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Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding

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Summary

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue a major disaster declaration to speed a wide range of federal aid to states determined to be overwhelmed by hurricanes or other catastrophes. Financing for the aid is appropriated to the Disaster Relief Fund (DRF), administered by the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security (DHS). Funds appropriated to the DRF remain available until expended (a “no-year” account). The Stafford Act authorizes temporary housing, grants for immediate needs of families and individuals, the repair of public infrastructure, emergency communications systems, and other forms of assistance.

Because the Stafford Act provides the President with permanent authority to direct federal aid to stricken states, Congress need not enact new legislation to meet immediate needs. Congress appropriated almost \$70 billion to the DRF in FY2005 in response to the four hurricanes that struck Florida in the fall of 2004, Hurricane Katrina (August 25-29, 2005), and other disasters. Congress can elect to consider supplemental appropriations should additional money be required to meet requests for assistance, including recovery costs associated with Hurricane Rita. Information on supplementals enacted after Hurricane Katrina is presented in CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*.

This report will be updated as warranted by events.

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Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding

Overview of the Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) authorizes the President to issue major disaster declarations that authorize federal agencies to provide assistance to states overwhelmed by disasters.¹ Through executive orders, the President has delegated to the Federal Emergency Management Agency (FEMA), within the Department of Homeland Security (DHS), responsibility for administering the major provisions of the Stafford Act. Assistance authorized by the statute is available to individuals, families, state and local governments, and certain nonprofit organizations.

Activities undertaken under authority of the Stafford Act are provided through funds appropriated to the Disaster Relief Fund (DRF). Federal assistance supported by DRF money is used by states, localities, and certain non-profit organizations to provide mass care, restore damaged or destroyed facilities, clear debris, and aid individuals and families with uninsured needs, among other activities. In calendar year 2004, President Bush issued 68 major disaster declarations; in calendar year 2005, 35 such declarations have been issued (as of the date of this report), including those for Florida, Louisiana, Alabama, and Mississippi for Hurricane Katrina, and Texas and Louisiana after Hurricane Rita.²

Presidential Declarations. Under Stafford Act authority, five types of actions may be taken by the President. Four of these are explicitly authorized; the fifth (pre-positioning of supplies and resources) has been inferred.³ Unlike other

¹ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. In addition to the assistance authorized by the Stafford Act, a wide range of aid is provided by other federal agencies under general statutory authority.

² For a list of major disaster declarations, see U.S. Federal Emergency Management Agency, "Federally Declared Disasters by Calendar Year," at [<http://www.fema.gov/library/drcys.shtml>], visited Aug. 29, 2005. For information on supplemental appropriations enacted in FY2005 after four hurricanes struck Florida in calendar year 2004, see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by Keith Bea and Ralph Chite. For information on Hurricane Katrina Supplementals enacted in FY2005, see CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*.

³ Following an investigation into the response to Hurricane Andrew in 1992 the General
(continued...)

provisions of the Stafford Act, these declaration authorities have not been delegated to the Secretary of the Department of Homeland Security.

Prior to a Disaster. Three types of declarations (or commitments) may be made under Stafford Act authority before a catastrophe occurs. First, at the request of a governor, the President may direct that Department of Defense resources be committed to perform emergency work essential to preserve life and property in “the immediate aftermath of an incident” that may result in the declaration of a major disaster or emergency (discussed below).⁴ The statute does not define the term “incident.”

Second, the President is authorized to provide fire management assistance in the form of grants, equipment, personnel, and supplies to supplement the resources of communities when fires on public property, or on private forests or grasslands, threaten destruction that might warrant a major disaster declaration.⁵ Implementation of this authority, which has been delegated to FEMA officials, requires that a gubernatorial request be submitted while an uncontrolled fire is burning. To be approved, state applications must demonstrate that either of the two cost thresholds established by FEMA through regulations has been reached.⁶ The thresholds involve calculations of the cost of an individual fire or those associated with all of the fires (declared and non-declared) in a state each calendar year.⁷

Third, when a situation threatens human health and safety, and a disaster is imminent but not yet declared, the Secretary of DHS may pre-position employees and supplies. DHS monitors the status of the situation, communicates with state emergency officials on potential assistance requirements, deploys teams and resources to maximize the speed and effectiveness of the anticipated federal response

³ (...continued)

Accounting Office (now the Government Accountability Office) reported that “Current federal law governing disaster response does not explicitly authorize federal agencies to undertake preparatory activities before a disaster declaration by the President, nor does it authorize FEMA to reimburse agencies for such preparation, even when disasters like hurricanes provide some warning that such activities will be needed.” U.S. General Accounting Office, *Disaster Management: Improving the Nation’s Response to Catastrophic Disasters* (Washington: July 23, 1993), p. 3.

