism.

(d) Reimbursement of costs

(1) **PAID-ON-CALL OR VOLUNTEER REIMBURSEMENT**—In addition to the activities described in subsection (a), a grant under section 604 or 605 of this title may be used to provide a reasonable stipend to paid-on-call or volunteer emergency response providers who are not otherwise compensated for travel to or participation in training or exercises related to the purposes of this part. Any such reimbursement shall not

be considered compensation for purposes of rendering an emergency response provider an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(2) **PERFORMANCE OF FEDERAL DUTY**—An applicant for a grant under section 604 or 605 of this title may petition the Administrator to use the funds from its grants under those sections for the reimbursement of the cost of any activity relating to preventing, preparing for, protecting against, or responding to acts of terrorism that is a Federal duty and usually performed by a Federal agency, and that is being performed by a State or local government under agreement with a Federal agency.

(e) Flexibility in unspent homeland security grant funds—Upon request by the recipient of a grant under section 604 or 605 of this title, the Administrator may authorize the grant recipient to transfer all or part of the grant funds from uses specified in the grant agreement to other uses authorized under this section, if the Administrator determines that such transfer is in the interests of homeland security.

(f) Equipment standards—If an applicant for a grant under section 604 or 605 of this title proposes to upgrade or purchase, with assistance provided under that grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards developed under section 747 of this title, the applicant shall include in its application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

§611. Administration and coordination

(a) Regional coordination—The Administrator shall ensure that—

(1) all recipients of grants administered by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters (excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.)) coordinate, as appropriate, their prevention, preparedness, and protection efforts with neighboring State, local, and tribal governments; and

(2) all high-risk urban areas and other recipients of grants administered by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters (excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.)) that include or substantially affect parts or all of more than 1 State coordinate, as appropriate, across State boundaries, including, where appropriate, through the use of regional working groups and requirements for regional plans.

(b) Planning committees

(1) **IN GENERAL**—Any State or high-risk urban area receiving a grant under section 604 or 605 of this title shall establish a planning committee to assist in preparation and revision of the State, regional, or local homeland security plan and to assist

in determining effective funding priorities for grants under sections 604 and 605 of this title.

(2) COMPOSITION—

(A) IN GENERAL—The planning committee shall include representatives of significant stakeholders, including—

(i) local and tribal government officials; and

(ii) emergency response providers, which shall include representatives of the fire service, law enforcement, emergency medical response, and emergency managers.

(B) GEOGRAPHIC REPRESENTATION—The members of the planning committee shall be a representative group of individuals from the counties, cities, towns, and Indian tribes within the State or high-risk urban area, including, as appropriate, representatives of rural, high-population, and high-threat jurisdictions.

(3) EXISTING PLANNING COMMITTEES—Nothing in this subsection may be construed to require that any State or high-risk urban area create a planning committee if that State or high-risk urban area has established and uses a multijurisdictional planning committee or commission that meets the requirements of this subsection.

(c) Interagency coordination

(1) **IN GENERAL**—Not later than 12 months after August 3, 2007, the Secretary (acting through the Administrator), the Attorney General, the Secretary of Health and Human Services, and the heads of other agencies providing assistance to State, local, and tribal governments

for preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters, shall jointly—

(A) compile a comprehensive list of Federal grant programs for State, local, and tribal governments for preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters;

(B) compile the planning, reporting, application, and other requirements and guidance for the grant programs described in subparagraph (A);

(C) develop recommendations, as appropriate, to—

(i) eliminate redundant and duplicative requirements for State, local, and tribal governments, including onerous application and ongoing reporting requirements;

(ii) ensure accountability of the programs to the intended purposes of such programs;

(iii) coordinate allocation of grant funds to avoid duplicative or inconsistent purchases by the recipients;

(iv) make the programs more accessible and user friendly to applicants; and

(v) ensure the programs are coordinated to enhance the overall preparedness of the Nation;

(D) submit the information and recommendations under subparagraphs (A), (B), and (C) to the appropriate committees of Congress; and

(E) provide the appropriate com-

mittees of Congress, the Comptroller General, and any officer or employee of the Government Accountability Office with full access to any information collected or reviewed in preparing the submission under subparagraph (D).

(2) **SCOPE OF TASK**—Nothing in this subsection shall authorize the elimination, or the alteration of the purposes, as delineated by statute, regulation, or guidance, of any grant program that exists on August 3, 2007, nor authorize the review or preparation of proposals on the elimination, or the alteration of such purposes, of any such grant program.

(d) Sense of Congress—It is the sense of Congress that, in order to ensure that the Nation is most effectively able to prevent, prepare for, protect against, and respond to all hazards, including natural disasters, acts of terrorism, and other man-made disasters—

(1) the Department should administer a coherent and coordinated system of both terrorism-focused and all-hazards grants;

(2) there should be a continuing and appropriate balance between funding for terrorism-focused and all-hazards preparedness, as reflected in the authorizations of appropriations for grants under the amendments made by titles I and II, as applicable, of the Implementing Recommendations of the 9/11 Commission Act of 2007; and

(3) with respect to terrorism-focused grants, it is necessary to ensure both that the target capabilities of the highest risk areas are achieved quickly and that basic levels of preparedness, as measured by the attainment of target capabilities, are

achieved nationwide.

§612. Accountability

(a) Audits of grant programs

(1) COMPLIANCE REQUIREMENTS—

(A) **AUDIT REQUIREMENT**—Each recipient of a grant administered by the Department that expends not less than \$500,000 in Federal funds during its fiscal year shall submit to the Administrator a copy of the organization-wide financial and compliance audit report required under chapter 75 of title 31.

(B) **ACCESS TO INFORMATION**—The Department and each recipient of a grant administered by the Department shall provide the Comptroller General and any officer or employee of the Government Accountability Office with full access to information regarding the activities carried out related to any grant administered by the Department.

(C) **IMPROPER PAYMENTS**—Consistent with the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), for each of the grant programs under sections 604 and 605 of this title and section 762 of this title, the Administrator shall specify policies and procedures for—

- (i) identifying activities funded under any such grant program that are susceptible to significant improper payments; and
- (ii) reporting any improper payments to the Department.

(2) AGENCY PROGRAM REVIEW—

(A) **IN GENERAL**—Not less than once every 2 years, the Administrator shall conduct, for each State and high-

risk urban area receiving a grant administered by the Department, a programmatic and financial review of all grants awarded by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters, excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.).

(B) **CONTENTS**—Each review under subparagraph (A) shall, at a minimum, examine—

- (i) whether the funds awarded were used in accordance with the law, program guidance, and State homeland security plans or other applicable plans; and
- (ii) the extent to which funds awarded enhanced the ability of a grantee to prevent, prepare for, protect against, and respond to natural disasters, acts of terrorism, and other man-made disasters.

(C) **AUTHORIZATION OF APPROPRIATIONS**—In addition to any other amounts authorized to be appropriated to the Administrator, there are authorized to be appropriated to the Administrator for reviews under this paragraph—

- (i) \$8,000,000 for each of fiscal years 2008, 2009, and 2010; and
- (ii) such sums as are necessary for fiscal year 2011, and each fiscal year thereafter.

(3) **PERFORMANCE ASSESSMENT**—In order to ensure that States and high-risk urban areas are using grants administered by the Department appropriately to meet target capabilities and preparedness priorities, the

Administrator shall—

(A) ensure that any such State or high-risk urban area conducts or participates in exercises under section 748(b) of this title;

(B) use performance metrics in accordance with the comprehensive assessment system under section 749 of this title and ensure that any such State or high-risk urban area regularly tests its progress against such metrics through the exercises required under subparagraph (A);

(C) use the remedial action management program under section 750 of this title; and

(D) ensure that each State receiving a grant administered by the Department submits a report to the Administrator on its level of preparedness, as required by section 752(c) of this title.

(4) **CONSIDERATION OF ASSESSMENTS**—In conducting program reviews and performance audits under paragraphs (2) and (3), the Administrator and the Inspector General of the Department shall take into account the performance assessment elements required under paragraph (4).

(5) **RECOVERY AUDITS**—The Administrator shall conduct a recovery audit under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note) for any grant administered by the Department with a total value of not less than \$1,000,000, if the Administrator finds that—

(A) a financial audit has identified improper payments that can be recouped; and

(B) it is cost effective to conduct a recovery audit to recapture the

targeted funds.

(6) **REMEDIES FOR NONCOMPLIANCE**—

(A) **IN GENERAL**—If, as a result of a review or audit under this subsection or otherwise, the Administrator finds that a recipient of a grant under this subchapter has failed to substantially comply with any provision of law or with any regulations or guidelines of the Department regarding eligible expenditures, the Administrator shall—

(i) reduce the amount of payment of grant funds to the recipient by an amount equal to the amount of grants funds that were not properly expended by the recipient;

(ii) limit the use of grant funds to programs, projects, or activities not affected by the failure to comply;

(iii) refer the matter to the Inspector General of the Department for further investigation;

(iv) terminate any payment of grant funds to be made to the recipient; or

(v) take such other action as the Administrator determines appropriate.

(B) **DURATION OF PENALTY**—The Administrator shall apply an appropriate penalty under subparagraph (A) until such time as the Administrator determines that the grant recipient is in full compliance with the law and with applicable guidelines or regulations of the Department.

(b) Reports by grant recipients

(1) **QUARTERLY REPORTS ON HOMELAND SECURITY SPENDING**—

(A) **IN GENERAL**—As a condition of receiving a grant under section 604 or 605 of this title, a State, high-risk urban area, or directly eligible tribe shall, not later than 30 days after the end of each Federal fiscal quarter, submit to the Administrator a report on activities performed using grant funds during that fiscal quarter.

(B) **CONTENTS**—Each report submitted under subparagraph (A) shall at a minimum include, for the applicable State, high-risk urban area, or directly eligible tribe, and each subgrantee thereof—

- (i) the amount obligated to that recipient under section 604 or 605 of this title in that quarter;
- (ii) the amount of funds received and expended under section 604 or 605 of this title by that recipient in that quarter; and
- (iii) a summary description of expenditures made by that recipient using such funds, and the purposes for which such expenditures were made.

(C) **END-OF-YEAR REPORT**—The report submitted under subparagraph (A) by a State, high-risk urban area, or directly eligible tribe relating to the last quarter of any fiscal year shall include—

- (i) the amount and date of receipt of all funds received under the grant during that fiscal year;
- (ii) the identity of, and amount provided to, any subgrantee for that grant during that fiscal year;
- (iii) the amount and the dates of disbursements of all such funds

expended in compliance with section 611(a)(1) of this title or under mutual aid agreements or other sharing arrangements that apply within the State, high-risk urban area, or directly eligible tribe, as applicable, during that fiscal year; and

(iv) how the funds were used by each recipient or subgrantee during that fiscal year.

(2) **ANNUAL REPORT**—Any State applying for a grant under section 605 of this title shall submit to the Administrator annually a State preparedness report, as required by section 752(c) of this title.

(c) Reports by the Administrator

(1) **FEDERAL PREPAREDNESS REPORT**—The Administrator shall submit to the appropriate committees of Congress annually the Federal Preparedness Report required under section 752(a) of this title.

(2) **RISK ASSESSMENT**—

(A) **IN GENERAL**—For each fiscal year, the Administrator shall provide to the appropriate committees of Congress a detailed and comprehensive explanation of the methodologies used to calculate risk and compute the allocation of funds for grants administered by the Department, including—

- (i) all variables included in the risk assessment and the weights assigned to each such variable;
- (ii) an explanation of how each such variable, as weighted, correlates to risk, and the basis for concluding there is such a correlation; and
- (iii) any change in the methodologies from the previous fiscal year, including changes in vari-

ables considered, weighting of those variables, and computational methods.

(B) **CLASSIFIED ANNEX**—The information required under subparagraph (A) shall be provided in unclassified form to the greatest extent possible, and may include a classified annex if necessary.

(C) **DEADLINE**—For each fiscal year, the information required under subparagraph (A) shall be provided on the earlier of—

(i) October 31; or

(ii) 30 days before the issuance of any program guidance for grants administered by the Department.

(3) **TRIBAL FUNDING REPORT**—At the end of each fiscal year, the Administrator shall submit to the appropriate committees of Congress a report setting forth the amount of funding provided during that fiscal year to Indian tribes under any grant program administered by the Department, whether provided directly or through a subgrant from a State or high-risk urban area.

§613. Identification of reporting redundancies and development of performance metrics

(a) **Definition**—In this section, the term “covered grants” means grants awarded under section 604 of this title, grants awarded under section 605 of this title, and any other grants specified by the Administrator.

(b) **Initial report**—Not later than 90 days after October 12, 2010, the Administrator shall submit to the appropriate committees of Congress a report that includes—

(1) an assessment of redundant reporting requirements imposed by the Administrator on State, local, and tribal governments in connection with the awarding of grants, including—

(A) a list of each discrete item of data requested by the Administrator from grant recipients as part of the process of administering covered grants;

(B) identification of the items of data from the list described in subparagraph (A) that are required to be submitted by grant recipients on multiple occasions or to multiple systems; and

(C) identification of the items of data from the list described in subparagraph (A) that are not necessary to be collected in order for the Administrator to effectively and efficiently administer the programs under which covered grants are awarded;

(2) a plan, including a specific timetable, for eliminating any redundant and unnecessary reporting requirements identified under paragraph (1); and

(3) a plan, including a specific timetable, for promptly developing a set of quantifiable performance measures and metrics to assess the effectiveness of the programs under which covered grants are awarded.

(c) **Biennial reports**—Not later than 1 year after the date on which the initial report is required to be submitted under subsection (b), and once every 2 years thereafter, the Administrator shall submit to the appropriate committees of Congress a grants management report that includes—

(1) the status of efforts to eliminate

redundant and unnecessary reporting requirements imposed on grant recipients, including—

(A) progress made in implementing the plan required under subsection (b)(2);

(B) a reassessment of the reporting requirements to identify and eliminate redundant and unnecessary requirements;

(2) the status of efforts to develop quantifiable performance measures and metrics to assess the effectiveness of the programs under which the covered grants are awarded, including—

(A) progress made in implementing the plan required under subsection (b)(3);

(B) progress made in developing and implementing additional performance metrics and measures for grants, including as part of the comprehensive assessment system required under section 749 of this title; and

(3) a performance assessment of each program under which the covered grants are awarded, including—

(A) a description of the objectives and goals of the program;

(B) an assessment of the extent to which the objectives and goals described in subparagraph (A) have been met, based on the quantifiable performance measures and metrics required under this section, section 612(a)(4) of this title, and section 749 of this title;

(C) recommendations for any program modifications to improve the effectiveness of the program, to address changed or emerging conditions; and

(D) an assessment of the experience of recipients of covered grants, including the availability of clear and accurate information, the timeliness of reviews and awards, and the provision of technical assistance, and recommendations for improving that experience.

(d) Grants program measurement study [*Requiring report during FY12*]

§701. Definitions

In this title—*

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) those committees of the House of Representatives that the Speaker of the House of Representatives determines appropriate;

(4) the term “catastrophic incident” means 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;

(5) the term “Department” means the Department of Homeland Security;

(6) the terms “emergency” and “major disaster” have the meanings given the terms in section 5122 of title 42;

*“This title” refers to Title VI of Pub. L. 109-295, PKEMRA.

(7) the term “emergency management” means the governmental function that coordinates and integrates all activities necessary to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, or mitigate against threatened or actual natural disasters, acts of terrorism, or other man-made disasters;

(8) the term “emergency response provider” has the meaning given the term in section 101 of this title;

(9) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of title 42;

(10) the term “individual with a disability” has the meaning given the term in section 12102 of title 42;

(11) the terms “local government” and “State” have the meaning given the terms in section 101 of this title;

(12) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

(13) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6) of this title;

(14) the term “Secretary” means the Secretary of Homeland Security;

(15) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident; and

(16) the term “tribal government” means the government of an Indian tribe or authorized tribal organization,

or in Alaska a Native village or Alaska Regional Native Corporation.

§711. Surge Capacity Force

(a) Establishment

(1) IN GENERAL—Not later than 6 months after October 4, 2006, the Administrator shall prepare and submit to the appropriate committees of Congress a plan to establish and implement a Surge Capacity Force for deployment of individuals to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.

(2) AUTHORITY—

(A) IN GENERAL—Except as provided in subparagraph (B), the plan shall provide for individuals in the Surge Capacity Force to be trained and deployed under the authorities set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(B) EXCEPTION—If the Administrator determines that the existing authorities are inadequate for the training and deployment of individuals in the Surge Capacity Force, the Administrator shall report to Congress as to the additional statutory authorities that the Administrator determines necessary.

(b) Employees designated to serve

The plan shall include procedures under which the Secretary shall designate employees of the Department who are not employees of the Agency and shall, in conjunction with the heads of other Executive agencies, designate employees of those other Executive agencies, as appropriate, to serve on the Surge

Capacity Force.

(c) Capabilities

The plan shall ensure that the Surge Capacity Force—

(1) includes a sufficient number of individuals credentialed in accordance with section 320 of this title that are capable of deploying rapidly and efficiently after activation to prepare for, respond to, and recover from natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents; and

(2) includes a sufficient number of full-time, highly trained individuals credentialed in accordance with section 320 of this title to lead and manage the Surge Capacity Force.

(d) Training

The plan shall ensure that the Administrator provides appropriate and continuous training to members of the Surge Capacity Force to ensure such personnel are adequately trained on the Agency's programs and policies for natural disasters, acts of terrorism, and other man-made disasters.

(e) No impact on agency personnel ceiling

Surge Capacity Force members shall not be counted against any personnel ceiling applicable to the Federal Emergency Management Agency.

(f) Expenses

The Administrator may provide members of the Surge Capacity Force with travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for the purpose of participating in any training that relates to service as a member of the Surge Capacity Force.

(g) Immediate implementation of Surge Capacity Force involving Federal employees

As soon as practicable after October 4, 2006, the Administrator shall develop and implement—

(1) the procedures under subsection (b); and

(2) other elements of the plan needed to establish the portion of the Surge Capacity Force consisting of individuals designated under those procedures.

§721. Evacuation preparedness technical assistance

The Administrator, in coordination with the heads of other appropriate Federal agencies, shall provide evacuation preparedness technical assistance to State, local, and tribal governments, including the preparation of hurricane evacuation studies and technical assistance in developing evacuation plans, assessing storm surge estimates, evacuation zones, evacuation clearance times, transportation capacity, and shelter capacity.

§722. Urban Search and Rescue Response System

(a) In general

There is in the Agency a system known as the Urban Search and Rescue Response System.

(b) [*Authorization of appropriations*]

§723. Metropolitan Medical Response Grant Program

(a) In general

There is a Metropolitan Medical Response Program.

(b) Purposes

The program shall include each purpose of the program as it existed on June 1, 2006.

