

JUL 11 1990

MEMORANDUM FOR: Jerry D. Jennings
Acting Director

FROM: *H* George W. Watson
Acting General Counsel

SUBJECT: Draft Report to OMB - Lessons Learned From
Hurricane Hugo and the Loma Prieta Earthquake

Your memorandum of June 19, 1990 asks for the comments of your Associate Directors and Staff Officers on the draft report to the Office of Management and Budget (OMB) regarding the lessons learned from Hurricane Hugo and the Loma Prieta Earthquake. My comments involve issues of a combined legal and policy nature.

I. SCOPE OF ANALYSIS

The draft report makes the statement, on page 43, that "Current legislation does not provide clear authority for FEMA to take immediate action in response to a catastrophic disaster when the State is clearly overwhelmed and has not yet made a request for Federal disaster assistance." The statement is made in the context of one title of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("The Stafford Act") (42 U.S.C. § 5121, et seq.), namely the title dealing with emergency authorities following the Presidential declaration of a major disaster (Title IV of the Stafford Act, 42 U.S.C. §§ 5170 - 5189b). However, the report does not discuss in depth the authorities FEMA or other Federal Agencies might have under other titles of the Stafford Act or other statutes such as the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. § 2251, et seq. For example, authority exists to furnish State and local governments communications equipment for response to an emergency, even before the Governor has requested declaration of a major disaster, under both the Stafford Act and the Civil Defense Act. Section 202(c) of the Stafford Act (42 U.S.C. § 5132(c)); Section 201(c) of the Civil Defense Act (50 U.S.C. App. § 2281(c)).

Also See GCM-90-10-4

GCM 90-74

GCM 90-7-11

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II. RELATIONSHIP BETWEEN DISASTER ASSISTANCE AND FLOOD INSURANCE

Recommendation No. 12, on page 38 of the report, advocates that FEMA propose legislation to delete the flood insurance purchase requirement in the context of Individual and Family Grants under the Stafford Act. I expect that the Federal Insurance Administration will have its own comments on this proposal. The legal issue is that the elimination of the purchase requirement is not only inconsistent with the express provisions of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq., (specifically 42 U.S.C. § 4012a), it is also inconsistent with the statutory intent to allocate the costs of flood damage as broadly and equitably as possible (42 U.S.C. § 4002(b)(3),(4)). The mandatory purchase requirement has long been viewed as an essential feature of the Flood Insurance Act.

III. COORDINATION

A consistent theme which runs through the draft report is disaster victims' frustration with what some perceive as a cumbersome application process. There is an expectation in many quarters that FEMA ought to alleviate that frustration. FEMA needs to exercise leadership, pre-disaster, in the relative calm between declared disasters, (1) to screen other (non-DAP and non-FEMA) programs for duplication of benefits or overlapping features, and (2) to streamline application process. To the extent that different agencies have different forms of assistance, it seems to be FEMA's role to act as a broker: to match the needs of individuals with the resources of the appropriate agencies. This type of coordination at time of disaster requires extensive familiarity with the programs of other offices within FEMA and other agencies.

IV. RESOURCES

On the other hand, it is arguably not FEMA's role to be a first responder in time of emergency. There are severe fiscal limitations on FEMA's ability to be a primary responder. FEMA does not have adequate staff to be a first responder. There are serious unanswered questions about the economic feasibility of prelocating supplies, equipment, and facilities. Any study of this subject should examine the following issues:

Should there be a more extensive cadre of trained disaster reservists?

Is it enough to be prepared for the "average" year?

Effective training depends upon clarification of FEMA's role(s):

Is FEMA's role that of

- a. Check writer;
- b. "911" dispatcher;
- c. Emergency responder; or
- d. All of the above?



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V. AUTHORITIES

The draft report suggest some uncertainty about the nature of FEMA's authority to act in response to an emergency. It implies the following questions:

What is FEMA's authority to act before a disaster declaration or Governor's request for a disaster declaration -

1. To protect lives or property;
2. To provide supplies or equipment to State or local governments;
or
3. To assign tasks to other Federal Agencies?

What is FEMA's authority before or after a declaration to act as a first responder or coordinator of first responders? (This question can only be effectively analyzed function by function (e.g., alert and notification, communications, evacuation assistance, search and rescue, medical assistance).)

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I would glad to elaborate on these points if you agree that these questions are pertinent to the report and appropriate to be examined.

VI. TONE OF REPORT

The tone of the report deserves some attention. It seems reasonable that OMB will expect FEMA to coordinate more effectively its own efforts and the efforts of many other Federal Agencies. However, the criticism of other offices and agencies named in the report is sometimes harsh. This could very well hinder the cooperation that the Disaster Assistance Program needs to elicit from other FEMA offices or that FEMA needs to elicit from those other agencies. I understand that the Department of Defense, the Department of Energy, and the National Communications System have also prepared after-action reports. You may find it helpful to review the reports of those agencies before a final version of FEMA's report is submitted to OMB.

!cc: CF 2, GC/Watson, Cumming, Hirsch, McPheters, FLYNN
! GC: FLYNN:hjf: 7/11/90
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