⁴ The statute reads “During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act...the Governor of the state in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.” 42 U.S.C. 5170b(c).

⁵ Sec. 420 of the Stafford Act, 42 U.S.C. 5187.

⁶ Regulations are found at 44 CFR 204.1 et seq.

⁷ 44 CFR 204.51.

and, when necessary, performs preparedness and preliminary damage assessment activities.⁸

After a Catastrophe Occurs. The Stafford Act authorizes the President to issue two types of declarations after an incident that overwhelms state and local resources.

Major Disaster Declaration. The President may issue a major disaster declaration after receiving a request from the governor of an affected state.⁹ Major disaster declarations may be issued after a natural catastrophe or, “regardless of cause, [after a] fire, flood or explosion.”¹⁰ A declaration authorizes the President to direct that the following types of disaster assistance be provided: (1) *general federal assistance* for technical and advisory aid and support to state and local governments in the distribution of consumable supplies,¹¹ (2) *essential assistance* from federal agencies to distribute aid to victims through state and local governments and voluntary organizations, perform life and property saving assistance, clear debris, and use resources of the Department of Defense before a major disaster (or emergency, discussed below) occurs,¹² (3) *hazard mitigation* grants to reduce future risks and damages,¹³ (4) *federal facilities* repair and reconstruction,¹⁴ (5) *repair, restoration, and replacement of damaged facilities* owned by state and local governments and owners of private nonprofit facilities that provide essential services,¹⁵ (6) *debris removal* through the use of federal resources or through grants to state or local

⁸ This activity is not explicitly set out in the Stafford Act. The *National Response Plan*, developed by DHS pursuant to congressional mandate, sets forth the following guidance: “When advance warning is possible, DHS may deploy liaison officers and personnel to a state emergency operations center (EOC) to assess the emerging situation.” U.S. Department of Homeland Security, *National Response Plan* (Washington: 2004), p. 91.

⁹ For criteria considered in the declaration of a major disaster, see 44 CFR 206.48.

¹⁰ 42 U.S.C. 5122(2).

¹¹ Sec. 402 of the Stafford Act, 42 U.S.C. 5170a.

¹² Sec. 403 of the Stafford Act, 42 U.S.C. 5170b. Debris removal provided as emergency work has been designated by FEMA as “Category A” assistance. Emergency protective measures have been designated by FEMA as “Category B” assistance.

¹³ Sec. 404 of the Stafford Act, 42 U.S.C. 5170c.

¹⁴ Sec. 405 of the Stafford Act, 42 U.S.C. 5171.

¹⁵ Sec. 406 of the Stafford Act, 42 U.S.C. 5172. Private nonprofit facilities that provide “critical services” (power, water, sewer, wastewater treatment, communications, and emergency medical care) may receive grants. Owners of other facilities that provide essential, but not critical services, must first apply for a Small Business Administration (SBA) loan, and may then receive grants if they are ineligible for such a loan or require aid above the amount approved by the SBA. The permanent work supported under this authority has been designated by FEMA as follows: “Category C,” roads and bridges; “Category D,” water control facilities; “Category E,” buildings and equipment; “Category F,” utilities; and “Category G,” parks, recreational facilities, and other items. For more information see: U.S. Department of Homeland Security, Federal Emergency Management Agency, “Public Assistance Guide - FEMA Publication 322,” available at [http://www.fema.gov/pdf/rrr/pa/pagprnt_071905.pdf], visited Sept. 5, 2005.