(c) [Authorization of appropriations]

§724. Logistics

The Administrator shall develop an efficient, transparent, and flexible logistics system for procurement and delivery of goods and services necessary for an effective and timely response to natural disasters, acts of terrorism, and other man-made disasters and for real-time visibility of items at each point throughout the logistics system.

§725. Prepositioned equipment program

(a) In general

The Administrator shall establish a prepositioned equipment program to preposition standardized emergency equipment in at least 11 locations to sustain and replenish critical assets used by State, local, and tribal governments in response to (or rendered inoperable by the effects of) natural disasters, acts of terrorism, and other man-made disasters.

(b) Notice

The Administrator shall notify State, local, and tribal officials in an area in which a location for the prepositioned equipment program will be closed not later than 60 days before the date of such closure.

§726. Basic life supporting first aid and education

The Administrator shall enter into agreements with organizations to provide funds to emergency response providers to provide education and

training in life supporting first aid to children.

§727. Improvements to information technology systems

(a) Measures to improve information technology systems

The Administrator, in coordination with the Chief Information Officer of the Department, shall take appropriate measures to update and improve the information technology systems of the Agency, including measures to—

- (1) ensure that the multiple information technology systems of the Agency (including the National Emergency Management Information System, the Logistics Information Management System III, and the Automated Deployment Database) are, to the extent practicable, fully compatible and can share and access information, as appropriate, from each other;
- (2) ensure technology enhancements reach the headquarters and regional offices of the Agency in a timely fashion, to allow seamless integration;
- (3) develop and maintain a testing environment that ensures that all system components are properly and thoroughly tested before their release;
- (4) ensure that the information technology systems of the Agency have the capacity to track disaster response personnel, mission assignments task orders, commodities, and supplies used in response to a natural disaster, act of terrorism, or other man-made disaster;
- (5) make appropriate improvements to the National Emergency Management Information System to address

shortcomings in such system on October 4, 2006; and

(6) provide training, manuals, and guidance on information technology systems to personnel, including disaster response personnel, to help ensure employees can properly use information technology systems.

(b) *[Report required 270 days after October 4, 2006]*

§728. Disclosure of certain information to law enforcement agencies

In the event of circumstances requiring an evacuation, sheltering, or mass relocation, the Administrator may disclose information in any individual assistance database of the Agency in accordance with section 552a(b) of title 5 (commonly referred to as the “Privacy Act”) to any law enforcement agency of the Federal Government or a State, local, or tribal government in order to identify illegal conduct or address public safety or security issues, including compliance with sex offender notification laws.

§741. Definitions

In this part:

(1) **CAPABILITY**—The term “capability” means the ability to provide the means to accomplish one or more tasks under specific conditions and to specific performance standards. A capability may be achieved with any combination of properly planned, organized, equipped, trained, and exercised personnel that achieves the intended outcome.

(2) **CREDENTIALLED; CREDENTIALING**—The terms “credentialed” and “credentialing” have the meanings given those terms in section 311 of this title.

(3) **HAZARD**—The term “hazard” has

the meaning given that term under section 5195a(a)(1) of title 42.

(4) **MISSION ASSIGNMENT**—The term “mission assignment” means a work order issued to a Federal agency by the Agency, directing completion by that agency of a specified task and setting forth funding, other managerial controls, and guidance.

(5) **NATIONAL PREPAREDNESS GOAL**—The term “national preparedness goal” means the national preparedness goal established under section 743 of this title.

(6) **NATIONAL PREPAREDNESS SYSTEM**—The term “national preparedness system” means the national preparedness system established under section 744 of this title.

(7) **NATIONAL TRAINING PROGRAM**—The term “national training program” means the national training program established under section 748(a) of this title.

(8) **OPERATIONAL READINESS**—The term “operational readiness” means the capability of an organization, an asset, a system, or equipment to perform the missions or functions for which it is organized or designed.

(9) **PERFORMANCE MEASURE**—The term “performance measure” means a quantitative or qualitative characteristic used to gauge the results of an outcome compared to its intended purpose.

(10) **PERFORMANCE METRIC**—The term “performance metric” means a particular value or characteristic used to measure the outcome that is generally expressed in terms of a baseline and a target.

(11) **PREVENTION**—The term “prevention” means any activity undertaken to avoid, prevent, or stop a threatened or actual act of terrorism.

(12) **RESOURCES**—The term “resources” has the meaning given that term in section 311 of this title.

(13) **TYPE**—The term “type” means a classification of resources that refers to the capability of a resource.

(14) **TYPED; TYPING**—The terms “typed” and “typing” have the meanings given those terms in section 311 of this title.

§742. National preparedness

In order to prepare the Nation for all hazards, including natural disasters, acts of terrorism, and other man-made disasters, the President, consistent with the declaration of policy under section 5195 of title 42 and title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.), as amended by this Act, shall develop a national preparedness goal and a national preparedness system.

§743. National preparedness goal

(a) Establishment

The President, acting through the Administrator, shall complete, revise, and update, as necessary, a national preparedness goal that defines the target level of preparedness to ensure the Nation’s ability to prevent, respond to, recover from, and mitigate against natural disasters, acts of terrorism, and other man-made disasters.

(b) National Incident Management System and National Response Plan

The national preparedness goal, to the greatest extent practicable, shall be consistent with the National Incident Management System and the National Response Plan.

§744. Establishment of national preparedness system

(a) Establishment

The President, acting through the Administrator, shall develop a national preparedness system to enable the Nation to meet the national preparedness goal.

(b) Components

The national preparedness system shall include the following components:

- (1) Target capabilities and preparedness priorities.
- (2) Equipment and training standards.
- (3) Training and exercises.
- (4) Comprehensive assessment system.
- (5) Remedial action management program.
- (6) Federal response capability inventory.
- (7) Reporting requirements.
- (8) Federal preparedness.

(c) National planning scenarios

The national preparedness system may include national planning scenarios.

§745. National planning scenarios

(a) In general

The Administrator, in coordination with the heads of appropriate Federal agencies and the National Advisory Council, may develop planning scenarios to reflect the relative risk requirements presented by all hazards, including natural disasters, acts of terrorism, and other man-made disasters, in order to provide the foundation for the flexible and adaptive development of target capabilities and the identification of target capability levels to meet the national preparedness goal.

(b) Development

In developing, revising, and replacing national planning scenarios, the Administrator shall ensure that the scenarios—

- (1) reflect the relative risk of all hazards and illustrate the potential scope, magnitude, and complexity of a broad range of representative hazards; and
- (2) provide the minimum number of representative scenarios necessary to identify and define the tasks and target capabilities required to respond to all hazards.

§746. Target capabilities and preparedness priorities

(a) [*Requiring guidelines on target capabilities no more than 180 days after October 4, 2006*]

(b) Distribution of guidelines

The Administrator shall ensure that the guidelines are provided promptly to the appropriate committees of Congress and the States.

(c) Objectives

The Administrator shall ensure that the guidelines are specific, flexible, and measurable.

(d) Terrorism risk assessment

With respect to analyzing and assessing the risk of acts of terrorism, the Administrator shall consider—

- (1) the variables of threat, vulnerability, and consequences related to population (including transient commuting and tourist populations), areas of high population density, critical infrastructure, coastline, and international borders; and
- (2) the most current risk assessment available from the Chief Intelligence Officer of the Department of

the threats of terrorism against the United States.

(e) Preparedness priorities

In establishing the guidelines under subsection (a), the Administrator shall establish preparedness priorities that appropriately balance the risk of all hazards, including natural disasters, acts of terrorism, and other man-made disasters, with the resources required to prevent, respond to, recover from, and mitigate against the hazards.

(f) Mutual aid agreements

The Administrator may provide support for the development of mutual aid agreements within States.

§747. Equipment and training standards

(a) Equipment standards

(1) **IN GENERAL**—The Administrator, in coordination with the heads of appropriate Federal agencies and the National Advisory Council, shall support the development, promulgation, and updating, as necessary, of national voluntary consensus standards for the performance, use, and validation of equipment used by Federal, State, local, and tribal governments and nongovernmental emergency response providers.

(2) **REQUIREMENTS**—The national voluntary consensus standards shall—

(A) be designed to achieve equipment and other capabilities consistent with the national preparedness goal, including the safety and health of emergency response providers;

(B) to the maximum extent practicable, be consistent with existing national voluntary consensus

standards;

(C) take into account, as appropriate, threats that may not have been contemplated when the existing standards were developed; and

(D) focus on maximizing operability, interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety.

(b) Training standards

The Administrator shall—

(1) support the development, promulgation, and regular updating, as necessary, of national voluntary consensus standards for training; and

(2) ensure that the training provided under the national training program is consistent with the standards.

(c) Consultation with standards organizations

In carrying out this section, the Administrator shall consult with representatives of relevant public and private sector national voluntary consensus standards development organizations.

§748. Training and exercises

(a) National training program

(1) IN GENERAL—Beginning not later than 180 days after October 4, 2006, the Administrator, in coordination with the heads of appropriate Federal agencies, the National Council on Disability, and the National Advisory Council, shall carry out a national training program to implement the national preparedness goal, National Incident Management System, National Response Plan, and other related plans and strategies.

(2) TRAINING PARTNERS—In develop-

ing and implementing the national training program, the Administrator shall—

(A) work with government training facilities, academic institutions, private organizations, and other entities that provide specialized, state-of-the-art training for emergency managers or emergency response providers; and

(B) utilize, as appropriate, training courses provided by community colleges, State and local public safety academies, State and private universities, and other facilities.

(b) National exercise program

(1) IN GENERAL—Beginning not later than 180 days after October 4, 2006, the Administrator, in coordination with the heads of appropriate Federal agencies, the National Council on Disability, and the National Advisory Council, shall carry out a national exercise program to test and evaluate the national preparedness goal, National Incident Management System, National Response Plan, and other related plans and strategies.

(2) REQUIREMENTS—The national exercise program—

(A) shall be—

(i) as realistic as practicable, based on current risk assessments, including credible threats, vulnerabilities, and consequences, and designed to stress the national preparedness system;

(ii) designed, as practicable, to simulate the partial or complete incapacitation of a State, local, or tribal government;

(iii) carried out, as appropriate, with a minimum degree of no-

tice to involved parties regarding the timing and details of such exercises, consistent with safety considerations;

(iv) designed to provide for the systematic evaluation of readiness and enhance operational understanding of the incident command system and relevant mutual aid agreements;

(v) designed to address the unique requirements of populations with special needs, including the elderly; and

(vi) designed to promptly develop after-action reports and plans for quickly incorporating lessons learned into future operations; and

(B) shall include a selection of model exercises that State, local, and tribal governments can readily adapt for use and provide assistance to State, local, and tribal governments with the design, implementation, and evaluation of exercises (whether a model exercise program or an exercise designed locally) that—

(i) conform to the requirements under subparagraph (A);

(ii) are consistent with any applicable State, local, or tribal strategy or plan; and

(iii) provide for systematic evaluation of readiness.

(3) NATIONAL LEVEL EXERCISES—The Administrator shall periodically, but not less than biennially, perform national exercises for the following purposes:

(A) to test and evaluate the capability of Federal, State, local, and tribal governments to detect, disrupt, and prevent threatened or

actual catastrophic acts of terrorism, especially those involving weapons of mass destruction; and

(B) to test and evaluate the readiness of Federal, State, local, and tribal governments to respond and recover in a coordinated and unified manner to catastrophic incidents.

§749. Comprehensive assessment system

(a) Establishment

The Administrator, in coordination with the National Council on Disability and the National Advisory Council, shall establish a comprehensive system to assess, on an ongoing basis, the Nation's prevention capabilities and overall preparedness, including operational readiness.

(b) Performance metrics and measures

The Administrator shall ensure that each component of the national preparedness system, National Incident Management System, National Response Plan, and other related plans and strategies, and the reports required under section 752 of this title is developed, revised, and updated with clear and quantifiable performance metrics, measures, and outcomes.

(c) Contents

The assessment system established under subsection (a) shall assess—

(1) compliance with the national preparedness system, National Incident Management System, National Response Plan, and other related plans and strategies;

(2) capability levels at the time of assessment against target capability levels defined pursuant to the

guidelines established under section 746(a) of this title;

(3) resource needs to meet the desired target capability levels defined pursuant to the guidelines established under section 746(a) of this title; and

(4) performance of training, exercises, and operations,

§750. Remedial action management program

The Administrator, in coordination with the National Council on Disability and the National Advisory Council, shall establish a remedial action management program to—

(1) analyze training, exercises, and real-world events to identify and disseminate lessons learned and best practices;

(2) generate and disseminate, as appropriate, after action reports to participants in exercises and real-world events; and

(3) conduct remedial action tracking and long-term trend analysis.

§751. Federal response capability inventory

(a) In general

In accordance with section 5196(h)(1)(C) of title 42, the Administrator shall accelerate the completion of the inventory of Federal response capabilities.

(b) Contents

For each Federal agency with responsibilities under the National Response Plan, the inventory shall include—

(1) for each capability—

(A) the performance parameters of the capability;

(B) the timeframe within which the capability can be brought to bear on an incident; and

(C) the readiness of the capability to respond to all hazards, including natural disasters, acts of terrorism, and other man-made disasters;

(2) a list of personnel credentialed in accordance with section 320 of this title;

(3) a list of resources typed in accordance with section 320 of this title; and

(4) emergency communications assets maintained by the Federal Government and, if appropriate, State, local, and tribal governments and the private sector.

(c) Department of Defense

The Administrator, in coordination with the Secretary of Defense, shall develop a list of organizations and functions within the Department of Defense that may be used, pursuant to the authority provided under the National Response Plan and sections 5170a, 5170b, and 5192 of title 42, to provide support to civil authorities during natural disasters, acts of terrorism, and other man-made disasters.

(d) Database

The Administrator shall establish an inventory database to allow—

(1) real-time exchange of information regarding—

(A) capabilities;

(B) readiness;

(C) the compatibility of equipment;

(D) credentialed personnel; and

(E) typed resources;

(2) easy identification and rapid deployment of capabilities, creden-

tial personnel, and typed resources during an incident; and

(3) the sharing of the inventory described in subsection (a) with other Federal agencies, as appropriate.

§752. Reporting requirements

(a) Federal preparedness report

(1) **IN GENERAL**—Not later than 12 months after October 4, 2006, and annually thereafter, the Administrator, in coordination with the heads of appropriate Federal agencies, shall submit to the appropriate committees of Congress a report on the Nation's level of preparedness for all hazards, including natural disasters, acts of terrorism, and other man-made disasters.

(2) **CONTENTS**—Each report shall include—

(A) an assessment of how Federal assistance supports the national preparedness system;

(B) the results of the comprehensive assessment carried out under section 749 of this title;

(C) a review of the inventory described in section 751 of this title, including the number and type of credentialed personnel in each category of personnel trained and ready to respond to a natural disaster, act of terrorism, or other man-made disaster;

(D) an assessment of resource needs to meet preparedness priorities established under section 746(e) of this title, including—

(i) an estimate of the amount of Federal, State, local, and tribal expenditures required to attain the preparedness priorities; and

(ii) the extent to which the use

of Federal assistance during the preceding fiscal year achieved the preparedness priorities;

(E) an evaluation of the extent to which grants administered by the Department, including grants under title XX of the Homeland Security Act of 2002 [6 U.S.C. 601 et seq.]—

(i) have contributed to the progress of State, local, and tribal governments in achieving target capabilities; and

(ii) have led to the reduction of risk from natural disasters, acts of terrorism, or other man-made disasters nationally and in State, local, and tribal jurisdictions; and

(F) a discussion of whether the list of credentialed personnel of the Agency described in section 751(b)(2) of this title—

(i) complies with the strategic human capital plan developed under section 10102 of title 5; and

(ii) is sufficient to respond to a natural disaster, act of terrorism, or other man-made disaster, including a catastrophic incident.

(b) Catastrophic resource report

(1) **IN GENERAL**—The Administrator shall develop and submit to the appropriate committees of Congress annually an estimate of the resources of the Agency and other Federal agencies needed for and devoted specifically to developing the capabilities of Federal, State, local, and tribal governments necessary to respond to a catastrophic incident.

(2) **CONTENTS**—Each estimate under paragraph (1) shall include the

resources both necessary for and devoted to—

- (A) planning;
- (B) training and exercises;
- (C) Regional Office enhancements;
- (D) staffing, including for surge capacity during a catastrophic incident;
- (E) additional logistics capabilities;
- (F) other responsibilities under the catastrophic incident annex and the catastrophic incident supplement of the National Response Plan;
- (G) State, local, and tribal government catastrophic incident preparedness; and
- (H) covering increases in the fixed costs or expenses of the Agency, including rent or property acquisition costs or expenses, taxes, contributions to the working capital fund of the Department, and security costs for the year after the year in which such estimate is submitted.

(c) State preparedness report

(1) **IN GENERAL**—Not later than 15 months after October 4, 2006, and annually thereafter, a State receiving Federal preparedness assistance administered by the Department shall submit a report to the Administrator on the State’s level of preparedness.

(2) **CONTENTS**—Each report shall include—

- (A) an assessment of State compliance with the national preparedness system, National Incident Management System, National Response Plan, and other related plans and strategies;

(B) an assessment of current capability levels and a description of target capability levels; and

(C) a discussion of the extent to which target capabilities identified in the applicable State homeland security plan and other applicable plans remain unmet and an assessment of resources needed to meet the preparedness priorities established under section 746(e) of this title, including—

- (i) an estimate of the amount of expenditures required to attain the preparedness priorities; and
- (ii) the extent to which the use of Federal assistance during the preceding fiscal year achieved the preparedness priorities.

§753. Federal preparedness

(a) Agency responsibility

In support of the national preparedness system, the President shall ensure that each Federal agency with responsibilities under the National Response Plan—

(1) has the operational capability to meet the national preparedness goal, including—

- (A) the personnel to make and communicate decisions;
- (B) organizational structures that are assigned, trained, and exercised for the missions of the agency;
- (C) sufficient physical resources; and
- (D) the command, control, and communication channels to make, monitor, and communicate decisions;

(2) complies with the National Inci-

dent Management System, including credentialing of personnel and typing of resources likely needed to respond to a natural disaster, act of terrorism, or other man-made disaster in accordance with section 320 of this title;

(3) develops, trains, and exercises rosters of response personnel to be deployed when the agency is called upon to support a Federal response;

(4) develops deliberate operational plans and the corresponding capabilities, including crisis planning, to respond effectively to natural disasters, acts of terrorism, and other man-made disasters in support of the National Response Plan to ensure a coordinated Federal response; and

(5) regularly updates, verifies the accuracy of, and provides to the Administrator the information in the inventory required under section 751 of this title.

(b) Operational plans

An operations plan developed under subsection (a)(4) shall meet the following requirements:

(1) The operations plan shall be coordinated under a unified system with a common terminology, approach, and framework.

(2) The operations plan shall be developed, in coordination with State, local, and tribal government officials, to address both regional and national risks.