governments or owners of private nonprofit facilities;¹⁶ (7) *assistance to individuals and households* including financial grants to rent alternative housing, direct assistance through temporary housing units (mobile homes), limited financial assistance for housing repairs and replacement, and financial assistance for medical, dental, funeral, personal property, transportation and other expenses;¹⁷ (8) *unemployment assistance* to individuals unemployed as a result of the major disaster,¹⁸ (9) *grants to assist low-income migrant and seasonal farmworkers* to be provided by the Secretary of Agriculture (total limited to \$20 million annually) “where the Secretary determines that a local, state or national emergency or disaster” has resulted in a loss of income or inability to work,¹⁹ (10) *food coupons and distribution* for low-income households unable to purchase nutritious food,²⁰ (11) *food commodities* for emergency mass feeding,²¹ (12) *legal services* for low-income individuals,²² (13) *crisis counseling assistance and training* grants for state and local governments or private mental health organizations to provide services or train disaster workers,²³ (14) *community disaster loans* to local governments that lose tax or other revenues needed for governmental services,²⁴ (15) *emergency communications* to establish temporary communications during, “or in anticipation of an emergency or major disaster,”²⁵ (16) *emergency public transportation* to provide transportation to essential places.²⁶ Each major disaster declaration specifies the type of incident covered, the time period covered, the types of disaster assistance available, the counties affected by the declaration, and the name of the federal coordinating officer. Amendments to major disaster declarations often modify the types of assistance to be provided and the areas (generally counties) included in the major disaster declarations.

The Stafford Act does not establish a cap on the total assistance to be provided after the President issues a major disaster declaration. However, the statute does establish minimum and maximum restrictions on the federal assistance to be provided. Presidents have, for the most serious and costly disasters, exercised discretion in waiving the cost-share generally required to be provided by the affected

¹⁶ Sec. 407 of the Stafford Act, 42 U.S.S. 5173.

¹⁷ Sec. 408 of the Stafford Act, 42 U.S.C 5174. [Sec. 409, food coupons and distribution, was redesignated Sec. 412.]

¹⁸ Sec. 410 of the Stafford Act, 42 U.S.C. 5177.

¹⁹ 42 U.S.C. 5177a.

²⁰ Sec. 412 of the Stafford Act, 42 U.S.C. 5179.

²¹ Sec. 413 of the Stafford Act, 42 U.S.C. 5180.

²² Sec. 415 of the Stafford Act, 42 U.S.C. 5182. [Sec. 414 of the Act waives residency requirements for replacement housing eligibility.]

²³ Sec. 416 of the Stafford Act, 42 U.S.C. 5183.

²⁴ Sec. 417 of the Stafford Act, 42 U.S.C. 5184.

²⁵ Sec. 418 of the Stafford Act, 42 U.S.C. 5185.

²⁶ Sec. 419 of the Stafford Act, 42 U.S.C. 5186.

states. The federal share of assistance, and limitations on that assistance, are as follows.

- *Essential assistance:* The federal share must be at least 75% of eligible costs.
- *Hazard mitigation:* Up to 75% of the cost of approved measures may be provided, but total federal assistance cannot exceed 7.5% of the total assistance provided under the major disaster provisions (Title IV) of the Stafford Act.
- *Repair, restoration, or replacement of public facilities:* In general, at least 75% of eligible costs must be provided, but this threshold may be reduced to 25% if a facility has previously been damaged by the same type of disaster and mitigation measures have not been adopted to address the hazard. Federal aid generally will be reduced if facilities in flood hazard areas are not covered by flood insurance. Cost estimation regulations must be adhered to, but the President may approve costs that exceed the regulatory limitations. “Associated costs” associated with the employment of national guard forces, use of prison labor, and base and overtime wages for employees and “extra hires,” as well as “extraordinary costs” incurred by the state, are capped at percentages established in the statute, based on the net eligible cost of assistance. The President must notify congressional committees with jurisdiction before providing more than \$20 million to repair, restore, or replace facilities.
- *Debris removal:* The federal share must be at least 75% of the eligible costs.
- *Individual and household assistance:* Temporary housing units may be provided directly to victims of disasters, without charge, for up to 18 months, unless the President extends the assistance “due to extraordinary circumstances.” Fair market rents may be charged at the conclusion of the 18 month period. Up to \$5,000 (adjusted annually) may be provided for housing repair or hazard mitigation measures, and up to \$10,000 (adjusted annually) may be provided for the replacement of private residences.²⁷ The federal share of housing assistance is 100%. Financial assistance is also provided for uninsured medical, dental, funeral, transportation, personal property, and other needs; the federal share for this assistance is capped at 75%. The total amount of financial aid to be provided to an individual or household cannot exceed \$25,000 (adjusted annually).