(3) The operations plan shall contain, as appropriate, the following elements:

(A) Concepts of operations.

(B) Critical tasks and responsibilities.

(C) Detailed resource and person-

nel requirements, together with sourcing requirements.

(D) Specific provisions for the rapid integration of the resources and personnel of the agency into the overall response.

(4) The operations plan shall address, as appropriate, the following matters:

(A) Support of State, local, and tribal governments in conducting mass evacuations, including—

(i) transportation and relocation;

(ii) short- and long-term sheltering and accommodation;

(iii) provisions for populations with special needs, keeping families together, and expeditious location of missing children; and

(iv) policies and provisions for pets.

(B) The preparedness and deployment of public health and medical resources, including resources to address the needs of evacuees and populations with special needs.

(C) The coordination of inter-agency search and rescue operations, including land, water, and airborne search and rescue operations.

(D) The roles and responsibilities of the Senior Federal Law Enforcement Official with respect to other law enforcement entities.

(E) The protection of critical infrastructure.

(F) The coordination of maritime salvage efforts among relevant agencies.

(G) The coordination of Department of Defense and National

Guard support of civilian authorities.

(H) To the extent practicable, the utilization of Department of Defense, National Air and Space Administration, National Oceanic and Atmospheric Administration, and commercial aircraft and satellite remotely sensed imagery.

(I) The coordination and integration of support from the private sector and nongovernmental organizations.

(J) The safe disposal of debris, including hazardous materials, and, when practicable, the recycling of debris.

(K) The identification of the required surge capacity.

(L) Specific provisions for the recovery of affected geographic areas.

(c) Mission assignments

To expedite the provision of assistance under the National Response Plan, the President shall ensure that the Administrator, in coordination with Federal agencies with responsibilities under the National Response Plan, develops prescribed mission assignments, including logistics, communications, mass care, health services, and public safety.

(d) Certification

The President shall certify to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives on an annual basis that each Federal agency with responsibilities under the National Response Plan complies with subsections (a) and (b).

(e) Construction

Nothing in this section shall be construed to limit the authority of the Secretary of Defense with regard to—

(1) the command, control, training, planning, equipment, exercises, or employment of Department of Defense forces; or

(2) the allocation of Department of Defense resources.

§754. Use of existing resources

In establishing the national preparedness goal and national preparedness system, the Administrator shall use existing preparedness documents, planning tools, and guidelines to the extent practicable and consistent with this Act.

§761. Emergency Management Assistance Compact grants

(a) In general

The Administrator may make grants to administer the Emergency Management Assistance Compact consented to by the Joint Resolution entitled “Joint Resolution granting the consent of Congress to the Emergency Management Assistance Compact” (Public Law 104–321; 110 Stat. 3877).

(b) Uses

A grant under this section shall be used—

(1) to carry out recommendations identified in the Emergency Management Assistance Compact after-action reports for the 2004 and 2005 hurricane season;

(2) to administer compact operations on behalf of all member States and territories;

(3) to continue coordination with

the Agency and appropriate Federal agencies;

(4) to continue coordination with State, local, and tribal government entities and their respective national organizations; and

(5) to assist State and local governments, emergency response providers, and organizations representing such providers with credentialing emergency response providers and the typing of emergency response resources.

(c) Coordination

The Administrator shall consult with the Administrator of the Emergency Management Assistance Compact to ensure effective coordination of efforts in responding to requests for assistance.

(d) [*Authorization*]

§762. Emergency management performance grants program

(a) Definitions

In this section—

(1) the term “program” means the emergency management performance grants program described in subsection (b); and

(2) the term “State” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) In general

The Administrator of the Federal Emergency Management Agency shall continue implementation of an emergency management performance grants program, to make grants to States to assist State, local, and tribal governments in preparing for all hazards, as authorized by the Robert T. Stafford Disaster Re-

lief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(c) Federal share

Except as otherwise specifically provided by title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5195 et seq.], the Federal share of the cost of an activity carried out using funds made available under the program shall not exceed 50 percent.

(d) Apportionment

For fiscal year 2008, and each fiscal year thereafter, the Administrator shall apportion the amounts appropriated to carry out the program among the States as follows:

(1) **BASELINE AMOUNT**—The Administrator shall first apportion 0.25 percent of such amounts to each of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands and 0.75 percent of such amounts to each of the remaining States.

(2) **REMAINDER**—The Administrator shall apportion the remainder of such amounts in the ratio that—

(A) the population of each State; bears to

(B) the population of all States.

(e) Consistency in allocation

Notwithstanding subsection (d), in any fiscal year before fiscal year 2013 in which the appropriation for grants under this section is equal to or greater than the appropriation for emergency management performance grants in fiscal year 2007, no State shall receive an amount under this section for that fiscal year less than the amount that State received in fiscal year 2007.

(f) [*Authorization of appropriations*]

§763. Transfer of Noble Training Center

The Noble Training Center is transferred to the Center for Domestic Preparedness. The Center for Domestic Preparedness shall integrate the Noble Training Center into the program structure of the Center for Domestic Preparedness.

§764. National exercise simulation center

The President shall establish a national exercise simulation center that—

(1) uses a mix of live, virtual, and constructive simulations to—

(A) prepare elected officials, emergency managers, emergency response providers, and emergency support providers at all levels of government to operate cohesively;

(B) provide a learning environment for the homeland security personnel of all Federal agencies;

(C) assist in the development of operational procedures and exercises, particularly those based on catastrophic incidents; and

(D) allow incident commanders to exercise decisionmaking in a simulated environment; and

(2) uses modeling and simulation for training, exercises, and command and control functions at the operational level.

§771. National Disaster Recovery Strategy

(a) In general

The Administrator, in coordination with the Secretary of Housing and Urban Development, the Administra-

tor of the Environmental Protection Agency, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Treasury, the Secretary of Transportation, the Administrator of the Small Business Administration, the Assistant Secretary for Indian Affairs of the Department of the Interior, and the heads of other appropriate Federal agencies, State, local, and tribal government officials (including through the National Advisory Council), and representatives of appropriate nongovernmental organizations shall develop, coordinate, and maintain a National Disaster Recovery Strategy to serve as a guide to recovery efforts after major disasters and emergencies.

(b) Contents

The National Disaster Recovery Strategy shall—

(1) outline the most efficient and cost-effective Federal programs that will meet the recovery needs of States, local and tribal governments, and individuals and households affected by a major disaster;

(2) clearly define the role, programs, authorities, and responsibilities of each Federal agency that may be of assistance in providing assistance in the recovery from a major disaster;

(3) promote the use of the most appropriate and cost-effective building materials (based on the hazards present in an area) in any area affected by a major disaster, with the goal of encouraging the construction of disaster-resistant buildings; and

(4) describe in detail the programs that may be offered by the agencies described in paragraph (2), including—

(A) discussing funding issues;

(B) detailing how responsibili-

ties under the National Disaster Recovery Strategy will be shared; and

(C) addressing other matters concerning the cooperative effort to provide recovery assistance.

(c) Report

(1) **IN GENERAL**—Not later than 270 days after October 4, 2006, the Administrator shall submit to the appropriate committees of Congress a report describing in detail the National Disaster Recovery Strategy and any additional authorities necessary to implement any portion of the National Disaster Recovery Strategy.

(2) **UPDATE**—The Administrator shall submit to the appropriate committees of Congress a report updating the report submitted under paragraph (1)—

(A) on the same date that any change is made to the National Disaster Recovery Strategy; and

(B) on a periodic basis after the submission of the report under paragraph (1), but not less than once every 5 years after the date of the submission of the report under paragraph (1).

§772. National Disaster Housing Strategy

(a) In general

The Administrator, in coordination with representatives of the Federal agencies, governments, and organizations listed in subsection (b)(2) of this section, the National Advisory Council, the National Council on Disability, and other entities at the Administrator's discretion, shall develop, coordinate, and maintain a National Disaster Housing Strategy.

(b) Contents

The National Disaster Housing Strategy shall—

(1) outline the most efficient and cost effective Federal programs that will best meet the short-term and long-term housing needs of individuals and households affected by a major disaster;

(2) clearly define the role, programs, authorities, and responsibilities of each entity in providing housing assistance in the event of a major disaster, including—

(A) the Agency;

(B) the Department of Housing and Urban Development;

(C) the Department of Agriculture;

(D) the Department of Veterans Affairs;

(E) the Department of Health and Human Services;

(F) the Bureau of Indian Affairs;

(G) any other Federal agency that may provide housing assistance in the event of a major disaster;

(H) the American Red Cross; and

(I) State, local, and tribal governments;

(3) describe in detail the programs that may be offered by the entities described in paragraph (2), including—

(A) outlining any funding issues;

(B) detailing how responsibilities under the National Disaster Housing Strategy will be shared; and

(C) addressing other matters concerning the cooperative effort to provide housing assistance during a major disaster;

(4) consider methods through which

housing assistance can be provided to individuals and households where employment and other resources for living are available;

(5) describe programs directed to meet the needs of special needs and low-income populations and ensure that a sufficient number of housing units are provided for individuals with disabilities;

(6) describe plans for the operation of clusters of housing provided to individuals and households, including access to public services, site management, security, and site density;

(7) describe plans for promoting the repair or rehabilitation of existing rental housing, including through lease agreements or other means, in order to improve the provision of housing to individuals and households under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174); and

(8) describe any additional authorities necessary to carry out any portion of the strategy.

(c) Guidance

The Administrator should develop and make publicly available guidance on—

(1) types of housing assistance available under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) to individuals and households affected by an emergency or major disaster;

(2) eligibility for such assistance (including, where appropriate, the continuation of such assistance); and

(3) application procedures for such assistance.

(d) Report

(1) **IN GENERAL**—Not later than 270 days after October 4, 2006, the Administrator shall submit to the appropriate committees of Congress a report describing in detail the National Disaster Housing Strategy, including programs directed to meeting the needs of special needs populations.

(2) **UPDATED REPORT**—The Administrator shall submit to the appropriate committees of Congress a report updating the report submitted under paragraph (1)—

(A) on the same date that any change is made to the National Disaster Housing Strategy; and

(B) on a periodic basis after the submission of the report under paragraph (1), but not less than once every 5 years after the date of the submission of the report under paragraph (1).

§773. Individuals with disabilities guidelines

[Requiring creation of guidelines to accommodate individuals with disabilities within 90 days of October 4, 2006 during disaster response and recovery.]

§774. Reunification

(a) Definitions

In this section:

(1) **CHILD LOCATOR CENTER**—The term “Child Locator Center” means the National Emergency Child Locator Center established under subsection (b).

(2) **DECLARED EVENT**—The term “declared event” means a major disaster or emergency.

(3) **DISPLACED ADULT**—The term

“displaced adult” means an individual 21 years of age or older who is displaced from the habitual residence of that individual as a result of a declared event.

(4) **DISPLACED CHILD**—The term “displaced child” means an individual under 21 years of age who is displaced from the habitual residence of that individual as a result of a declared event.

(b) National Emergency Child Locator Center

(1) **IN GENERAL**—Not later than 180 days after October 4, 2006, the Administrator, in coordination with the Attorney General of the United States, shall establish within the National Center for Missing and Exploited Children the National Emergency Child Locator Center. In establishing the National Emergency Child Locator Center, the Administrator shall establish procedures to make all relevant information available to the National Emergency Child Locator Center in a timely manner to facilitate the expeditious identification and reunification of children with their families.

(2) **PURPOSES**—The purposes of the Child Locator Center are to—

(A) enable individuals to provide to the Child Locator Center the name of and other identifying information about a displaced child or a displaced adult who may have information about the location of a displaced child;

(B) enable individuals to receive information about other sources of information about displaced children and displaced adults; and

(C) assist law enforcement in lo-

ating displaced children.

(3) **RESPONSIBILITIES AND DUTIES**—The responsibilities and duties of the Child Locator Center are to—

(A) establish a toll-free telephone number to receive reports of displaced children and information about displaced adults that may assist in locating displaced children;

(B) create a website to provide information about displaced children;

(C) deploy its staff to the location of a declared event to gather information about displaced children;

(D) assist in the reunification of displaced children with their families;

(E) provide information to the public about additional resources for disaster assistance;

(F) work in partnership with Federal, State, and local law enforcement agencies;

(G) provide technical assistance in locating displaced children;

(H) share information on displaced children and displaced adults with governmental agencies and nongovernmental organizations providing disaster assistance;

(I) use its resources to gather information about displaced children;

(J) refer reports of displaced adults to—

(i) an entity designated by the Attorney General to provide technical assistance in locating displaced adults; and

(ii) the National Emergency

Family Registry and Locator System as defined under section 775(a) of this title;

(K) enter into cooperative agreements with Federal and State agencies and other organizations such as the American Red Cross as necessary to implement the mission of the Child Locator Center; and

(L) develop an emergency response plan to prepare for the activation of the Child Locator Center.

(c) Omitted

(d) [*Report*]

§775. National Emergency Family Registry and Locator System

(a) Definitions

In this section—

(1) the term “displaced individual” means an individual displaced by an emergency or major disaster; and

(2) the term “National Emergency Family Registry and Locator System” means the National Emergency Family Registry and Locator System established under subsection (b).

(b) [*Establishment*]

(c) Operation of System

The National Emergency Family Registry and Locator System shall—

(1) allow a displaced adult (including medical patients) to voluntarily register (and allow an adult that is the parent or guardian of a displaced child to register such child), by submitting personal information to be entered into a database (such as the name, current location of residence, and any other relevant information that could be used by others seeking to locate that individual);

(2) ensure that information submitted under paragraph (1) is accessible to those individuals named by a displaced individual and to those law enforcement officials;

(3) be accessible through the Internet and through a toll-free number, to receive reports of displaced individuals; and

(4) include a means of referring displaced children to the National Emergency Child Locator Center established under section 774 of this title.

(d) [*Publication of information*]

(e) [*Coordination*]

(f) [*Report*]

§776. Individuals and households pilot program

[*Establishing pilot program through December 31, 2008*]

§777. Public assistance pilot program

[*Establishing pilot program through December 31, 2008*]

§791. Advance contracting

(a) [*Initial report*]

(b) Entering into contracts

(1) IN GENERAL—Not later than 1 year after October 4, 2006, the Administrator shall enter into 1 or more contracts for each type of goods or services identified under subsection (a)(1)(A), and in accordance with the contracting strategy identified in subsection (a)(1)(C). Any contract for goods or services identified in subsection (a)(1)(A) previously awarded may be maintained in fulfilling this requirement.

(2) **CONSIDERED FACTORS**—Before entering into any contract under this subsection, the Administrator shall consider section 5150 of title 42.

(3) **PRENEGOTIATED FEDERAL CONTRACTS FOR GOODS AND SERVICES**—The Administrator, in coordination with State and local governments and other Federal agencies, shall establish a process to ensure that Federal prenegotiated contracts for goods and services are coordinated with State and local governments, as appropriate.

(4) **PRENEGOTIATED STATE AND LOCAL CONTRACTS FOR GOODS AND SERVICES**—The Administrator shall encourage State and local governments to establish prenegotiated contracts with vendors for goods and services in advance of natural disasters and acts of terrorism or other man-made disasters.

(c) Maintenance of contracts

After the date described under subsection (b), the Administrator shall have the responsibility to maintain contracts for appropriate levels of goods and services in accordance with subsection (a)(1)(C).

(d) Report on contracts not using competitive procedures

At the end of each fiscal quarter, beginning with the first fiscal quarter occurring at least 90 days after October 4, 2006, the Administrator shall submit a report on each disaster assistance contract entered into by the Agency by other than competitive procedures to the appropriate committees of Congress.

§792. Limitations on tiering of subcontractors

(a) Regulations

The Secretary shall promulgate regulations applicable to contracts described in subsection (c) to minimize the excessive use by contractors of subcontractors or tiers of subcontractors to perform the principal work of the contract.

(b) Specific requirement

At a minimum, the regulations promulgated under subsection (a) shall preclude a contractor from using subcontracts for more than 65 percent of the cost of the contract or the cost of any individual task or delivery order (not including overhead and profit), unless the Secretary determines that such requirement is not feasible or practicable.

(c) Covered contracts

This section applies to any cost-reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 134 of title 41) entered into by the Department to facilitate response to or recovery from a natural disaster or act of terrorism or other man-made disaster.

§793. Oversight and accountability of Federal disaster expenditures

(a) Authority of Administrator to designate funds for oversight activities

The Administrator may designate up to 1 percent of the total amount provided to a Federal agency for a mission assignment as oversight funds to be used by the recipient agency for performing oversight of activities carried out under the Agency reimbursable mission

assignment process. Such funds shall remain available until expended.

(b) Use of funds

(1) **TYPES OF OVERSIGHT ACTIVITIES**—Oversight funds may be used for the following types of oversight activities related to Agency mission assignments:

(A) Monitoring, tracking, and auditing expenditures of funds.

(B) Ensuring that sufficient management and internal control mechanisms are available so that Agency funds are spent appropriately and in accordance with all applicable laws and regulations.

(C) Reviewing selected contracts and other activities.

(D) Investigating allegations of fraud involving Agency funds.

(E) Conducting and participating in fraud prevention activities with other Federal, State, and local government personnel and contractors.

(2) **PLANS AND REPORTS**—Oversight funds may be used to issue the plans required under subsection (e) and the reports required under subsection (f).

(c) Restriction on use of funds

Oversight funds may not be used to finance existing agency oversight responsibilities related to direct agency appropriations used for disaster response, relief, and recovery activities.

(d) Methods of oversight activities

(1) **IN GENERAL**—Oversight activities may be carried out by an agency under this section either directly or by contract. Such activities may include evaluations and financial and performance audits.

(2) **COORDINATION OF OVERSIGHT AC-**

TIVITIES—To the extent practicable, evaluations and audits under this section shall be performed by the inspector general of the agency.

(e) Development of oversight plans

(1) **IN GENERAL**—If an agency receives oversight funds for a fiscal year, the head of the agency shall prepare a plan describing the oversight activities for disaster response, relief, and recovery anticipated to be undertaken during the subsequent fiscal year.

(2) **SELECTION OF OVERSIGHT ACTIVITIES**—In preparing the plan, the head of the agency shall select oversight activities based upon a risk assessment of those areas that present the greatest risk of fraud, waste, and abuse.

(3) **SCHEDULE**—The plan shall include a schedule for conducting oversight activities, including anticipated dates of completion.

(f) Federal disaster assistance accountability reports

A Federal agency receiving oversight funds under this section shall submit annually to the Administrator and the appropriate committees of Congress a consolidated report regarding the use of such funds, including information summarizing oversight activities and the results achieved.

(g) Definition

In this section, the term “oversight funds” means funds referred to in subsection (a) that are designated for use in performing oversight activities.

§794. Limitation on length of certain noncompetitive contracts**(a) Regulations**

The Secretary shall promulgate regulations applicable to contracts described in subsection (c) to restrict the contract period of any such contract entered into using procedures other than competitive procedures pursuant to the exception provided in paragraph (2) of section 3304(a) of title 41 to the minimum contract period necessary—

- (1) to meet the urgent and compelling requirements of the work to be performed under the contract; and
- (2) to enter into another contract for the required goods or services through the use of competitive procedures.

(b) Specific contract period

The regulations promulgated under subsection (a) shall require the contract period to not to exceed¹ 150 days, unless the Secretary determines that exceptional circumstances apply.

(c) Covered contracts

This section applies to any contract in an amount greater than the simplified acquisition threshold (as defined by section 134 of title 41) entered into by the Department to facilitate response to or recovery from a natural disaster, act of terrorism, or other man-made disaster.

§795. Fraud, waste, and abuse controls**(a) In general**

The Administrator shall ensure that—

- (1) all programs within the Agency administering Federal disaster relief

assistance develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse;

- (2) application databases used by the Agency to collect information on eligible recipients must record disbursements;

- (3) such tracking is designed to highlight and identify ineligible applications; and

- (4) the databases used to collect information from applications for such assistance must be integrated with disbursements and payment records.

(b) Audits and reviews required

The Administrator shall ensure that any database or similar application processing system for Federal disaster relief assistance programs administered by the Agency undergoes a review by the Inspector General of the Agency to determine the existence and implementation of such internal controls required under this section and the amendments made by this section.

§796. Registry of disaster response contractors**(a) Definitions**

In this section—

- (1) the term “registry” means the registry created under subsection (b); and

- (2) the terms “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, “small business concern owned and controlled by women”, and “small business concern owned and controlled by service-disabled veterans” have the meanings given

1. So in original. Probably should be “period not to exceed.”

those terms under the Small Business Act (15 U.S.C. 631 et seq.).

(b) Registry

(1) IN GENERAL—The Administrator shall establish and maintain a registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities.

(2) CONTENTS—The registry shall include, for each business concern—

(A) the name of the business concern;

(B) the location of the business concern;

(C) the area served by the business concern;

(D) the type of good or service provided by the business concern;

(E) the bonding level of the business concern; and

(F) whether the business concern is—

(i) a small business concern;

(ii) a small business concern owned and controlled by socially and economically disadvantaged individuals;

(iii) a small business concern owned and controlled by women; or

(iv) a small business concern owned and controlled by service-disabled veterans.

(3) SOURCE OF INFORMATION—

(A) SUBMISSION—Information maintained in the registry shall be submitted on a voluntary basis and be kept current by the submitting business concerns.

(B) ATTESTATION—Each business

concern submitting information to the registry shall submit—

(i) an attestation that the information is true; and

(ii) documentation supporting such attestation.

(C) VERIFICATION—The Administrator shall verify that the documentation submitted by each business concern supports the information submitted by that business concern.

(4) AVAILABILITY OF REGISTRY—The registry shall be made generally available on the Internet site of the Agency.

(5) CONSULTATION OF REGISTRY—As part of the acquisition planning for contracting for debris removal, distribution of supplies in a disaster, reconstruction, and other disaster or emergency relief activities, a Federal agency shall consult the registry.

§797. Fraud prevention training program

The Administrator shall develop and implement a program to provide training on the prevention of waste, fraud, and abuse of Federal disaster relief assistance relating to the response to or recovery from natural disasters and acts of terrorism or other man-made disasters and ways to identify such potential waste, fraud, and abuse.

§811. Authorization of appropriations

[Establishing appropriations formula]

§1102. National Domestic Preparedness Consortium

(a) In general

The Secretary is authorized to establish, operate, and maintain a National Domestic Preparedness Consortium within the Department.

(b) Members

Members of the National Domestic Preparedness Consortium shall consist of—

- (1) the Center for Domestic Preparedness;
- (2) the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology;
- (3) the National Center for Biomedical Research and Training, Louisiana State University;
- (4) the National Emergency Response and Rescue Training Center, Texas A&M University;
- (5) the National Exercise, Test, and Training Center, Nevada Test Site;
- (6) the Transportation Technology Center, Incorporated, in Pueblo, Colorado; and
- (7) the National Disaster Preparedness Training Center, University of Hawaii.

(c) Duties

The National Domestic Preparedness Consortium shall identify, develop, test, and deliver training to State, local, and tribal emergency response providers, provide on-site and mobile training at the performance and management and planning levels, and facilitate the delivery of training by the training partners of the Department.

(d) [*Authorization of appropriations*]

(e) Savings provision

From the amounts appropriated pursuant to this section, the Secretary shall ensure that future amounts provided to each of the following entities are not less than the amounts provided to each such entity for participation in the Consortium in fiscal year 2007—

- (1) the Center for Domestic Preparedness;
- (2) the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology;
- (3) the National Center for Biomedical Research and Training, Louisiana State University;
- (4) the National Emergency Response and Rescue Training Center, Texas A&M University; and
- (5) the National Exercise, Test, and Training Center, Nevada Test Site.

Executive Order 12148

42 U.S.C. § 5195 NOTE

EX. ORD. NO. 12148. FEDERAL EMERGENCY MANAGEMENT

Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071; Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073; Ex. Ord. No. 12381, Sept. 8, 1982, 47 F.R. 39795; Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571; Ex. Ord. No. 12919, §904(a)(8), June 3, 1994, 59 F.R. 29533; Ex. Ord. No. 13286, §52, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.),

Section 4 of Public Law 92–385 (86 Stat. 556), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C. App. 2285), the National Security Act of 1947, as amended [see Short Title note set out under 50 U.S.C. 401], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), Reorganization Plan No. 1 of 1958 [set out above], Reorganization Plan No. 1 of 1973 [set out above], the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and Section 301 of Title 3 of the United States Code, and in order to transfer emergency functions to the Department of Homeland Security, it is hereby ordered as follows:

Section 1. Transfers or Reassignments

1–1. TRANSFER OR REASSIGNMENT OF EXISTING FUNCTIONS.

1–101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Secretary of Homeland Security.

1–102. All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Secretary of Homeland Security, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1–103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Secretary of Homeland Security.

1–104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), including those functions

performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Secretary of Homeland Security.

1–2. TRANSFER OR REASSIGNMENT OF RESOURCES.

1–201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Secretary of Homeland Security.

1–202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

Sec. 2. Management of Emergency Planning and Assistance

2–1. GENERAL.

2–101. The Secretary of Homeland Security shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.

2–102. The Secretary of Homeland Security shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Secretary of Homeland Security shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2–103. The Secretary of Homeland Security shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

2-104. The Secretary of Homeland Security shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2-105. The Secretary of Homeland Security shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Department of Homeland Security. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.

2-2. IMPLEMENTATION.

2-201. In executing the functions under this Order, the Secretary of Homeland Security shall develop policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:

- (a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;
- (b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and
- (c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2-203. For purposes of this Order, "civil emergency" means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or

loss of property.

2-204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Secretary of Homeland Security shall be subject to oversight by the Secretary of Defense and the National Security Council.

2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Secretary of Homeland Security with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2-206. All Executive agencies shall cooperate with and assist the Secretary of Homeland Security in the performance of his functions.

2-3. TRANSITION PROVISIONS.

2-301. The functions which have been transferred, reassigned, or redelegated by Section 1 of this Order are reclassified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2-302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Secretary of Homeland Security may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

Sec. 3. Federal Emergency Management Council

[Revoked by Ex. Ord. No. 12919, §904(a)(8), June 3, 1994, 59 F.R. 29533.]

Sec. 4. Delegations

4-1. DELEGATION OF FUNCTIONS TRANSFERRED TO THE PRESIDENT.

4-101. [Revoked by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071.]

4-102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 1228 and 1244) (50 U.S.C. 404 and 405), were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), were transferred to the President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Secretary of Homeland Security.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended (Section 2-101(b) of Executive Order No. 12107) [5 U.S.C. 3376 note].

4-104. The Secretary of Homeland Security is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C. App. 2271 note) [now set out above], any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [50 U.S.C. App. 2285], were transferred to the President by Reorganization Plan

No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], were subsequently revested in the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646), and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1), were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)), to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], is hereby delegated to the Secretary of Homeland Security.

4-2. DELEGATION OF FUNCTIONS VESTED IN THE PRESIDENT.

4-201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), are hereby delegated to the Secretary of Homeland Security.

4-202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in

the President by Section 4 of Public Law 92–335 (86 Stat. 556) are hereby delegated to the Secretary of Homeland Security.

Section [sic] 4–203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies) [42 U.S.C. 5170], Section 501 (relating to the declaration of emergencies) [42 U.S.C. 5191], Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities) [42 U.S.C. 5171], and Section 412 (relating to food coupons [benefits] and distribution) [42 U.S.C. 5179], are hereby delegated to the Secretary of Homeland Security.

4–204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.) are delegated to the Secretary of Homeland Security.

4–205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are hereby delegated to the Secretary of Homeland Security.

4–206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)) [now 40 U.S.C. 574(d)], are hereby delegated to the Secretary of Homeland Security.

4–207. The functions vested in the President by Section 502 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2302), are delegated to the Secretary of Homeland Security.

Sec. 5. Other Executive Orders

[5–1. *Revocations.*]

[5–2. *Amendments.*]

Sec. 6.

This Order is effective July 15, 1979.

Additional FEMA Authorities

Name/Title	Location
Acts	
Defense Production Act of 1950	<i>50 App. U.S.C. § 2061 et seq.</i>
Earthquake Hazards Reduction Act of 1977	<i>42 U.S.C. § 7701 et seq.</i>
Fire Prevention and Control Act of 1974	<i>15 U.S.C. § 2201 et seq.; 42 U.S.C. § 290a</i>
McKinney-Vento Homeless Assistance Act (Title III)	<i>42 U.S.C. § 11331 et seq.</i>
National Capital Region Mutual Aid	<i>42 U.S.C. § 5196 note</i>
National Dam Safety Program Act	<i>33 U.S.C. § 467 et seq.</i>
National Emergencies Act	<i>50 U.S.C. § 1601 et seq.</i>
National Flood Insurance Act of 1968	<i>42 U.S.C. § 4001 et seq.</i>
National Security Act of 1947	<i>50 U.S.C. §§ 404-405</i>
Section 109 of Public Law 96-295 (June 30, 1980)	<i>N/A</i>
Warning, Alert, and Response Network Act	<i>47 U.S.C. § 1201 et seq.</i>
Specific Statutes	
Comprehensive emergency response plans	<i>42 U.S.C. § 11003</i>
Destruction of existing stockpile of lethal chemical agents and munitions	<i>50 U.S.C. § 1521</i>
Emergency response to natural disasters	<i>33 U.S.C. § 701n</i>
Planning and training grants, monitoring, and review	<i>49 U.S.C. § 5116</i>
Response authorities [CERCLA]	<i>42 U.S.C. § 9604</i>
Training curriculum for the public sector	<i>49 U.S.C. § 5115</i>
War powers of President	<i>47 U.S.C. § 606</i>
Executive Orders	
E.O. 11514, Protection and Enhancement of Environmental Quality	<i>42 U.S.C. § 4321 note</i>
E.O. 11795, Delegation of Presidential Functions	<i>42 U.S.C. § 5121 note</i>
E.O. 11988, Floodplain Management	<i>42 U.S.C. § 4321 note</i>
E.O. 11990, Protection of Wetlands	<i>42 U.S.C. § 4321 note</i>
E.O. 12127, Transfer of Functions to Federal Emergency Management Agency	<i>15 U.S.C. § 2201 note</i>
E.O. 12148, Federal Emergency Management	<i>42 U.S.C. § 5195 note</i>

Executive Orders (continued)

E.O. 12472, Assignment of National Security and Emergency Preparedness Telecommunications Functions	<i>42 U.S.C. § 5195 note</i>
E.O. 12656, Assignment of Emergency Preparedness Responsibilities	<i>42 U.S.C. § 5195 note</i>
E.O. 12657, Department of Homeland Security Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants	<i>42 U.S.C. § 5195 note</i>
E.O. 12673, Delegation of Disaster Relief and Emergency Assistance Functions	<i>42 U.S.C. § 5195 note</i>
E.O. 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.	<i>42 U.S.C. § 7704 note</i>
E.O. 12941, Seismic Safety of Existing Federally Owned or Leased Buildings	<i>42 U.S.C. § 7705b note</i>
E.O. 13010, Critical Infrastructure Protection	<i>42 U.S.C. § 5195 note</i>
E.O. 13151, Global Disaster Information Network	<i>42 U.S.C. § 5195 note</i>
E.O. 13161, Establishment of the Presidential Medal of Valor for Public Safety Officers	<i>15 U.S.C. § 2214 note</i>
E.O. 13347, Individuals with Disabilities in Emergency Preparedness	<i>6 U.S.C. § 314 note</i>
E.O. 13407, Public Alert and Warning System	<i>42 U.S.C. § 5195 note</i>
Reorganization Plan No. 1 of 1958	<i>42 U.S.C. § 5195 note</i>
Reorganization Plan No. 1 of 1973	<i>42 U.S.C. § 5195 note</i>
Reorganization Plan No. 3 of 1978	<i>15 U.S.C. § 2201 note</i>

The Office of Chief Counsel maintains this booklet. Please submit any comments or inquiries about this publication to FEMA-OCC@fema.dhs.gov.

Additional Resources

Congressional Primer on Responding to and Recovering from
Major disasters and Emergencies

<https://fas.org/sqp/crs/homesecc/R41981.pdf>

A Brief Overview of FEMA's Public Assistance Program

<https://crsreports.congress.gov/product/pdf/IF/IF11529>

The State's Role in Mitigating and Responding to Natural Disasters

Speaker:

Will Polk, Esq.

North Carolina's Department of Public
Safety

March 24, 2021

Resource Links for Practitioners in Disaster/Emergency Management Law

Robert T. Stafford Act and Amendments: <https://www.fema.gov/disasters/authorities>

National Response Framework: https://www.fema.gov/sites/default/files/2020-04/NRF_FINALApproved_2011028.pdf

Disaster Declaration Process and Checklists: <https://www.fema.gov/disasters/how-declared>

FEMA Procurement Resources: <https://www.fema.gov/grants/procurement>

US Small Business Administration Disaster Assistance Program:
https://www.sba.gov/sites/default/files/articles/Overview_of_SBA_Disaster_Declarations_updated_0513.pdf

Legal Services Corporation Disaster Task Force: <https://www.lsc.gov/media-center/publications/lsc-disaster-task-force-report#bfrtoc-spantopicsspan>

Association of State and Territorial Health Officials Fact Sheet on Emergency Authority and Immunity: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Key-Federal-Laws-and-Policies-Regarding-Emergency-Authority-and-Immunity/>

National Emergency Management Association Webinar on Non-traditional authorities for emergency response: <https://www.youtube.com/watch?v=icHR74C5NBc>

National Governor's Association Memo on Emergency Powers during the COVID-19 response: https://mcusercontent.com/5541ed27d4e7e859f01d1c31d/files/09e10347-612c-4222-b619-930b3b488429/NGA_Memo_COVID_19_2.13.20_FINAL.pdf

State Emergency Declaration Laws:
<https://www.networkforphl.org/wp-content/uploads/2020/01/Emergency-Declaration-Authorities.pdf>

Public Health Law Quarantine and Isolation Statutes from the National Conference of State Legislatures: <https://www.ncsl.org/research/health/state-quarantine-and-isolation-statutes.aspx>

National Emergency Management Association Resources (membership required to access):
<https://www.nemaweb.org/index.php/resources/#reportsandpubs>

The Current and Future State of Disaster Policies in the United States

Speaker:

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March 25, 2021

RESPONSE AND RECOVERY AFTER MARÍA: LESSONS FOR DISASTER LAW AND POLICY

ARTICLE

DANIEL FARBER*

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INTRODUCTION

IN 2017, MAJOR HURRICANES IN TEXAS AND FLORIDA WERE FOLLOWED IN QUICK succession by Hurricane María, which devastated the island of Puerto Rico and the Virgin Islands. This article aims to inquire into what the field of Disaster Law can learn from the Puerto Rico experience. The lessons include disaster response, the initial provision of emergency aid and restoration of basic services, and disaster recovery through rebuilding and restoration.

A dozen years earlier, Hurricane Katrina had exposed deep flaws in disaster prevention and response.¹ Katrina and its aftermath dramatized the American legal system's inability to manage disaster risks, including bungled flood control, amplification of existing social injustices, exhaustion of compensation systems, and paralysis due to ambiguous division of responsibility between the state and

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¹ For a description and analysis of Hurricane Katrina's impact and the response effort, see DOUGLAS BRINKLEY, *THE GREAT DELUGE: HURRICANE KATRINA, NEW ORLEANS, AND THE MISSISSIPPI GULF COAST* (2006).

federal governments.² Since Katrina, there have been many efforts to improve disaster response and recovery. Hurricane María put those efforts to the test.

As we will see, the lessons are sobering. The federal response to María was slow, leaving much of the population of Puerto Rico without electricity, clean water, and medical services for extended periods. As a result, lives were lost. The federal government failed to rise to the challenges posed by logistical difficulties and strained agency resources due to prior disasters that same year. The government response was hindered by unrealistic planning, Puerto Rico's lack of political power in Washington D.C. and an inattentive presidential administration. The evidence supports *The Economist's* harsh assessment that while "[e]ven the most attentive government would have struggled with María",³ the response suffered further because "instead of strong leadership, to cut through the difficulties, Donald Trump provided little help."⁴ Recovery planning in Puerto Rico will have to contend with a weak economy and infrastructure, widespread destruction and the local government's fiscal crisis. It is by no means clear that the political will to overcome these problems exists, particularly in Washington. These lapses might be more understandable if Puerto Rico were a foreign country. But the Puerto Ricans who suffered in the aftermath of María are United States citizens to whom the federal government owed a duty of protection.

It is crucial to understand what went wrong and why, and how the federal response and recovery system can be improved. Hurricane María presented a severe challenge, given the extent of devastation, the major hurricanes that immediately preceded it, and logistical hurdles. The year 2017 was not even the worst-case scenario: Houston might have been hit by a major storm surge and heavier winds, and Hurricane Irma might not have swerved to avoid Miami. We cannot afford to view the failures of the María response as a one-off.

To address these issues and questions, the article is organized as follows. Part I introduces general aspects regarding Disaster Law that are necessary to understand the Puerto Rico experience, namely: (1) the disaster cycle, (2) the role of the Federal Emergency Management Agency's (FEMA) and (3) social vulnerability. A key point is that FEMA's central mission is to coordinate the efforts of federal agencies and state governments. This mission has inherent problems; it prevents those other agencies from prioritizing disaster response efforts and potentially weakened local governments from accepting FEMA's guidance.