²⁷ Financial assistance to build permanent housing may be provided in insular areas outside the continental United States “an in other remote locations” where temporary housing alternatives are not available.

- *Unemployment assistance:* Individuals unemployed as a result of a major disaster may receive assistance for up to 26 weeks, as long as they are not entitled to other unemployment compensation or credits.

Emergency Declaration. The declaration process for emergencies is similar to that used for major disasters, but the criteria (based on the definition of “emergency”) are less specific.²⁸ The President may issue an emergency declaration without a gubernatorial request if primary responsibility rests with the federal government.²⁹ The types of *emergency assistance* authorized to be provided under an emergency declaration include the following: (1) activities to support state and local emergency assistance, (2) coordinate disaster relief provided by federal and non-federal organizations, (3) provide technical and advisory assistance to state and local governments, (4) emergency assistance through federal agencies, (5) remove debris through grants to state and local governments and direct federal assistance, (6) award grants to individuals and households for temporary housing and other needs, and (7) help states distribute medicine, food, and consumables. Expenditures for an emergency are limited to \$5 million per declaration unless the President determines that there is a continuing need; Congress must be notified if the \$5 million ceiling is breached. The federal share of emergency assistance must be at least 75 percent of eligible costs.

In considering a gubernatorial request for a Stafford Act declaration, the President evaluates a number of factors, including the cause of the catastrophe, damages, needs, certification by state officials that state and local governments will comply with cost sharing and other requirements, as well as official requests for assistance. FEMA has established thresholds which are considered by the President and DHS officials in the process of determining whether a major disaster is to be

²⁸ A Stafford Act “emergency” is “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.” 42 U.S.C. 5122(1).

²⁹ “The President may exercise any authority vested in him by ... this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected state, if practicable. The President’s determination may be made without regard to subsection (a) of this section.” 42 U.S.C. 5191(b).

declared.³⁰ Neither the Stafford Act nor implementing regulations provide for a congressional role in the declaration process.³¹

FEMA policy specifies the type of assistance to be provided in each of these categories.

Disaster Relief Fund

Congress appropriates money to the Disaster Relief Fund (DRF) to ensure that the foregoing federal assistance is available to help individuals and communities stricken by severe disasters. Funds appropriated to the DRF remain available until expended. Such accounts are referred to as “no-year” accounts.³² Appropriations to the DRF generally evoke little controversy. Supplemental appropriations legislation is generally required each fiscal year to meet the urgent needs of particularly catastrophic disasters. Questions have been raised in the past concerning the increased cost of federal disaster assistance authorized by the Stafford Act as the categories of aid and eligibility for federal disaster assistance have expanded. For example, over the past five decades, Congress has expanded the basic authority first enacted in 1950 to include housing, grants for the repair of infrastructure, aid to individuals, loans to communities for lost revenue, and other needs.

Congress has previously explored the issue of rising federal disaster assistance costs and reliance upon supplemental appropriations.³³ As shown in **Table 1** below, DRF obligations have increased considerably since 1990 in comparison to those recorded in previous decades.

³⁰ One indicator used in determining whether a major disaster declaration will be declared for disasters that occur after Oct. 1, 2004, is whether damages exceed \$1.14 per capita in each affected state. See U.S. Department of Homeland Security, Federal Emergency Management Agency, “Notice of Adjustment of Statewide Per Capita Impact Indicator,” *Federal Register*, vol. 69, Oct. 19, 2004, p. 61515. Similarly, a “countywide” indicator (\$2.84 per capita for disasters that occur after October 1, 2004) is used in determining which local jurisdictions will be included in the major disaster declaration. See U.S. Department of Homeland Security, Federal Emergency Management Agency, “Notice of Adjustment of Countywide Per Capita Impact Indicator,” *Federal Register*, vol. 69, Oct. 19, 2004, p. 61505-61506.

³¹ For regulations on the request and declaration process, see 44 CFR §§206.35-206.39.

³² For background on this and other types of federal budget accounts, see CRS Report 98-410, *Basic Federal Budgeting Terminology*, by Bill Heniff, Jr.

³³ U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, S.Doc. 104-4, 104th Cong., 1st sess., (Washington: GPO, 1995). The House convened a task force that issued an unpublished report. Following completion of the task force efforts, some Members introduced a concurrent resolution (H.Con.Res. 39, 104th Congress) seeking a “fundamental overhaul of federal disaster policies.” See also U.S. Congress, House Committee on the Budget, Task Force on Budget Process, *Budgetary Treatment of Emergencies*, hearing, 105th Cong., 2nd sess., June 23, 1998 (Washington: GPO, 1998).

Table 1. Disaster Relief Fund, FY1974-FY2005
(millions of dollars, 2005 constant dollars)

FY	^a Request	Total Appropriations				Outlays	
		Original	Supple- mental	Nominal	Constant	Nominal	Constant
1974	100	200	233	433	1,412	250	816
1975	100	150	50	200	591	206	609
1976	187	187	0	187	517	362	999
1977	100	100	200	300	770	294	754
1978	150	115	300	415	997	461	1,108
1979	200	200	194	394	876	277	616
1980	194	194	870	1,064	2,175	574	1,173
1981	375	358	0	358	668	401	746
1982	400	302	0	302	526	115	201
1983	325	130	0	130	217	202	337
1984	0	0	0	0	0	243	391
1985	100	100	0	100	156	192	299
1986	194	100	250	350	533	335	511
1987	100	120	^b 0	120	178	219	325
1988	125	120	0	^c 120	173	187	269
1989	200	100	^d 1,108	1,208	1,674	140	194
1990	270	98	^e 1,150	1,248	1,668	1,333	1,781
1991	270	0	0	0	0	552	711
1992	^f 184	185	4,136	^g 4,321	5,429	902	1,134
1993	292	292	2,000	^h 2,292	2,816	2,276	2,796
1994	ⁱ 1,154	226	^j 4,709	4,935	5,935	3,743	4,502
1995	320	320	^k 3,275	3,595	4,235	2,116	2,492
1996	320	222	^k 3,275	^k 3,497	4,042	2,233	2,581
1997	320	^l 1,320	^l 3,300	4,620	5,248	2,551	2,898
1998	^m 2,708	320	ⁿ 1,600	1,920	2,155	1,998	2,242
1999	^o 2,566	^p 1,214	^q 1,130	2,344	2,597	3,746	4,149
2000	2,780	^r 2,780	0	2,780	3,019	2,628	2,853
2001	2,909	300	^{s, t}	^u 5,890	6,249	3,217	3,413
2002	^u 1,369	664	^v 7,008	^v 12,160	12,677	3,947	4,114
2003	1,843	800	^w 1,426	^w 2,199	2,255	8,541	8,761
2004	1,956	1,800	^x 2,275	^x 2,042	^y 2,068	^y 3,044	^y 3,082
2005	2,151	2,042	^x 68,500	70,542	70,542	^y 3,363	^y 3,363
Total	24,240	16,360	108,988	132,099	144,455	50,648	60,224

Sources: U.S. President, annual budget documents; appropriations legislation; U.S. FEMA budget justifications. Nominal amounts are the actual appropriations; constant dollar amounts based on CRS calculations in turn based on GDP (chained) price index in U.S. President (Bush), *Historical Tables, Budget of the United States Government, Fiscal Year 2005* (Washington, 2004), pp. 184-185. Table prepared by Keith Bea, Specialist in American National Government, Government and Finance Division.