Part II recounts the emergency response and early disaster recovery effort in Puerto Rico after María. The federal government's response was far slower than it had been for Houston after Hurricane Harvey, despite much greater needs in Puerto Rico. As a result, most island residents lost access to electricity, water and

² For a discussion of the broader lessons from the Katrina experience, see ROBERT R.M. VERCHICK, *FACING CATASTROPHE: ENVIRONMENTAL ACTION FOR A POST-KATRINA WORLD* (2010).

³ *After the Hurricane: America Has Let Down its Puerto Rican Citizens*, *ECONOMIST* (Apr. 14, 2018), <https://www.economist.com/news/briefing/21740394-islanders-must-look-themselves-salvage-their-fortunes-america-has-let-down-its-puerto>.

⁴ *Id.*

other basic necessities for an intolerable period, a precarious situation that produced a significant number of deaths.

Part III then analyzes the reasons why the federal response was markedly slower than in earlier major hurricanes the same year. In a situation where there was little support from the White House and the local government was mired in a deep fiscal crisis, FEMA's efforts were severely hampered. Providing aid to Puerto Rico was inevitably more difficult in terms of logistics than aiding mainland coastal cities, but that difficulty was obvious and should have been planned for. Part III also seeks to understand the implications for Disaster Law more generally.

For the benefit of the readers who are impatient for the takeaway points, here are nine key lessons derived from the analysis presented in this article:

1. The federal government needs greater surge capacity. It is likely that the federal government will face similar disaster clusters in the future and therefore needs to develop the ability to summon additional resources capable of meeting these challenges.
2. Presidential leadership is indispensable. Presidents must be held accountable for failed disaster response.
3. Media access is a key part of an effective response to catastrophic events, because only public awareness can create the necessary pressure on political actors to support extraordinary government action.
4. Planning must include realistic assessments of local resiliency and the capacity of response of the local government, utilities and other institutions. State and local governments differ widely in their capacities and it is foolish to pretend otherwise.
5. Disasters magnify existing inequalities. Those who are poor, politically powerless or physically vulnerable suffer the most during disasters and helping them often requires special efforts.
6. Resource allocation must consider the scale of need. It is not enough to devote equal resources to similar extreme events, especially when disaster impacts vary because of social conditions.
7. *Pay me now or pay me later* is a valid precept of disaster policy. Stinting on infrastructure resilience results in spending even more money on disaster response and recovery. Puerto Rico's electrical grid is a vivid illustration.
8. Flood insurance does not meet the needs of the poor. They cannot afford premiums and may not be able to prove property title. Either the system must be reformed or another mechanism for restoring low-income homes is needed.
9. The need to prepare for catastrophic events is increased by climate change, which may well have contributed to the disastrous events of 2017. This point underlines the importance of the preceding eight points. The future is very likely to hold worse in store than the summer of 2017.

To the proverbial certainty of death and taxes, we might add another certitude: we have not seen the last catastrophic natural disaster in the United States. Hopefully, we can learn the lessons of Hurricane María and be better prepared in the future.

I. KEY ASPECTS OF DISASTER LAW

Before turning to Puerto Rico's experience after Hurricane María, it is important to provide some background on Disaster Law. The legal system plays a central role in disaster prevention, response, and management.⁵ A growing body of research addressing this topic has emerged since Hurricane Katrina under the rubric of Disaster Law.⁶ This emerging legal academic field encompasses a wide-ranging, interdisciplinary body of research that seeks to inform and improve disaster-related decision-making.⁷

This section will not attempt to cover all the complexities of Disaster Law. Instead, it will focus on three basic points. First, it will discuss the disaster cycle, a fundamental organizing principle of Disaster Law. Then, it will explain FEMA's role with regards to disaster response. Finally, it will explain how social vulnerability amplifies the effects of natural disasters.

A. Understanding the Disaster Management Cycle

Disaster Law is best characterized by the cycle of risk management: a set of strategies including "mitigation, emergency response, compensation, and rebuilding", with rebuilding completing the circle by including or failing to include mitigation measures.⁸ Understanding disaster-related activities as a cycle has two important implications. First, it emphasizes that disaster risks call for a series of interrelated responses. For instance, compensation for victims must be designed in a way that encourages precautions before the disaster event and risk mitigation in rebuilding. Second, although public attention to disasters focuses mostly on the dramatic events associated with disasters themselves and emergency response efforts, these are merely phases in the overall effort to cope with disaster risks.

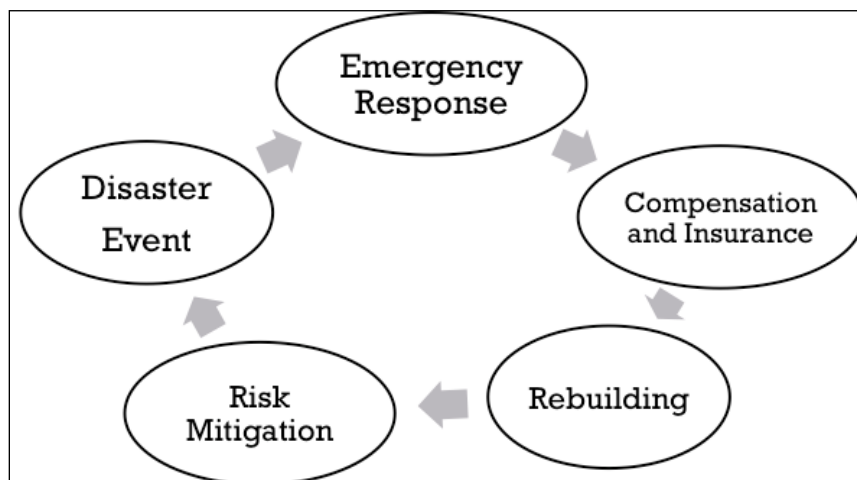
⁵ These issues are the subject of DANIEL A. FARBER ET AL., *DISASTER LAW AND POLICY* (3d ed. 2015).

⁶ The emergence of this community is reflected by the publication of books such as RESEARCH HANDBOOK ON CLIMATE DISASTER LAW: BARRIERS AND OPPORTUNITIES (Rosemary Lyster & Robert Verchick eds., 2018); NAN D. HUNTER, *THE LAW OF EMERGENCIES: PUBLIC HEALTH AND DISASTER MANAGEMENT* (2d ed. 2017); FARBER ET AL., *supra* note 5; THE INTERNATIONAL LAW OF DISASTER RELIEF (David D. Caron et al. eds., 2014); DISASTER LAW (Daniel A. Farber & Michael G. Faure eds., 2010); LOSING GROUND: A NATION ON EDGE (John Nolon & Daniel Rodriguez eds., 2007).

⁷ Disasters are also the subject of a robust body of work in economics and policy analysis. See, e.g., NAT'L RESEARCH COUNCIL, *INCREASING NATIONAL RESILIENCE TO HAZARDS AND DISASTERS: THE PERSPECTIVE FROM THE GULF COAST OF LOUISIANA AND MISSISSIPPI: SUMMARY OF A WORKSHOP* (2011); ROBERT MEYER & HOWARD KUNREUTHER, *THE OSTRICH PARADOX: WHY WE UNDERPREPARE FOR DISASTERS* (2017); HOWARD KUNREUTHER & MICHAEL USEEM, *LEARNING FROM CATASTROPHES: STRATEGIES FOR REACTION AND RESPONSE* (2009); INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, *NATURAL HAZARDS, UNNATURAL DISASTERS: THE ECONOMICS OF EFFECTIVE PREVENTION* (2010).

⁸ FARBER ET AL., *supra* note 5, at 4.

FIGURE 1. THE DISASTER MANAGEMENT CYCLE



Using the disaster management cycle as a framework helps put the emergency response, which usually gets the lion's share of attention, into context. Each stage of the cycle —mitigation, emergency response, insurance/liability compensation, rebuilding— is part of society's risk management portfolio.⁹ Also, the cycle highlights the interdependence between risk management strategies. Failures to mitigate risk "often contribute to the impact of the later disaster, turning an otherwise manageable event into a more serious risk to life or property, or amplifying what would otherwise be a less significant risk to calamitous proportions."¹⁰ Post-disaster compensation mechanisms and the rebuilding stage are as important as the emergency response in determining the severity of the impact on numerous victims. Disaster response, risk reduction, financial compensation and rebuilding may involve diverse institutions and procedures. But none of them can be considered in isolation from the others in planning disaster management strategies.¹¹

Victim compensation is a central focus of Disaster Law, because compensation is crucial to disaster recovery. Post-emergency compensation to disaster victims generally takes one of three forms: private insurance, litigation or government programs.¹² Each of these methods has its limitations. The unavailability of private insurance for many catastrophic risks (due to expense or underwriting risks), the exclusion of disaster risks by contract and the difficulty of handling large numbers of claims create significant hurdles in this regard. The second

⁹ Daniel A. Farber, *International Law and the Disaster Cycle*, in *THE INTERNATIONAL LAW OF DISASTER RELIEF*, *supra* note 6, at 9.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 17.

method of compensation, litigation, also has its limitations, such as the need for proof of negligence or other basis for liability. The third possibility is obtaining compensation from the government through *ad hoc* government funding statutes or through more general forms of disaster relief.¹³ As we will see, for most Puerto Ricans, only the third method (government funding) is a realistic possibility.

Rebuilding is also a key part of Disaster Law. The process can be difficult and lengthy. A decade after a major earthquake, recovery in Kobe, Japan was still incomplete.¹⁴ Recovery from Hurricane Katrina in New Orleans was also a complex and protracted process.¹⁵ Moreover, recovery sets the stage for some later date on which the cycle will begin again, since unfortunately there is never such a thing as the final time disaster strikes in a given location. Thus, a crucial question about recovery is the extent to which steps will be taken to mitigate the harm that will be inflicted eventually by future disasters. Puerto Rico's rebuilding process is still in its early stages, and history suggests that it will take at least a decade to complete.

B. FEMA's roles and responsibilities

Federal disaster response pivots around FEMA. When people think of FEMA, they envision rescuers finding victims and taking them to safety. FEMA does provide emergency assistance, temporary housing and other services. But its main job is to coordinate the emergency response of the many agencies of the federal government. And the federal government's role itself is mostly supportive, with the main responsibility of carrying out emergency response operations falling squarely on the shoulders of state and local governments.

President Jimmy Carter created FEMA in 1979 by combining the functions of several different government agencies.¹⁶ Today, its work is governed by the *Post-Katrina Emergency Management Reform Act of 2006*.¹⁷ This Act charged FEMA with assisting the President in carrying out his functions under the core of federal

¹³ In a sense, it is a mistake to speak of a "system" of compensation for catastrophic losses. Instead, our society has a makeshift assembly of jerry-rigged components:

In the final analysis, the U.S. has what might well be termed a patchwork system for providing financial compensation for catastrophic loss. . . . Inevitably, in such a multifaceted milieu, where the tendency has been to develop discrete schemes in response to particularized categories of disasters (or rely on general welfare schemes that were enacted without disaster relief in mind), there will be ongoing fine-tuning of the system and a continuing dialogue over the efficacy of the measures in place.

Robert L. Rabin & Suzanne A. Bratis, *United States*, in FINANCIAL COMPENSATION FOR VICTIMS OF CATASTROPHES: A COMPARATIVE LEGAL APPROACH 303, 356 (Michael Faure & Tom Hartlief eds., 2006).

¹⁴ See FARBER ET AL., *supra* note 5, at 422-27.

¹⁵ See *id.* at 427-31.

¹⁶ For an account of the formation and evolution of FEMA, see JAMES F. MISKEL, DISASTER RESPONSE AND HOMELAND SECURITY: WHAT WORKS, WHAT DOESN'T 67-74 (2008).

¹⁷ Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1394 (2006) (codified in scattered sections of 6 U.S.C.).

disaster law,¹⁸ the *Stafford Act*.¹⁹ FEMA is also responsible for “leading and supporting the Nation in a risk-based, comprehensive emergency management system.”²⁰ FEMA follows a National Response Framework (“NRF”) issued in 2013.²¹ The framework emphasizes that disaster response requires “[l]ayered, mutually supporting capabilities of individuals, communities, the private sector, NGOs, and governments at all levels.”²² Efforts are coordinated through the Incident Command System, including multiple agencies.²³ There are no fewer than fourteen agencies that can be involved in post-disaster response.

First responders rarely consist of federal personnel; instead, they are state and local personnel who are already on the scene. When the National Guard is deployed to the scene, it too is often under state rather than federal control. Private entities like utility companies also play an essential role in restoring power, water and communications in the aftermath of a disaster.²⁴

FEMA’s performance in the immediate aftermath of Hurricane Katrina was widely considered a fiasco.²⁵ Several reforms ensued, resulting in much improved performance by the time Superstorm Sandy hit the Northeast. Post-mortems on that performance led to additional recommendations for improvement. FEMA’s assessment after Sandy indicated areas of strength and weakness.²⁶ The Govern-

¹⁸ According to the Act:

The primary mission of the Agency [FEMA] is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.

6 U.S.C. § 313(b)(1) (2012).

¹⁹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (codified as amended at 42 U.S.C. §§ 5121-5204 (1988)).

²⁰ 6 U.S.C. § 314(a)(9) (2012).

²¹ U.S. DEPARTMENT OF HOMELAND SECURITY, NATIONAL RESPONSE FRAMEWORK 1 (3d ed. 2016), https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf.

²² *Id.* at 6.

²³ *Id.* at 6, 40.

²⁴ MISKEL, *supra* note 16, at 84-85.

²⁵ For a summary of the shortcomings of the Katrina responses and resulting changes in response strategy, see Aileen M. Marty, *Hurricane Katrina: A Deadly Warning Mandating Improvement to the National Response to Disasters*, 31 NOVA L. REV. 423 (2007).

²⁶ FEMA, HURRICANE SANDY FEMA AFTER-ACTION REPORT (2013), https://www.fema.gov/media-library-data/20130726-1923-25045-7442/sandy_fema_aar.pdf. On the positive side, FEMA said:

The Agency pre-positioned commodities and assets, activated response centers, and deployed over 900 personnel ahead of Sandy’s landfall. . . . As recovery efforts began, FEMA continued to work with its partners to assist survivors and their communities. The Agency executed one of the largest deployments of personnel in its history, delivered over \$1.2 billion in housing assistance to more than 174,000 survivors, and obligated over \$800 million for debris removal and infrastructure restoration.

ment Accountability Office (GAO), which audits government performance on behalf of Congress, reached the same conclusion.²⁷ In particular, GAO raised questions about whether the agency had followed up on past indications of gaps in the response capabilities of some agencies or had sufficiently improved logistics such as its ability to track the location of supplies.²⁸ GAO also found room for improvement in several areas such as coordination of federal senior leadership, implementing the Incident Management System and connecting planning efforts with operational decision-making.²⁹

In disaster recovery, FEMA plays yet another important role through its management of the federal flood insurance program and federal disaster payments. The flood insurance program, as currently designed, provides subsidies that allow many property owners to develop or maintain structures in unsafe areas and encompasses the recovery activities of land use management, insurance and public disclosure.³⁰ FEMA also has the task of aiding in the rebuilding phase, through requirements imposed on local governments and property owners in return for disaster funding.

Congress has taken a few halting steps to address the need to strengthen infrastructure in the context of its 2018 budget legislation. In reauthorizing FEMA's National Flood Insurance Program until July 1, 2018, Congress attempted to improve the resilience of local public infrastructure.³¹

For instance, in Puerto Rico and the [U.S.] Virgin Islands, FEMA's Public Assistance (PA) program will pay for public facility and infrastructure repairs up to current nationally-accepted codes and standards regardless of local codes at the time of the storm. Also, the *Stafford Act* will now include incentives for communities to increase the federal share of disaster funding from [seventy-five] percent to [eighty-five] percent if they take steps to plan for and mitigate against future disasters.³²

Id. at iii. But there were also shortcomings, with the agency pointing out that “[d]ifficulties with issuing timely mission assignments, the implementation of incident management structures, and meeting survivor needs early in the response phase are examples of challenges that emerged during Sandy.” *Id.* In particular, the agency pointed to the need to improve its efforts at coordinating restoration of electrical power, transportation systems, and housing. *Id.* at 1.

²⁷ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-90T, FEMA HAS MADE PROGRESS SINCE HURRICANES KATRINA AND SANDY, BUT CHALLENGES REMAIN (2015), <https://www.gao.gov/assets/680/673279.pdf>.

²⁸ *Id.* at 4-7.

²⁹ *Id.*

³⁰ See FARBER ET AL., *supra* note 5, at 331, 353-60.

³¹ See *National Flood Insurance Program: Reauthorization*, FEMA (Mar. 23, 2018, 4:45 PM), <https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-reauthorization-guidance>.

³² Ari Renoni, *With the Bipartisan Budget Bill, Congress Missed Its Chance to Reform FEMA for the Future*, HAGERTY (Feb. 11, 2018, 9:46 AM), <http://hagertyconsulting.com/about-us/blog/bipartisan-budget-bill-congress-missed-chance-reform-fema-future/>.

C. Disaster Inequality

The effects of disasters fall unevenly on different sectors of society.³³ This was brought home vividly to anyone who watched the news during Hurricane Katrina. Consider the New Orleans Superdome, which offered shelter of last resort: “The Dome was a brewing public health disaster The number of people inside had doubled in twenty-four hours, becoming a virtual city of twenty-thousand, overwhelmingly poor and African American.”³⁴ For days it was “clear to anyone watching television that the majority of people trapped in New Orleans were African Americans, most from the low end of the income spectrum.”³⁵ This because “much of New Orleans’ white population had departed before the storm hit, while the remainder lived in areas closer to dry land and found it easier to escape.”³⁶ Ultimately, the Congressional Research Service found that “an estimated 272,000 black people were displaced by flooding or damage, accounting for seventy three percent of the population affected by the storm in the parish.”³⁷

The connection of race and poverty with evacuation rates was not unique to Katrina. As the National Research Council found:

[R]esearch has shown that different racial, ethnic, income, and special needs groups respond in different ways to warning information and evacuation orders. . . . Lower-income groups, inner-city residents, and elderly persons are more likely to have to rely on public transportation, rather than personal vehicles, in order to evacuate.³⁸

Both globally and within the United States, social vulnerability—including inequalities stemming from race, gender, class, age and disability— amplifies the

³³ For background on this problem, see FARBER ET AL., *supra* note 6, at 227-82; Robert R.M. Verchick, *Disaster Justice: The Geography of Human Capability*, 23 DUKE ENVTL. L. & POL’Y F. 23, 25 (2012). As the National Research Council (“NRC”) observes, some “population segments are more likely to experience casualties, property damage, psychological impacts, demographic impacts, economic impacts, or political impacts—as direct, indirect, or informational effects.” NAT’L RESEARCH COUNCIL, *FACING HAZARDS AND DISASTERS: UNDERSTANDING HUMAN DIMENSIONS* 73 (2006). The NRC refers to this phenomenon as “social vulnerability.” *Id.*

³⁴ JOHN MCQUAID & MARK SCHLEIFSTEIN, *PATH OF DESTRUCTION: THE DEVASTATION OF NEW ORLEANS AND THE COMING AGE OF SUPERSTORMS* 235 (2006). The authors were two New Orleans newspaper reporters who covered the disaster firsthand.