- a. Data in the request column generally represent the first budget request submitted by the Administration each year and do not include amended or supplemental requests. Notes in this column provide additional detail.
- b. In Feb. 1987, a total of \$57.475 million was rescinded and transferred from the DRF to the Emergency Food and Shelter Program account (P.L. 100-6; 101 Stat. 92). That amount was returned to the fund the same year in supplemental appropriations legislation enacted in July 1987 (P.L. 100-71; 101 Stat. 412).
- c. P.L. 100-202 (101 Stat. 329), the Continuing Appropriations Act for FY1988, appropriated \$120 million for disaster relief. According to FEMA, the original appropriation for that fiscal year was \$125 million, but \$5 million was transferred to the Department of Labor for “low income agriculture workers.”
- d. Supplemental funds were included in P.L. 101-100 (101 Stat. 640), continuing appropriations legislation enacted after Hurricane Hugo struck in Sept. 1989. According to FEMA, this amount was “referred to as a supplemental but was an increase in the original appropriation during a continuing resolution.”
- e. P.L. 101-130 (103 Stat. 775), enacted after the Loma Prieta earthquake, appropriated \$1.1 billion in supplemental funding for FY1990. In addition, \$50 million was appropriated in P.L. 101-302 (104 Stat. 214), dire emergency supplemental appropriations legislation. **Table 1** does not reflect a \$2.5 million transfer from the President’s unanticipated needs fund.
- f. FY1992 request does not include the budget amendment of \$90 million submitted by the Administration.
- g. Appropriations for FY1992 included a \$943 million dire emergency supplemental in P.L. 102-229 (105 Stat. 1701), enacted in fall 1991 after Hurricane Bob; \$300 million after the Los Angeles riots and flooding in Chicago (spring 1992) in P.L. 102-302 (106 Stat. 248); and \$2.893 billion in P.L. 102-368 (106 Stat. 1117) after Hurricanes Andrew and Iniki, Typhoon Omar, and other disasters.
- h. Total for FY1993 includes the \$2 billion supplemental approved after the Midwest floods in 1993 (P.L. 103-75; 107 Stat. 739).
- i. The original FY1994 budget request was \$292 million. On July 29, 1993, a supplemental request of \$862 million was sent by President Clinton to Congress.
- j. Supplemental appropriations for FY1994 enacted after the Northridge earthquake struck Los Angeles (P.L. 103-211; 108 Stat. 13).
- k. Additional supplemental appropriation approved for Northridge earthquake costs (P.L. 104-19; 109 Stat. 230) for FY1995, with the same amount (\$3.275 billion) reserved for a contingency fund for FY1996 (P.L. 104-19; 109 Stat. 231). However, \$1 billion of the contingency fund was rescinded in FY1996 omnibus appropriations, P.L. 104-134 (110 Stat. 1321-358). In the same legislation, another \$7 million was also appropriated to other FEMA accounts for costs associated with the bombing of the Alfred P. Murrah federal building in Oklahoma City (P.L. 104-134; 109 Stat. 254).
- l. The FY1998 budget appendix (p. 1047) noted a transfer of \$104 million from the disaster relief fund in FY1996. In the FY1997 appropriations act (P.L. 104-204; 110 Stat. 1321-358), \$1 billion that had been rescinded in FY1996 (P.L. 104-134) was restored, and \$320 million in new funds were appropriated. Supplemental appropriations of \$3.3 billion were approved in P.L. 105-18 (111 Stat. 200) after flooding in the Dakotas and Minnesota, and after storms in other states were declared major disasters. The legislation specified, however, that of the total, \$2.3 billion was to be available in FY1998 only when FEMA submitted a cost control report to Congress. This requirement was met, and the funding was made available in FY1998.
- m. The FY1998 request consisted of a \$320 million base amount plus \$2.388 billion “to address actual and projected requirements from 1997 and prior year declarations.” (*Budget Appendix FY1998*, p. 1047). Does not include \$50 million requested for the DRF for mitigation activities.
- n. Supplemental appropriations legislation (P.L. 105-174; 112 Stat. 77) for FY1998, approved for flooding associated with El Niño and other disasters.
- o. The FY1999 request consisted of \$307.8 million for the DRF and an additional \$2.258 billion in contingency funding to be available when designated as an emergency requirement under the Balanced Budget Act of 1985, as amended.
- p. The FY1999 omnibus appropriations act (P.L. 105-277; 112 Stat. 2681-579) included \$906 million for costs associated with Hurricane Georges, flooding associated with El Niño, and other disasters.
- q. Emergency supplemental appropriations for FY1999 (P.L. 106-31; 113 Stat. 73) included \$900 million for tornado damages as well as \$230 million for unmet needs, subject to allocation directions in the conference report (H.Rept. 106-143).