³⁵ *Id.* at 300. Outside the city, in St. Bernard parish, whites were more heavily impacted; many died. *Id.*

³⁶ *Id.*

³⁷ THOMAS GABE, GENE FALK & MAGGIE MCCARTY, CONG. RESEARCH SERV., RL33141, *HURRICANE KATRINA: SOCIAL-DEMOGRAPHIC CHARACTERISTICS OF IMPACTED AREAS* 16 (2005).

³⁸ NAT’L RESEARCH COUNCIL, *supra* note 33, at 129. In particular, “[l]ack of financial resources may leave less-well-off segments of the population less able to take time off from work when disasters threaten, to travel long distances to avoid danger, or to pay for emergency lodging.” *Id.*

impacts of disasters and the difficulty of recovery.³⁹ The relationship between race, poverty and disaster risk can be complex. In 1995, over seven hundred Chicago residents died in a week-long heat wave.⁴⁰ African Americans were the group most at risk, being 1.5 times more likely to die than White Americans.⁴¹ But Hispanics were the least likely of any group to be victims. Despite their “overall level of poverty placed them at a heightened risk of mortality, [they] experienced a surprisingly low death rate.”⁴² The reason for the contrast between the African American and Hispanic risk levels may be related to the social ecology of the neighborhoods where they live, with Hispanic neighborhoods being more likely to encourage the elderly to get out and connect with others.⁴³ Along with age, social isolation is a critical risk factor during heat waves and other disasters.⁴⁴

The elderly are also exposed to special risks. In the 1995 Chicago heat wave, almost three quarters of the victims were over sixty-five years of age.⁴⁵ Also, they are at higher risk from hurricanes:

During Hurricane Katrina the elderly and disabled died in the Convention Center and in their homes throughout the city of the symptoms of diseases such as asthma, diabetes, and high blood pressure that are easily managed under normal conditions but that become lethal when access to medicine and treatment is cut off.⁴⁶

Nearly half of the elderly living in the impact zone of Katrina reported having at least one disability, and one-quarter reported that their disability impaired their ability to leave their dwellings unassisted.⁴⁷ Unsurprisingly, nearly forty percent of the dead were identified as over seventy-one years old.⁴⁸ Death rates among the elderly were particularly high after Hurricane María as well.⁴⁹

³⁹ For discussion and a compilation of relevant materials, see FARBER ET AL., *supra* note 5, at 227-82.

⁴⁰ See ERIC KLINENBERG, *HEAT WAVE: A SOCIAL AUTOPSY OF DISASTER IN CHICAGO* 9 (2002).

⁴¹ *Id.* at 18.

⁴² *Id.* at 19.

⁴³ *Id.* at 34, 117.

⁴⁴ *Id.* at 45-46.

⁴⁵ *Id.* at 18-19.

⁴⁶ Elizabeth Fussell, *Leaving New Orleans: Social Stratification, Networks, and Hurricane Evacuation*, in UNDERSTANDING KATRINA: PERSPECTIVES FROM THE SOCIAL SCIENCES, SOCIAL SCIENCE RESEARCH COUNCIL (Jun. 11, 2006), <http://understandingkatrina.ssrc.org/Fussell/>.

⁴⁷ FARBER ET AL., *supra* note 5, at 265.

⁴⁸ Audie Cornish, *Katrina Took Deadly Toll on Elderly*, NPR (Mar. 5, 2006, 12:04 PM), <http://www.npr.org/templates/story/story.php?storyId=5242064>.

⁴⁹ Omayra Sosa Pascual, *Nearly 1,000 More People Died in Puerto Rico After Hurricane María*, CENTER FOR INVESTIGATIVE JOURNALISM (Dec. 7, 2017), <http://periodismoinvestigativo.com/2017/12/se-disparan-en-casi-mil-las-muertes-tras-maria/> translated in Julio Ricardo Varela, *Nearly 1,000 More People Died in Puerto Rico After Hurricane María*, LATINO USA (Dec. 7, 2017), <http://latinousa.org/2017/12/07/nearly-1000-people-died-puerto-rico-hurricane-maria/>.

As we will see, Puerto Rico, as a whole, fits the definition of a vulnerable group, lacking almost completely in political power and far poorer than the mainland United States. Moreover, many of the most impacted were poor communities living in *informal* housing built without obtaining permits or complying with building codes.

II. RESPONSE AND RECOVERY AFTER HURRICANE MARÍA

With this background on Disaster Law in hand, we turn to Hurricane María and its aftermath. Part II's discussion is divided into two sections. Section A discusses the first stages of the disaster cycle: the impact and emergency response phases. Section B discusses the subsequent phases, which encompass the compensation and recovery phases.

A. *The Impact and Emergency Response Phases in Puerto Rico*

Hurricane María, a Category Four storm, hit Puerto Rico on September 20, 2017.⁵⁰ The hurricane was “the strongest hurricane to hit Puerto Rico in more than eighty years.”⁵¹ The official death toll for Hurricane María's effect on Puerto Rico is sixty-four,⁵² but that figure only accounts for those directly killed during the storm. However, taking into account those who died later, CNN estimated that there have been 499 deaths (an estimate that only counts death that occurred until the middle of October 2017); the Center for Investigative Journalism estimated 985 fatalities; *The New York Times* estimated 1,052 deaths; another study estimated

⁵⁰ *Hurricane Maria: Facts, F.A.Q.s, and How to Help*, WORLD VISION, <https://www.worldvision.org/disaster-relief-news-stories/hurricane-maria-facts> (last updated Feb. 14, 2018).

⁵¹ *Id.* (citing Danica Coto, *Maria Destroys Homes, Triggers Flooding in Puerto Rico*, ASSOCIATED PRESS (Sept. 21, 2017), <https://apnews.com/5f2002103e2f42e4916efeda88d0e511/Hurricane-Maria-hits-Puerto-Rico,-heavy-flooding-reported>).

⁵² WORLD VISION, *supra* note 50 (citing Ann M. Simmons & Milton Carrero Galarza, *Four Months after Hurricane Maria, Puerto Rico Struggles with Lack of Electricity, Food and Water*, L.A. TIMES (Jan. 30, 2018), <http://www.latimes.com/nation/la-na-puerto-rico-aid-20180130-story.html>).

1085 fatalities;⁵³ and a more recent Harvard study estimated 4645.⁵⁴ The average of these estimates is 1820 deaths. As of January 2018, around “450,000 of Puerto Rico’s 1.5 million electricity customers [were] still without power, and those who [did] have electricity suffer frequent blackouts.”⁵⁵ The damages caused by Hurricane María “resulted in a cascade of further problems, including job losses, foreclosures, a decrease in neighborhood police presence and a resulting increase in violent crimes.”⁵⁶

As of the day after María struck, Urban Search & Rescue (US&R) operations began with initial damage assessments and intelligence reports, with four task forces stationed in the area and another eight waiting for airports to reopen.⁵⁷ “FEMA-loaded vessels with more than 1.3 million meals, 2 million liters of water, 30 generators and 6,000 cots [were] en route to St. Thomas, awaiting port opening and clearance” and “FEMA [had] also pre-positioned commodities at its Distribution Center and Warehouse in San Juan, Puerto Rico.”⁵⁸ As of September 22, 2017, FEMA US&R rescued over sixty individuals and searched over forty-five structures.⁵⁹ Even though aid was being shipped into Puerto Rico, distributing the relief remained difficult after the storm due to a lack of trucks in some areas and road

⁵³ Alexis R. Santos-Lozada, *Why Puerto Rico’s Death Toll from Hurricane Maria is so Much Higher than Officials Thought*, THE CONVERSATION (Jan. 3, 2018, 6:54 AM), <http://theconversation.com/why-puerto-ricos-death-toll-from-hurricane-maria-is-so-much-higher-than-officials-thought-89349>. A reason for this discrepancy in the number of deaths calculated is that “[i]n Puerto Rico, deaths are recorded using international classifications” that do not “capture all of the circumstances surrounding a death that happens following a natural disaster.” *Id.* As a result:

Under the international system, a death resulting from circumstances [like having a cellphone tower unable to function because of the Hurricane, thereby preventing a 911 call from going through to save a person suffering from a heart attack] would be classified as [the] result of a cardiovascular conditions, and would not be attributed to the hurricane either.

Id.

⁵⁴ Nishant Kishore et al., *Mortality in Puerto Rico After Hurricane Maria*, NEW ENGL. J. MED. (May 2018), available at <https://www.nejm.org/doi/full/10.1056/NEJMsa1803972>.

⁵⁵ Alan Taylor, *After Four Months, Much of Puerto Rico Still Dark and Damaged*, ATLANTIC (Jan. 29, 2018), <https://www.theatlantic.com/photo/2018/01/after-four-months-much-of-puerto-rico-still-dark-and-damaged/551756> (citing Erin Dooley, *4 Months after Maria, 450K Residents of Puerto Rico Still Without Power*, ABC NEWS (Jan. 24, 2018, 3:18 PM), <http://abcnews.go.com/US/months-maria-450k-residents-puerto-rico-power/story?id=52585227>).

⁵⁶ *Id.*

⁵⁷ *Hurricane Maria Response and Relief Operations Underway*, FEMA (Sept. 21, 2017), <https://www.fema.gov/news-release/2017/09/21/hurricane-maria-response-and-relief-operations-underway#>.

⁵⁸ *Id.*

⁵⁹ FEMA Public Affairs, *Overview of Federal Efforts to Prepare for and Respond to Hurricane Maria*, FEMA, <https://www.fema.gov/blog/2017-09-29/overview-federal-efforts-prepare-and-respond-hurricane-maria> (last updated Oct. 31, 2017, 16:50) (this website provides an overview of federal efforts in anticipation of and in immediate response to Hurricane María).

closures.⁶⁰ In contrast, roads were more readily accessible after the hurricanes in Texas and Florida.⁶¹

As FEMA itself admitted, “Puerto Rico and the Virgin Islands [had] seen much fewer personnel since Hurricane María hit.”⁶² FEMA stated that over “10,000 federal staff were on the ground in Puerto Rico and the Virgin Islands assisting search and rescue and recovery efforts.”⁶³ President Trump had declared that recovery efforts were harder in Puerto Rico because Puerto Rico “is an island sitting in the middle of an ocean, and it’s a big ocean.”⁶⁴ Although he was undoubtedly right about the logistical issues, these challenges obviously were known well before the disaster.

According to World Vision, “Puerto Rican authorities . . . requested \$94 billion to cover damages from Hurricane María. Congress approved \$5 billion in the fall of 2017 as part of an overall federal aid package of more than \$36 billion allotted for hurricanes María, Harvey, and Irma.”⁶⁵ FEMA approved “more than \$53 million for debris removal and \$417 million for emergency protective measures.”⁶⁶ FEMA delivered “[m]ore than 56 million liters of water and 48 million meals . . . making it the largest and longest commodity delivery mission in FEMA’s history.”⁶⁷ FEMA also gave more than 120,000 tarps to municipalities on the island for use as roof covers.⁶⁸ Through its Transitional Shelter Assistance program, FEMA housed

⁶⁰ Jack Healy, Frances Robles & Ron Nixon, *Aid Is Getting to Puerto Rico. Distributing It Remains a Challenge*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html>.

⁶¹ *Id.* For more about the problems facing the trucks, including difficulty in obtaining fuel, see Alex Figueroa Cancel, *Miles de Vagones con Mercancía Permanecen en los Muelles*, EL NUEVO DÍA (Sept. 25, 2017), <https://www.elnuevodia.com/noticias/locales/nota/milesdevagonesconmercanciapermanecenlosmuelles-2360301/>; Gloria Ruiz Kuilan, *Fema Admite que el Sistema de Transporte es Inadecuado*, EL NUEVO DÍA (Sept. 27, 2017), <https://www.elnuevodia.com/noticias/locales/nota/femaadmitequeelsistemadetransporteessinadecuado-2360941/>.

⁶² Eric Levenson, *3 Storms, 3 Responses: Comparing Harvey, Irma and Maria*, CNN (Sept. 27, 2017), <https://edition.cnn.com/2017/09/26/us/response-harvey-irma-maria/index.html>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ WORLD VISION, *supra* note 50 (citing Erik Wasson, *Trump \$44 Billion Aid Request Puts Off Puerto Rico Demands*, BLOOMBERG (Nov. 17, 2017, 11:28 AM), <https://www.bloomberg.com/news/articles/2017-11-17/trump-disaster-request-said-to-fall-short-of-puerto-rico-request>; and Lisa Mascaro, *Congress Approves \$36.5-billion Disaster Aid for Puerto Rico, Wildfires and Hurricane Relief*, L.A. TIMES (Oct. 24, 2017, 1:35 PM), <http://www.latimes.com/politics/washington/la-na-pol-essential-washington-updates-congress-approves-36-5-billion-1508860506-htmllstory.html>)).

⁶⁶ *Disaster Assistance in Puerto Rico 90 Days After Hurricane Maria*, FEMA (Dec. 20, 2017), <https://www.fema.gov/news-release/2017/12/20/disaster-assistance-puerto-rico-90-days-after-hurricane-maria>.

⁶⁷ *Id.*

⁶⁸ *Id.*

nearly ten thousand survivors in Puerto Rico and the mainland.⁶⁹ The Small Business Administration (“SBA”) and FEMA employed over 1300 island residents during their recovery efforts.⁷⁰

Two months after the disaster, the Red Cross reported that conditions remained very difficult, especially in rural areas.⁷¹ Residents were “still dealing with a lack of water and electricity and the struggle to find food. . . . Despite some improvement in urban areas, lack of access to water, electricity and food is a major problem for hundreds of thousands of families.”⁷²

B. Funding and Reconstruction in Puerto Rico

Disaster recovery after the hurricane faced formidable challenges. Because of Hurricane María, according to FEMA:

Puerto Rico was left without potable running water. Waist-deep flooding, mudslides and winds powerful enough to uproot the concrete foundations of metal utility poles, impacted more than 80 percent of the Island’s power grid. In addition, the existing infrastructure for cellular and wireless service was rendered virtually useless further hampering communications.⁷³

In late January 2018, nearly half a million customers still lacked electricity.⁷⁴ However, FEMA, working with the Puerto Rico Electric Power Authority (“PREPA”) and the U.S. Army Corps of Engineers, had restored power for a million customers.⁷⁵ But four months after the disaster, a quarter of Puerto Ricans still

⁶⁹ *Id.*

⁷⁰ *Id.*; see also *Fact Sheet: Why You Should Complete the SBA Disaster Loan Application*, FEMA (Oct. 10, 2017), <https://www.fema.gov/news-release/2017/10/10/fact-sheet-why-you-should-complete-sba-disaster-loan-application> (discussing the process of the SBA disaster loan application).

⁷¹ *Puerto Rico: Many Still Without Basic Necessities*, AMERICAN NATIONAL RED CROSS (Nov. 20, 2017), <http://www.redcross.org/news/article/Puerto-Rico-Many-Still-Without-Basic-Necessities>.

⁷² *Id.*

⁷³ *Hurricane Maria Update*, FEMA (Oct. 19, 2017), <https://www.fema.gov/news-release/2017/10/19/4339/hurricane-maria-update>.

⁷⁴ Erin Dooley, *4 Months after Maria, 450K Residents of Puerto Rico Still Without Power*, ABC NEWS (Jan. 24, 2018, 3:18 PM), <http://abcnews.go.com/US/months-maria-450k-residents-puerto-rico-power/story?id=52585227>. For a discussion of the weaknesses of the Puerto Rican electrical power system prior to Maria and the shortcomings of the reconstruction efforts, see James Glanz & Frances Robles, *How Storms, Missteps and an Ailing Grid Left Puerto Rico in the Dark*, N.Y. TIMES (May 6, 2018), available at <https://www.nytimes.com/interactive/2018/05/06/us/puerto-rico-power-grid-hurricanes.html>.

⁷⁵ Ray Sanchez, *Nearly Half a Million in Puerto Rico Still in the Dark 4 Months after Hurricane Maria*, CNN (Jan. 25, 2018, 17:20 GMT), <https://edition.cnn.com/2018/01/25/us/puerto-rico-hurricane-maria-power/index.html>.

lacked electricity.⁷⁶ Recovery was slow and uneven. By mid-April, over ninety-five percent of Puerto Ricans had power, but more than fifty thousand still did not.⁷⁷

By April, FEMA's federal coordinating officer in Puerto Rico, Mike Byrne, held that "he [was] working with the U.S. territory's government to determine how federal funds [would] be used to identify priorities and rebuild damaged infrastructure."⁷⁸ He explained that "some of the money [would] go toward strengthening the island's power grid since the storm destroyed two-thirds of its distribution system."⁷⁹ FEMA's administrator, Brock Long, stated that Puerto Rico needed around \$50 billion to rebuild in the aftermath of Hurricane María.⁸⁰ Long said that "[we are] running out of time" and that "[w]e have a long way to go," noting that the next hurricane season starts on June 1,⁸¹ These remarks rightly underline the risk of a further disaster. In anticipation of such an event, FEMA and local government officials have stockpiled food and water in five warehouses across the island as a precaution.⁸² Also, FEMA will remain in Puerto Rico for a few years in order to assist in the rebuilding phase.⁸³ But, Long also said "FEMA cannot be directly responsible for all of the response and recovery."⁸⁴ He indicated that "the private sector should ensure that communication systems become more resistant" in conjunction with the public sector.⁸⁵

The U.S. Army Corps of Engineers announced that its work restoring the power system would be completed on May 18, 2018, leaving behind only a transition team.⁸⁶ Power had been restored to ninety-six percent of the island's residents, although 50,000 still lacked electricity.⁸⁷ In terms of the number of hours of customer service lost, Puerto Rico had suffered the largest power interruption in U.S. history, three times the amount of the nearest runner-up.⁸⁸ Although the

⁷⁶ Patricia Mazzei, *What Puerto Rico Is, and Isn't, Getting in Disaster Relief*, N.Y. TIMES (Feb. 8, 2018), <https://www.nytimes.com/2018/02/08/us/puerto-rico-disaster-relief.html>.

⁷⁷ Rhodium Group, *The World's Second Largest Blackout* (April 12, 2008), available at <https://rhg.com/research/puerto-rico-hurricane-maria-worlds-second-largest-blackout/>.

⁷⁸ Danica Coto, *FEMA: Puerto Rico Running Out of Time as Storm Season Nears*, ASSOCIATED PRESS (Apr. 6, 2018), <https://www.apnews.com/7c238de9e23a4c41b2f557e671e5a12d/FEMA:-Puerto-Rico-running-out-of-time-as-storm-season-nears>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Robert Walton, *Federal Agencies Prepare to Wind Down Puerto Rico Power Restoration in May*, UTILITY DIVE (Apr. 12, 2018), <https://www.utilitydive.com/news/federal-agencies-prepare-to-wind-down-puerto-rico-power-restoration-in-may/521135/>.