- r. FY2000 appropriations act (P.L. 106-74, 113 Stat. 1085) included disaster relief funding as follows: \$300 million in regular appropriations and \$2.480 billion designated as emergency spending for costs associated with Hurricane Floyd and other disasters. In addition, the Consolidated Appropriations Act (P.L. 106-113; 113 Stat. 1501) authorized the Director of FEMA to use up to \$215 million in disaster relief funds appropriated in P.L. 106-74 (113 Stat. 1047) for the purchase of residences flooded by Hurricane Floyd, under specified conditions.
- s. Supplemental appropriations legislation (P.L. 106-246; 114 Stat. 568) authorized that **\$50 million** from the DRF was to be used for buyout and relocation assistance for victims of Hurricane Floyd. The act also appropriated \$500 million in a separate account (P.L. 106-246; 114 Stat. 590) for claim compensation and administrative costs associated with the Cerro Grande fire that destroyed much of Los Alamos, New Mexico.
- t. P.L. 107-38 (115 Stat. 220) appropriated \$40 billion in response to the terrorist attacks of Sept. 11, 2001. Pursuant to the statute, these funds for FY2001 were allocated by the Office of Management Budget from the Emergency Response Fund (ERF). Of the total appropriated in P.L. 107-38 after the Sept. 11 attacks, \$4.357 billion was allocated for FY2001 through P.L. 107-117 (115 Stat. 2338). The total available for obligation for FY2001 (\$5.9 billion) taken from FEMA *Justification of Estimates, FY2003*, p. DR-2.
- u. Request for FY2002 did not include funding for the Disaster Relief Contingency Fund.
- v. Congress appropriated a total of \$7.008 billion for FY2002 in P.L. 107-117 (115 Stat. 2238) and P.L. 107-206 (116 Stat. 894) to meet additional needs associated with the terrorist attacks. Total funds available (\$12.16 billion) include a transfer from TSA, \$1 billion released from the Emergency Contingency Fund, and other sources. See DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2004*, p. DR-2.
- w. Includes \$983.6 million in P.L. 108-69 (117 Stat. 885) and \$441.7 million in P.L. 108-83 (117 Stat. 1037) to meet needs associated with tornadoes, winter storms, the recovery of wreckage of the Space Shuttle *Columbia* and other disasters. Also, funds appropriated in these measures and in the FY2004 appropriations act for DHS (P.L. 108-90; 117 Stat. 1137) have been used for costs associated with Hurricane Isabel. Total of \$2.199 billion available taken from DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18.
- x. P.L. 108-106 (117 Stat. 1209), which primarily addressed reconstruction costs in Iraq and Afghanistan, also contained an appropriation of \$500 million for needs arising from disasters in fall 2003, including Hurricane Isabel and the California fires (117 Stat. 1220). Section 4002 of the act designates the funds an emergency requirement pursuant to the budget resolution adopted by Congress (H.Con.Res. 95), but the Consolidated Appropriations Act for FY2004 (Section 102(a), Division H, P.L. 108-199; 118 Stat. 454) rescinded \$225 million of the \$500 million appropriated in P.L. 108-106 (117 Stat. 1220). Total of \$2.043 billion taken from: DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18. P.L. 108-303 (118 Stat. 1124), enacted after Hurricanes Charley and Frances struck Florida, appropriated \$2 billion to the DRF and gave discretion to DHS to transfer \$30 million to the Small Business Administration for disaster loans. P.L. 108-324, Division B of the Military Construction Appropriations Act for FY2005, appropriated an additional \$6.5 billion to the DRF (118 Stat. 1247). Congress also appropriated \$10 billion in P.L. 109-61 (119 Stat. 1988), approved by Congress in a special session of the leadership and signed by the President on September 2, 2005, as an immediate response to the needs caused by Hurricane Katrina. A second supplemental for costs associated with Hurricane Katrina (\$50 billion, P.L. 109-62; 119 Stat. 1990) was approved by Congress and signed by President Bush on September 8, 2005.
- y. Outlay data and constant dollar calculations based on estimates.