⁸⁷ *Id.*

⁸⁸ *Id.*

Corps were unable to make major changes in the grid, partly due to the local power company's lack of a system model, they had set everything to code, including transmission lines and poles.⁸⁹ Future upgrades were subject to issue about statutory authorization and whether the utility would have to cover ten percent of the cost, which it could ill-afford.⁹⁰

The continuing fragility of the power system was dramatized on April 12, 2018, the same day *Utility Dive* published an article about the near completion of the Corps' work.⁹¹ As crews were clearing land in Cayey, a mountain town, as part of the power-restoration effort, a tree fell on the main power line serving San Juan.⁹² The result was a blackout that temporarily left over 840,000 people without power.⁹³

After the first phases of the emergence response, the need for additional federal assistance was clear. The congressional budget bill passed in early 2018 included \$4.8 billion for Medicaid on the island to deal with its funding crisis, \$2 billion to restore the power grid and \$9 billion for housing and urban development in Puerto Rico.⁹⁴ The bill waived the government of Puerto Rico's contributions for Army Corps of Engineers and federal highway funds and provided \$14 million for USDA food assistance.⁹⁵ The Medicaid assistance was especially important because it affects forty percent of Puerto Ricans and the island "receives less in matching funds than mainland states to help cover Medicaid costs."⁹⁶

III. LEARNING FROM PUERTO RICO'S MARÍA EXPERIENCE

In thinking about Puerto Rico's experience in the wake of Hurricane María, first we need to understand why the federal response has been slow and incom-

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² Marwa Eltagouri, *Another Power Outage Hits Puerto Rico, Leaving About 840,000 in the Dark, Officials Say*, WASH. POST (Apr. 12, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/04/12/another-power-outage-hits-puerto-rico-leaving-about-840000-in-the-dark-officials-say/?utm_term=.172d31c2493c&wpisrc=nl_energy202&wpm=1.

⁹³ *Id.* An additional blackout occurred a week later. See Gavin Bade, *Line Fault Again Plunges Puerto Rico into Blackout*, UTILITY DIVE (April 18, 2018), <https://www.utilitydive.com/news/line-fault-again-plunges-puerto-rico-into-blackout/521651/>. For a discussion of future prospects for the grid, including privatization, see David Ferris, *How Puerto Rico's New Grid Could Go Wrong*, E&E NEWS (May 7, 2018), <https://www.eenews.net/stories/1060080949>.

⁹⁴ Mazzei, *supra* note 76.

⁹⁵ Kathya Severino, *How Latest Federal Appropriations for Disaster Relief Help Puerto Rico*, CENTER FOR PUERTO RICAN STUDIES (Feb. 15, 2018, 5:30 PM), <https://centropr.hunter.cuny.edu/events-news/puerto-rico-news/congress/how-latest-federal-appropriations-disaster-relief-help-puerto>.

⁹⁶ John Bresnahan & Heather Caygle, *How Politics Screwed Puerto Rico Out of Billions in Disaster Aid*, POLITICO (Dec. 23, 2017, 7:02 AM), <https://www.politico.com/story/2017/12/23/puerto-rico-disaster-aid-medicaid-315974>.

plete. Section A provides further evidence of delay as compared to earlier hurricanes, particularly Hurricane Harvey. Section B probes the reasons for delay, which involve both economic and political considerations, as well as the logistical problems faced by the federal response effort. Then, Section C seeks to distill lessons from this experience that could help enrich the field of Disaster Law.

A. Assessing the Adequacy of the Response

To say that the federal response to Hurricane María was slower than its response to comparable disasters is not to disrespect the relief workers and their strenuous and commendable efforts. For instance, based on a timeline of the emergency response, one journalist concluded that although there were “few obvious gaps in the federal response,” the timetable made it “clear that the speed and scale of the initial María relief effort pales next to other recent campaigns.”⁹⁷ Based on public reactions to previous disasters, national security professor James Miskel concluded in 2008 that two of the hallmarks of a successful disasters response from the public’s perspective were that: (1) “few if any” remained without adequate shelter, food or water after twenty-four hours, and (2) electric power was restored to nearly everyone within thirty-six hours.⁹⁸ Judged by those standards, the response to Hurricane María was a resounding failure.

A week after the hurricane struck, a CNN article compared FEMA’s responses to Hurricane María in Puerto Rico, Hurricane Harvey in Texas and Hurricane Irma in Florida.⁹⁹ The news article noted that “[f]ewer FEMA personnel [were] in place” for María than Harvey and Irma, highlighting that “[t]hose differences [were] partly because of issues unique to Puerto Rico, an island that already had a weakened infrastructure, a government struggling through bankruptcy —and that had only just been hit by Hurricane Irma.”¹⁰⁰ Before Hurricane Harvey hit Texas, FEMA had already placed people and supplies there, and the number of federal employees and National Guard soldiers quickly topped 31,000.¹⁰¹ In Florida, “[e]ven more federal personnel responded to Hurricane Irma when it made landfall.”¹⁰² Within four days, over “40,000 federal personnel, including 2,650 FEMA staff, were in place.”¹⁰³ FEMA had also “transferred 6.6 million meals and 4.7 million liters of water to states in the Southeast after Irma as of [September] 14th —four days after

⁹⁷ Robinson Meyer, *What’s Happening with the Relief Effort in Puerto Rico? A Timeline of the Unprecedented Catastrophe of Hurricane Maria*, ATLANTIC (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>.

⁹⁸ MISKEL, *supra* note 16, at 35.

⁹⁹ Eric Levenson, *3 Storms, 3 Responses: Comparing Harvey, Irma and Maria*, CNN (Sept. 27, 2017, 16:44 GMT), <https://www.cnn.com/2017/09/26/us/response-harvey-irma-maria/index.html>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Irma hit the mainland.¹⁰⁴ Furthermore, FEMA provided “3 million meals and 3 million liters of water” to survivors in Texas”.¹⁰⁵

Table 1 summarizes the differences between the responses in Texas and Puerto Rico, including data from later stages in the response effort. The disparity is unmistakable.

Table 1: Comparison of Texas and Puerto Rico Hurricane Responses¹⁰⁶

Government Action	Hurricane Harvey (Texas)	Hurricane María (Puerto Rico)
Helicopter deployment	73 helicopters within a week.	70+ helicopters after 3 weeks.
Immediate FEMA funding (9 days post-storm)	\$141.8 million	\$6.2 million
Meals delivered in first 9 days	5.1 million	1.6 million
Personnel deployed after first 9 days	30,000	10,000
FEMA payments approved in first nine days ¹⁰⁷	\$142 million	\$6 million
Time after storm to approve permanent disaster work	10 days	43 days

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* Disparate treatment of Puerto Rico is also documented in Nicole Einbinder, *How the Response to Hurricane Maria Compared to Harvey and Irma*, PBS FRONTLINE (May 1, 2018), available at <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-maria-compared-to-harvey-and-irma/>.

¹⁰⁶ The figures in this table are derived from Danny Vinik, *How Trump Favored Texas over Puerto Rico*, POLITICO (Mar. 27, 2018, 5:00 AM), <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557>. An additional factor in the slow response was the inability to mobilize half of the Puerto Rico National Guard in the days after the disaster. See Dan Lamothe, *María Hit 9 Days Ago. Less Than Half of the Puerto Rico National Guard is on Duty*, THE WASH. POST (Sept. 29, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/09/29/maria-hit-9-days-ago-less-than-half-of-the-puerto-rico-national-guard-is-on-duty/?utm_term=.40a5c6a2dd3c. This is an issue that calls for further inquiry. In addition to comparisons made in this paper, Puerto Rico’s universities also got much less aid than their counterparts on the mainland. See Erica L. Green & Emily Cochrane, *In Devastated Puerto Rico, Universities Get Just a Fraction of Storm Aid*, N.Y. TIMES (May 1, 2018), available at <https://www.nytimes.com/2018/05/01/us/politics/hurricane-maria-puerto-rico-emergency-aid.html>

¹⁰⁷ ECONOMIST, *supra* note 3.

Percent of relief applications approved as of day 78.	39%	28%
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Addressing the criticisms that FEMA’s response to Hurricane María was delayed and did not allocate as many resources to Puerto Rico as it did to cities in the contiguous United States that had been hit by two major hurricanes, FEMA Administrator Long stated “[that is] completely false.”¹⁰⁸ He added that “in the first six months since María hit, FEMA invested \$10 billion in Puerto Rico, in contrast to the \$6 billion invested in the six months after Hurricane Katrina.”¹⁰⁹ As Long put it, “[r]ecovery never moves as fast as people want it to be . . . [a]nd in this case, moving faster can be detrimental from the standpoint of putting this money to work in a manner that truly makes Puerto Rico stronger and more resilient.”¹¹⁰ His explanation for the slow progress of recovery was based on the difficulty of obtaining power poles and construction equipment given the slew of natural disasters that had struck the U.S. in the past year.¹¹¹

There is no reason to doubt FEMA’s good faith or that the federal government ultimately devoted similar resources to address Hurricane María and its aftermath as it did to other hurricanes. Response agencies were already stretched thin by two major hurricanes, wildfires in California and the logistical problems of aiding an island at some distance from the mainland.¹¹² Thus, equal resources would inevitably have led to unequal results. Indeed, this is probably always to be true when considering the needs of vulnerable populations, who are likely to need greater assistance than peers who have greater resources and less needs.

But even assuming FEMA devoted equivalent effort to the two disasters, the fact remains that equal effort was not necessarily the right standard, given the different levels of harm suffered in Texas and Puerto Rico. Consider the following table:

¹⁰⁸ Coto, *supra* note 78.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² As *The Economist* put it, “[e]ven the most attentive government would have struggled with María. FEMA was overstretched in Texas, Florida and California. Puerto Rico, unlike Houston, is rugged, 180 [kilometers] long, and has worn-out infrastructure and weak institutions.” *ECONOMIST*, *supra* note 3.

Table 2: Comparison of Impacts (Texas and Puerto Rico)

	Texas	Puerto Rico
Housing units destroyed or significantly damaged	97,000 (Greater Houston area, destroyed or major damage) ¹¹³	+400,000 (destroyed or significantly damaged) ¹¹⁴
Number of deaths	88 ¹¹⁵	500-4500 ¹¹⁶
Number without power	280,000 ¹¹⁷	1,000,000 ¹¹⁸
Number without drinking water	45 water systems in smaller communities shut down, Houston unaffected. ¹¹⁹	One half of population (approx. 1.7 million) left without potable water. ¹²⁰
Number without phone-cell or internet service	180,000 homes ¹²¹	+90% of island left with-

¹¹³ *Houston and Hurricane Harvey: What You Need to Know*, THE GREATER HOUSTON PARTNERSHIP (Mar. 19, 2018), <http://www.houston.org/pdf/comm/Hurricane-Harvey-Statistics.pdf> (last visited on May 18, 2018).

¹¹⁴ Nick Brown, *Special Report: In Puerto Rico, A Housing Crisis U.S. Storm Aid Won't Solve*, REUTERS (Feb. 6, 2018, 10:08 AM), <https://www.reuters.com/article/us-usa-puertorico-housing-special-report/special-report-in-puerto-rico-a-housing-crisis-u-s-storm-aid-wont-solve-idUSKBN1FQ211> (last visited on May 18, 2018).

¹¹⁵ Giulia Afiune, *Texas Officials: Hurricane Harvey Death Toll Rises to 88*, TYLER MORNING TELEGRAPH (Oct. 16, 2017), https://tylerpaper.com/news/texas/texas-officials-hurricane-harvey-death-toll-rises-to/article_d3uabb8-09ca-538e-a0f3-e86f46coce66.html.

¹¹⁶ See text accompanying notes 52 to 55 *supra*.

¹¹⁷ Tom DiChristopher, *Texas Utilities Struggle to Restore Power as Harvey Hampers Progress*, CNBC (Aug. 28, 2017), <https://www.cnbc.com/2017/08/28/texas-utilities-struggle-to-restore-power-as-harvey-hampers-progress.html>.

¹¹⁸ *Quick Facts: Hurricane Maria's Effect on Puerto Rico*, MERCY CORPS (Jan. 19, 2018), <https://www.mercycorps.org/articles/united-states/quick-facts-hurricane-marias-effect-puerto-rico>.

¹¹⁹ *Harvey Floods Left Houston Water Plant Hours Away from Failure*, CBS NEWS (Sept. 5, 2017, 7:37 AM), <https://www.cbsnews.com/news/houston-water-filtration-plant-harvey-flooding-impact/>. Other communities were under “boil water” orders. *Id.*

¹²⁰ Andrew Jakabovics, *Beginning to Assess the Magnitude of Destroyed Housing After Maria*, ENTERPRISE (Sept. 28, 2017), <https://www.enterprisecommunity.org/blog/2017/09/beginning-assess-magnitude-destroyed-housing-after-maria>.

¹²¹ Samantha Ehlinger, *Hurricane Harvey Leaves Texans without Internet, Phone Service*, SAN ANTONIO EXPRESS NEWS (Aug. 28, 2017, 4:42 PM), <https://www.mysanantonio.com/business/technology/article/Hurricane-Harvey-leaves-Texans-without-internet-12069233.php>.

		out cell phone coverage ¹²²
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Bad as things were in Texas, they were much worse in Puerto Rico. Despite the massive destruction of infrastructure and housing in Puerto Rico, the federal government simply did not choose to make it a priority. Given the massive capabilities of the federal government, it seems likely that it could have overcome resource and logistical challenges if a more strenuous effort had been made.¹²³

B. Understanding the Inadequate Response

To understand the shortcomings of the disaster response, we need to address two interrelated questions. First, why was the level of vulnerability in Puerto Rico higher (and resilience lower) as compared to Texas and Florida, and should this have motivated a more strenuous response effort on the part of the federal government? And second, why did the U.S. government fail to treat Puerto Rico as a priority consistent with the greater degree of harm the island suffered as a result of Hurricane María?

1. *Economic Factors.* At the outset, it is necessary to recognize the challenges that Puerto Rico was already facing before María. First and foremost was the economy. It would be hard to exaggerate the extent of the economic problems facing the island or the fiscal plight of its government.

Due to factors such as the end of favorable tax treatment and competition from China, the island’s economic output began to decline before the Great Recession and continued despite the U.S. economic recovery.¹²⁴ Puerto Rico is also losing about one percent of its population per year, shrinking its labor force.¹²⁵ Electricity, water and labor costs are at all-time highs, making it difficult to attract investment¹²⁶ Labor force participation is two-thirds of that on the mainland and unemployment among those in the workforce is twice as high.¹²⁷ The poverty rate

¹²² Elizabeth Weise, *Puerto Rico is Nearly Entirely Cut Off from Cellphone Service, Leading to Low Tech Solutions*, USA TODAY (Sept. 28, 2017), <https://www.usatoday.com/story/tech/2017/09/28/puerto-rico-cell-phone-service-tmobile-att-hurricane/710775001/>.

¹²³ Presumably it would not have taken three weeks to get helicopters to the scene if Puerto Rico had been invaded by Venezuela, for instance.

¹²⁴ Anne O. Krueger et al., *PUERTO RICO: A WAY FORWARD*, GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO 3-5 (Jun. 29, 2015), <http://www.gdb.pr.gov/documents/PuertoRicoAWayForward.pdf>.

¹²⁵ *Id.* at 6-7.

¹²⁶ *Id.* at 8-9.

¹²⁷ Lara Merling et al., *LIFE AFTER DEBT IN PUERTO RICO: HOW MANY MORE LOST DECADES?*, CENTER FOR ECONOMIC AND POLICY RESEARCH 2 (July 2017), <http://cepr.net/images/stories/reports/puerto-rico-2017-07.pdf>.

is shocking: forty-six percent for adults, fifty-eight percent for children.¹²⁸ Median household income is \$19,000, about one-third of the mainland average of \$53,900.¹²⁹

Given this economic situation, it is not surprising that the government is deeply in debt.¹³⁰ Despite austerity efforts, public sector debt comprised one hundred percent of Puerto Rico's Gross National Product (G.N.P.) by 2014, having risen every year since 2000.¹³¹ The highway authority, the electric utility and the water company were already in the midst of financial crisis by 2015.¹³² After the United States Supreme Court ruled that Puerto Rico could not make use of the Bankruptcy Code, Congress passed the Puerto Rico Oversight, Management and Stability Act (P.R.O.M.E.S.A.) that created the Financial Oversight and Management Board of Puerto Rico.¹³³ The Board oversees the island's budget and finances as the government seeks to regain solvency.¹³⁴ The Board's Fiscal Plan would commit the island to another decade of austerity, with additional spending cuts of \$25.7 billion.¹³⁵ The plan includes a pay freeze for government employees in order to shrink government employment, as well as cuts in healthcare services, public education and university funding.¹³⁶ After failing to reach a deal with bondholders, the government of Puerto Rico entered a process under P.R.O.M.E.S.A. akin to a Chapter 9 municipal bankruptcy process.¹³⁷

The austerity measures imposed by the Fiscal Control Board to address Puerto Rico's debt crisis have a direct relationship to disaster response. As discussed in Part I, FEMA plays primarily a coordination role in emergency response, relying heavily on local authorities. Serious budget cuts would necessarily impair those local response capacities. Financial issues also undoubtedly contributed to infrastructure weaknesses that made the crisis worse, such as the poor condition of the island's electricity grid.

The government's fiscal issues can also impact the disaster recovery more directly. There was a delay of several months in the release of \$4.7 billion in disaster funding because the U.S. Treasury Secretary disagreed with the government of

128 *Id.*

129 *Id.* at 9.

130 So is the U.S. government, but Puerto Rico does not have the advantage of being able to print its own money.

131 Krueger et al., *supra* note 124, at 9.

132 *Id.* at 15-16.

133 See Merling et al., *supra* note 127, at 10. The Act is now Chapter 20 of 48 U.S.C. §§2101-2241.

134 *Id.*

135 *Id.* at 11.

136 *Id.* at 12-13.

137 *Id.* at 17-19.

Puerto Rico over terms for repayment.¹³⁸ According to Puerto Rico's Governor, Ricardo Rosselló, Treasury had demanded that repayment be given a higher budget priority than essential government services and had sought to cap the amount of aid at \$2 billion.¹³⁹ Ultimately, however, White House officials required the Governor and his team to agree to assume responsibility for cost overruns, a requirement that was not imposed on Texas; FEMA added this requirement as an amendment to the disaster declaration.¹⁴⁰ Consequently, cost estimates have become more contentious and time-consuming than usual.¹⁴¹

Puerto Rico had severe housing issues before the storm hit. New home prices have fallen by a quarter over the past decade, mainly as a result of the island's weakened economy.¹⁴² A conservative estimate puts the number of homes constructed without permits or compliance with building codes at 260,000, but a 2007 study estimated that said figure could be as high as 700,000.¹⁴³ Some more recent reports estimate even higher figures. The *Miami Herald* reported that "as much as half the housing on the island was built without permits . . . No one knows precisely how much of that there is, but the government's housing secretary says it could be as much as the roughly one million legal dwellings on the island."¹⁴⁴ These *informal* houses were hit especially hard by the storm:

It's that informal construction that bore the brunt of María's fury, said housing secretary Fernando Gil. There's no full tally yet, but the numbers so far are hair-raising: 250,000 homes with major damage, 70,000 of those destroyed. By the time inspections are concluded, Gil estimates, as many as 300,000 dwellings will be determined to have suffered some degree of significant damage.¹⁴⁵

These *informal* homes may have trouble qualifying for disaster aid, particularly in cases where the resident does not have title to the land.¹⁴⁶ In the meantime, the island has about 330,000 vacant houses due to population decline, some of which might be rehabilitated to provide housing.¹⁴⁷

¹³⁸ Adrian Florido, *Feds and Puerto Rico Reach Deal Allowing Disaster Recovery Loans to Start Flowing*, N.P.R. (Mar. 22, 2018), <https://www.npr.org/sections/thetwo-way/2018/03/22/596196849/feds-and-puerto-rico-reach-deal-allowing-disaster-recovery-loans-to-start-flowing>.

¹³⁹ *Id.*

¹⁴⁰ Vinik, *supra* note 106.

¹⁴¹ *Id.*

¹⁴² Brown, *supra* note 115.

¹⁴³ *Id.*

¹⁴⁴ Andres Viglucci, *Half of Puerto Rico's housing was Built Illegally. Then Came Hurricane Maria*, MIAMI HERALD (Feb. 14, 2018), <http://www.miamiherald.com/news/nation-world/world/americas/article199948699.html>.

¹⁴⁵ *Id.*

¹⁴⁶ Brown, *supra* note 116.

¹⁴⁷ *Id.*

Housing recovery is also handicapped by the almost complete lack of flood insurance. At the time of María, less than a half-a-percent of housing units had flood insurance.¹⁴⁸ Only half of the houses even had wind insurance, and those policies typically have significant deductibles.¹⁴⁹ To add to the problems besetting homeowners, more than ten percent of active mortgages were delinquent when María hit, almost triple the figure on the mainland.¹⁵⁰

Thus, many Puerto Rican residents were unusually vulnerable to disasters for reasons stemming from poverty and a weak economy, and from the inability of local government to marshal the resources that states such as Florida and Texas could muster. Because federal disaster relief relies heavily on local partners, the federal effort faced unique difficulties from the outset.

FEMA's advance planning for a possible hurricane in Puerto Rico did not take the diminished capabilities of local responders into account. Besides planning for a smaller hurricane, FEMA's advance plan for Puerto Rico ignored the problems handicapping the island's resilience. According to *Politico*, which obtained a copy of the plan and shared it with experts:

FEMA did not anticipate having to take on a lead role in the aftermath of the disaster, despite clear signs that the island's government and critical infrastructure would be overwhelmed in the face of such a storm. Instead, the document largely relied on local Puerto Rico entities to restore the island's power and telecommunications systems. It [did not] mention the financial instability of the Puerto Rican government and Puerto Rican electrical utility, factors that significantly complicated the immediate response to María.¹⁵¹

2. *Political factors.* Strong White House support is needed to make FEMA effective, for the simple reason that FEMA has no direct authority over the agencies it seeks to coordinate.¹⁵² Indeed, it has little clout compared with the military, which is often the most crucial participant in response to major disasters,¹⁵³ which

¹⁴⁸ There were approximately five-and-half thousand flood insurance policies, but over a million-and-a-half housing units. Tim Johnson & Kevin G. Hall, *Few Puerto Rican Households Had Flood Insurance. They Can't Afford It*, MCCLATCHY WASH. BUREAU (Oct. 12, 2017), <http://www.mcclatchydc.com/news/nation-world/national/economy/article178344776.html>.

¹⁴⁹ Leslie Scism & Nicole Friedman, *Hurricane Maria Exposes a Common Problem for Puerto Rico Homeowners: No Insurance*, WALL ST. J. (Sept. 20, 2017), <https://www.wsj.com/articles/hurricane-maria-exposes-a-common-problem-for-puerto-rico-homeowners-no-insurance-1505940660>.

¹⁵⁰ *Id.*

¹⁵¹ Danny Vinik, *FEMA's Plan Underestimated Puerto Rican Hurricane in Preparing for the Storm, the Disaster Agency Failed to Anticipate the Level of Damage or Extent of Federal Involvement Required*, POLITICO (Apr. 15, 2018, 6:55 AM), <https://www.politico.com/story/2018/04/15/puerto-rico-hurricane-fema-disaster-523033>.

¹⁵² MISKEL, *supra* note 16, at 74, 136. On the role of the White House in the Katrina response, which contributed to the failings of the federal effort, see Richard T. Sylvester, *President Bush and Hurricane Katrina: A Presidential Leadership Study*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 26 (2006).

¹⁵³ MISKEL, *supra* note 16, at 40-41, 54-55, 84.

leaves FEMA as the smaller partner by far even though nominally in charge. Fortunately, presidents generally have strong political incentives to respond to disasters efficiently. Typically, the White House, as well as federal agencies, come under sharp pressure from the congressional delegations of the affected states. Disaffected voters may decline to support the president's reelection or may take revenge in congressional races. But these conditions were not present after Hurricane María. Puerto Rico was handicapped from the beginning because its residents do not vote in presidential elections and do not elect voting members of Congress.¹⁵⁴ Of course, there are significant Puerto Rican communities in U.S. cities that may have helped exert some pressure and countered somewhat the lack of direct representation. Still, Puerto Rico had far less political importance for the President or Congress than Florida or Texas, the site of the other two major hurricanes.

As Table 1 showed, the response to Hurricane Harvey in Texas was considerably prompter than the response to Hurricane María in Puerto Rico. This feat may have owed something to the energetic efforts of the Texas congressional delegation. The Senate majority whip, John Cornyn (R-Texas), put the nomination of the deputy director of the Office of Management and Budget (OMB) on hold for months and allowed it to move forward only after Congress passed a \$90 billion disaster relief bill.¹⁵⁵ Puerto Rico had no similar congressional champion.

One significant problem in mobilizing political support for the relief effort was media inattention. A Massachusetts Institute of Technology (MIT) study revealed that Hurricane María received only a third as many mentions in the media compared to Harvey and Irma —about 6,600 as opposed to over 17,000 and 19,000, respectively, in the two-week period straddling each storm.¹⁵⁶ This does not seem to have been due to lack of public interest, as indicated by online activity such as the number of shares on Facebook.¹⁵⁷ Still, it was much harder for the public to remain informed about conditions in Puerto Rico. It was also undoubtedly unhelpful that only slightly more than half of Americans were aware that Puerto Ricans are United States citizens.¹⁵⁸ Without public attention, there was less pressure for the White House or Congress to prioritize the issue.

¹⁵⁴ On the history of Puerto Rico's status *vis-à-vis* the United States, see *Developments in the Law: The U.S. Territories*, 130 HARV. L. REV. 1616, 1656-80 (2017).

¹⁵⁵ Vinik, *supra* note 106.

¹⁵⁶ Anushka Shah, Allan Ko & Fernando Peinado, *The Mainstream Media Didn't Care About Puerto Rico Until It Became A Trump Story*, WASH. POST, (Nov. 27, 2017), https://www.washingtonpost.com/news/posteverything/wp/2017/11/27/the-mainstream-media-didnt-care-about-puerto-rico-until-it-became-a-trump-story/?utm_term=.023b2491b458. (The *Trump Story* emerged after the President became involved in a hostile exchange with the mayor of San Juan.)

¹⁵⁷ *Id.*

¹⁵⁸ Kyle Dropp & Brendan Nygan, *Nearly Half of Americans Don't Know Puerto Ricans Are Fellow Citizens*, N.Y. TIMES (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/upshot/nearly-half-of-americans-dont-know-people-in-puerto-ricoans-are-fellow-citizens.html>.

Regardless of the reasons, it is clear that President Donald Trump did not treat Puerto Rico post-María as a priority.¹⁵⁹ He tweeted about the situation in Texas in the first week after Harvey made landfall three times as often as he did in the same period after María.¹⁶⁰ The week after María, he tweeted half as often about the storm than he did to complain about football players who knelt during the national anthem.¹⁶¹ He also engaged in an angry verbal exchange with the mayor of San Juan over the adequacy of the federal response.¹⁶² This performance can hardly have helped to persuade officials in the Defense Department or elsewhere to move disaster response for Puerto Rico to the top of their priority lists, drop other on-going projects and take urgent action.

C. Lessons Learned

Since Hurricane Katrina devastated New Orleans in 2005, the federal disaster response system had not fallen so short of what American citizens are entitled to expect from their government.¹⁶³ There is no doubt that there will be post-mortems from a variety of perspectives for years to come. This section offers a few preliminary thoughts about the lessons we should take away from Puerto Rico's post-María experience to date.

1. *The federal government needs greater surge capacity.* Climate change and the increasing population in vulnerable areas all but guarantee that the likelihood of massive harm stemming from natural disasters will increase drastically in the years to come. This will necessarily increase the probability of two or more disasters occurring in close succession.¹⁶⁴ Thus, the government needs to plan for multiple events, just as the Pentagon plans for the possibility of more than one simultaneous war.

159 The problem was not just the relative paucity of presidential tweets. As *The Economist* put it:

The President at first sought to downplay the disaster, then suggested Puerto Ricans were doing too little to help themselves. Three weeks after Maria, he suggested it would soon be time for the feds to leave. "We cannot keep FEMA, the Military & the First Responders, who have been amazing (under the most difficult circumstances) in P.R. forever!"

ECONOMIST, *supra* note 3.

160 Vinik, *supra* note 106.

161 *Id.*

162 *Id.*

163 Unfortunately, *The Economist's* verdict about the response to date may stand: "Puerto Rico was due the same emergency response as any other part of America. Its 3.4m inhabitants got so much less, in such desultory fashion, with such horrible consequences [...]." ECONOMIST, *supra* note 3.

164 For illustrative purposes, suppose that there is a 5% chance (one in twenty) that a major disaster will occur somewhere in the United States during a specific period. Then the chance of two such disasters occurring is one in four hundred or 0.25%. Now suppose that the chances of such an event increase by a factor of two, to 10% (one in ten). Now, the chance of two such events is one in a hundred or 1%. Thus, doubling the chance of a major disaster quadruples the chances of experiencing two in the same time period. Similar reasoning shows that the chances of experiencing three such disasters increase by a factor of eight. This analysis assumes that disasters are not correlated, but it seems likely

2. *Presidential leadership is indispensable.* FEMA's role requires to summon and coordinate the efforts of agencies that are much more powerful and larger, pulling them away from their normal activities. In the event of a catastrophic event, this collaboration must happen very quickly. Without strong support from the top, FEMA has limited ability to command maximum effort from those agencies.

3. *Media access is a key part of effective disaster response.* From the point of view of hard-pressed disaster personnel, the media is probably perceived as being a disruptive nuisance. But disaster response is a political act, not just a management problem. Without public awareness of the extent of the disaster, response and recovery will lack political salience and will not receive the governmental priority it deserves.

4. *Planning must include realistic assessments of local resiliency.* The disaster response system works best with strong local partners. States like Texas, Florida and California may be prone to disaster events, but they also have substantial public and private resources to bring to bear. Poorer jurisdictions such as New Orleans or Puerto Rico are much less able to respond to a major disaster. To assume they will play a leading or even equal role in the aftermath is unrealistic and a recipe for failure.

5. *Disasters magnify existing inequalities.* Puerto Rico is much poorer than the mainland states, faces severe governmental fiscal problems and is locked out of the U.S. political system. All of these factors handicap disaster response and make recovery more difficult. Although it seems impossible to document this point, it seems equally impossible to dismiss the possibility that the island's Hispanic make-up contributed to the inattention from political leaders.

6. *Resource allocation must consider the scale of need.* This may seem an obvious point, but the statement of FEMA's head suggests that the agency viewed it as sufficient to allocate resources equally between major disaster areas. That simply is not appropriate when some areas are suffering much greater deprivations. Puerto Rico had more urgent needs than Texas or Florida, and it should have received a higher priority than either of them.

7. *Pay me now or pay me later.* As is well-known, investments in resilience pay for themselves when natural disasters strike.¹⁶⁵ If the federal government had paid attention to the frailty of Puerto Rico's electrical system earlier, it would not have

that a major hurricane will occur under conditions that indicate a major hurricane season, so that the odds of a repetition are probably enhanced.

165 For instance, according to a recent report:

Recent studies have indicated that for every dollar spent building or improving buildings to comply with the newer codes saves four dollars in damages. . . . [T]he return on investment in building to the upgraded codes parallels similar investment in efforts to create a more resilient infrastructure. Studies have indicated that it's possible to receive a 6:1 rate of return on federal grants that have been provided for in mitigation efforts, including enhancing the infrastructure.

ZURICH NORTH AMERICA, REBUILDING INFRASTRUCTURE: THE NEED FOR SUSTAINABLE AND RESILIENT SOLUTIONS 5 (2018), https://www.zurichna.com/_/media/dbe/zna/docs/kh/infrastructure/zurich_resilient-infrastructure_final.pdf (footnotes omitted).

had to invest billions to rebuild it. Even now, the federal government has not invested the funds necessary to ensure that Puerto Rico's electrical system will be able to withstand another major hurricane.

8. *Flood insurance does not reach the poor.* Homeowners in many parts of the United States are probably much less likely to be poor than those who rent housing. But the poor may also own housing, as was true in parts of New Orleans and in Puerto Rico.¹⁶⁶ As in Puerto Rico, poorer New Orleans residents often had problems showing clear title.¹⁶⁷ We need a voucher system to make flood insurance affordable for the poor. FEMA also needs to have more flexibility to deal with situations where the possession of housing is clear, there is no other apparent owner and a legal title is in question.

9. *Climate change increases the need to prepare for catastrophic events.* The unusual high intensity of the major hurricanes of the 2017 storm season is consistent with predictions regarding the effects of climate change and suggests that such storms will continue to become more likely.¹⁶⁸ A recent Stanford study concluded that, even if the commitments in the Paris Agreement are met, emissions nevertheless "are likely to lead to substantial and widespread increases in the probability of historically unprecedented extreme events."¹⁶⁹ Some scientists have linked Hurricane Harvey's record rainfall to climate change.¹⁷⁰ Besides attempting to curb emissions, we also need to start ramping up our emergency response capacity.

Beyond Disaster Law, Hurricane María poses important questions about the economic and political future of Puerto Rico. Those critical issues are outside the scope of this article,¹⁷¹ but the reconstruction effort and whether it succeeds or fails will undoubtedly have larger ramifications. However, even limiting the focus to disaster management suggests that some significant reforms are in order.

¹⁶⁶ See *Beyond Data: Straight Talk from some Lower Ninth Ward Residents*, GREATER NEW ORLEANS COMMUNITY DATA CENTER (Mar. 23, 2005), http://www.datacenterresearch.org/pre-katrina/orleans/8/22/cem/owner_occupied.html.

¹⁶⁷ Kathy Finn, *Blighted Houses Still Mar New Orleans a Decade after Katrina*, REUTERS (Aug. 23, 2015), <https://www.reuters.com/article/us-usa-katrina-blight/blighted-houses-still-mar-new-orleans-a-decade-after-katrina-idUSKCN0QSoFE20150823>. ("Many of homes in the Lower Ninth Ward were handed down through several generations and it is unclear who holds the deed"). *Id.*

¹⁶⁸ Annie Sneed, *Was the Extreme 2017 Hurricane Season Driven by Climate Change? Global Warming Already Appears to be Making Hurricanes More Intense*, SCI. AM. (Oct. 26, 2017), <https://www.scientificamerican.com/article/was-the-extreme-2017-hurricane-season-driven-by-climate-change/>.

¹⁶⁹ Noah S. Diffenbaugh, Deepti Singh, & Justin S. Mankin, *Unprecedented Climate Events: Historical Changes, Aspirational Targets, and National Commitments*, 4 SCI. ADVANCES (2018), available at <http://advances.sciencemag.org/content/4/2/eaao3354>.

¹⁷⁰ Henry Fountain, *Scientists Link Hurricane Harvey's Record Rainfall to Climate Change*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/climate/hurricane-harvey-climate-change.html>.

¹⁷¹ For further discussion of Puerto Rico's governance issues, see Anibal Acevedo Vilá, *With Plenary Powers comes Plenary Responsibility: Puerto Rico's Economic and Fiscal Crisis and the United States*, 85 REV. JUR. UPR 729 (2016); José Javier Colón Morera, *Puerto Rico: A Case of American Imperial Doubts?*, 85 REV. JUR. UPR 883 (2016).

CONCLUSION

Hurricane María led to the biggest failure of American disaster response since Hurricane Katrina struck New Orleans and the Gulf Coast in 2005. As shown in Part II, the disaster response was delayed, much of the island was left without electricity or drinkable water for extended periods of time and hundreds, perhaps thousands, died. All of this shows a serious failure to uphold the nation's obligations to its citizens.

Part III of the article probed the reasons for the inadequate disaster response. FEMA is designed to coordinate the effort of local responders and federal agencies. Coming on the heels of other disasters and involving difficult geography and massive damage due to the island's economic weakness, María posed major challenges, which FEMA was unable to meet due to two major reasons relating to its coordination mission. First, because of the island's fiscal crisis, local authorities—including utilities—were unable to perform the role that FEMA normally expects. This was entirely foreseeable but was not integrated into planning. Second, because FEMA lacks effective power over agencies such as the Defense Department, it needs strong support from the White House to obtain the resources needed to cope with catastrophic incidents. But Puerto Rico lacks political representation, the media was inattentive, and the President was seemingly indifferent to the crisis.

Post-María reconstruction will be a test of the U.S. governance system's ability to respond to the needs of its most vulnerable citizens. Proposing a plan for reconstruction is outside the scope of this article; the effectiveness of reconstruction will depend on political will as much as policy analysis. But if nothing else, María should drive home some important lessons about Disaster Law and policy. These lessons include the need for greater federal surge capacity and a more realistic approach regarding the capacities of local governments, the indispensable role the White House plays after catastrophic events and the importance of strengthening resilience prior to such events.

Learning these lessons may help us be better prepared to confront the next catastrophic event, in Puerto Rico or elsewhere. Much as we hate to contemplate this prospect, there is very little as certain as the fact that the occurrence of another Katrina or María-scale disaster, somewhere in the United States, is only a matter of time. We must be better prepared when that day comes.