Issues for the 109th Congress

Controlling Federal Expenditures. The increase in federal expenditures for disaster assistance since 1990 has been the subject of some debate. A report issued by the Office of Inspector General (OIG) for FEMA concluded that the increase in federal disaster costs since 1989 “is due to a greater number and magnitude of disasters, expansion of the law and eligibility for assistance, and interpretation of the law and regulations.”³⁴ Some contend that other factors, notably political considerations, contribute to the costs of disaster relief as well. One 2002 study by economists Thomas A. Garrett and Russell S. Sobel purports: “States politically important to the president have a higher rate of disaster declaration by the president, and disaster expenditures are higher in states having congressional representation on FEMA oversight committees. Election year impacts are also found.” Another study, which builds upon the 2002 paper, examined presidential disasters declarations from 1981 through 2004 and found that “...the greater the electoral prize and the more competitive the statewide presidential contest, the more likely it is that a state will receive a presidential disaster declaration even after controlling for actual need.”³⁵

Another perspective on the issue was presented in a 1989 study completed by Government Accountability Office (GAO) that also considered the effects of politics on disaster declarations. After examining presidential declaration data from the perspective of the party affiliation of governors and members of state congressional delegations, the authors concluded that there “were no indications that party affiliation affected White House major disaster declaration decisions.”³⁶ In light of concerns about funding decisions after the 2004-2005 hurricanes, and the rising deficit, Members of the 109th Congress may elect to consider means of controlling costs or establishing alternative funding mechanisms.

Long-Term Recovery Policy. The Stafford Act authorizes a variety of assistance for stricken states through the full range of events that precede and result from catastrophes. Specific provisions, and the phases of emergency management to which they pertain, include

- **Preparedness:** funding is provided to help states and communities develop disaster preparedness plans, improve warning systems, and conduct training and exercise activities;³⁷

³⁴ U.S. Federal Emergency Management Agency, at [<http://www.fema.gov/library/pp2man.shtm>], visited Nov. 19, 2004.

³⁵ Andrew Reeves, “Political Disaster? Presidential Disaster Declarations and Electoral Politics,” Abstract, unpublished paper, August 29, 2005, available online at [<http://www.people.fas.harvard.edu/~reeves/papers/fema.pdf>], visited Sept. 16, 2005.

³⁶ U.S. General Accounting Office, *Disaster Assistance: Timeliness and Other Issues Involving the Major Disaster Declaration Process*, GAO/RCED-89-138, May 25, 1989, pp. 1, 4.

³⁷ 42 U.S.C. 5131.

- **Emergency response:** federal resources may be used to provide equipment, supplies, and personnel to support state and local efforts, to coordinate disaster relief operations, and provide essential assistance to meet emergency needs;³⁸
- **Recovery:** repair of damaged buildings and infrastructure, debris removal, temporary housing and limited home repairs, and revenue loss loans;³⁹ and,
- **Hazard mitigation:** financial assistance before and after a major disaster declaration is issued to reduce future disaster losses.⁴⁰

The Stafford Act does not explicitly authorize the President to provide long-term recovery assistance to communities.⁴¹ However, the federal government has occupied the field to some extent. The Secretary of Commerce is authorized to undertake disaster economic recovery activities.⁴² The *National Response Plan*, the document that sets forth agency responsibilities when major disaster declarations are issued, includes a “Long-Term Community Recovery and Mitigation Annex.” This annex “provides a framework for federal government support to state, regional local, and tribal governments, nongovernmental organizations (NGOs), and the private sector designed to enable community recovery from the long-term consequences” of catastrophes.⁴³ Congress may be called upon to consider whether the existing statutory authority of the Secretary of Commerce is adequate, and to consider whether the Secretary of DHS may undertake long-term recovery activities as set out in the *National Response Plan*, or to consider other legislative initiatives.

³⁸ 42 U.S.C. 5170a, 5170b. Even before a major disaster declaration is issued, the President is authorized to direct the Secretary of Defense to use departmental resources for emergency work essential for preserving life and property (42 U.S.C. 5170b(c)).

³⁹ 42 U.S.C. 5172-5186.

⁴⁰ 42 U.S.C. 5133 (pre-disaster mitigation); 42 U.S.C. 5170c (post-disaster mitigation).

⁴¹ Title V of P.L. 93-288, the Disaster Relief Act of 1974 (88 Stat. 160-163), authorized the President to provide economic recovery assistance “after the period of emergency aid and replacement of essential facilities and services.” Congress never funded this authority, and it was repealed in 1998 amendments (see Sec. 102(c) of P.L. 105-393, 112 Stat. 3617).

⁴² 42 U.S.C. 3149(c)(2).

⁴³ U.S. Department of Homeland Security, *National Response Plan* (Washington: 2004), pp. ESF#14-1 through 14-6. The *National Response Plan* may be downloaded from the DHS website at [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml], visited Sept. 16, 2005.