



# Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions

**Keith Bea, Coordinator**  
Section Research Manager

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## Summary

Reports issued by committees of the 109<sup>th</sup> Congress, the White House, federal offices of Inspector General, and the Government Accountability Office (GAO), among others, concluded that the losses caused by Hurricane Katrina were due, in part, to deficiencies such as questionable leadership decisions and capabilities, organizational failures, overwhelmed preparation and communication systems, and inadequate statutory authorities. As a result, the 109<sup>th</sup> Congress revised federal emergency management policies vested in the President; reorganized the Federal Emergency Management Agency (FEMA); and enhanced and clarified the mission, functions, and authorities of the agency, as well as those of its parent, the Department of Homeland Security (DHS).

Six statutes enacted by the 109<sup>th</sup> Congress are notable in that they contain changes that apply to future federal emergency management actions. These public laws include the following:

- Title VI of P.L. 109-295 (H.R. 5441), the Post-Katrina Emergency Management Reform Act of 2006, referred to in this report as the Post-Katrina Act;
- Sections of P.L. 109-347 (H.R. 4954), the Security and Accountability for Every Port Act of 2005, known as the SAFE Port Act;
- P.L. 109-308 (H.R. 3858), the Pets Evacuation and Transportation Standards Act of 2006;
- P.L. 109-63 (H.R. 3650), the Federal Judiciary Emergency Special Sessions Act of 2005;
- P.L. 109-67 (H.R. 3668), the Student Grant Hurricane and Disaster Relief Act; and
- Sections of P.L. 109-364 (H.R. 5122), the John Warner National Defense Authorization Act for Fiscal Year 2007.

Most of these statutes contain relatively few changes to federal authorities related to emergencies and disasters. The Post-Katrina Act, however, contains many changes that will have long-term consequences for FEMA and other federal entities. That statute reorganizes FEMA, expands its statutory authority, and imposes new conditions and requirements on the operations of the agency.

The Administration will implement these new authorities through the FY2008 appropriations legislation. The oversight plans of committees with jurisdiction indicate that Members of the 110<sup>th</sup> Congress will evaluate the steps taken by the leadership of FEMA to carry out the expanded legislative mandate. In addition, Members will continue to debate legislation pertaining to the recovery of Gulf Coast states. For example, H.R. 1144 would waive disaster assistance cost share requirements for the states affected by the hurricanes. This report will be updated as developments warrant.

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## Overview

Hurricane Katrina struck Florida and the Gulf Coast states in the last days of August 2005, followed within weeks by Hurricanes Rita and Wilma. These disasters will long be remembered for disrupting families, changing and ending lives, and forcing Americans to rethink vulnerability and risk assumptions. In addition to these impacts, the hurricanes served as catalysts for significant changes in federal policy and the organization of responsible federal entities, notably within the Department of Homeland Security (DHS).

Most of those changes were included in Title VI of the DHS appropriations legislation for FY2007.<sup>1</sup> Among other provisions, Title VI, officially titled the “Post-Katrina Emergency Management Reform Act of 2006” (hereafter referred to as the Post-Katrina Act), established new leadership positions and position requirements within the Federal Emergency Management Agency (FEMA), brought new missions into FEMA and restored some that had previously been removed, and enhanced the agency’s authority by directing the FEMA Administrator to undertake a broad range of activities before and after disasters occur. The Post-Katrina Act contains provisions that set out new law, amend the Homeland Security Act (HSA),<sup>2</sup> and modify the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).<sup>3</sup>

In addition to the Post-Katrina Act, Congress enacted five other statutes that have long-term implications for the administration of federal emergency policies.<sup>4</sup> These include:

- Sections of P.L. 109-347 (H.R. 4954), the Security and Accountability for Every Port Act of 2005, known as the SAFE Port Act;
- P.L. 109-308 (H.R. 3858), the Pets Evacuation and Transportation Standards Act of 2006;
- P.L. 109-63 (H.R. 3650), the Federal Judiciary Emergency Special Sessions Act of 2005;
- P.L. 109-67 (H.R. 3668), the Student Grant Hurricane and Disaster Relief Act; and
- Sections of P.L. 109-364 (H.R. 5122), the John Warner National Defense Authorization Act for Fiscal Year 2007.

Through these enactments the 109<sup>th</sup> Congress acted on findings and conclusions reached by House and Senate investigators, White House staff, offices of federal Inspectors General (especially those published by the DHS office) and the Government Accountability Office (GAO), among others, who evaluated the consequences of and response to Hurricane Katrina. The investigators and their studies presented findings on major shortcomings, and most urged a reconsideration of existing policies and practices. This CRS report summarizes information on

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<sup>1</sup> P.L. 109-295, H.R. 5441.

<sup>2</sup> P.L. 107-296, 116 Stat. 2140-2321, as amended, 6 U.S.C. 101 et seq.

<sup>3</sup> P.L. 93-288, 88 Stat. 143-164, as amended, 42 U.S.C. 5121 et seq.

<sup>4</sup> In addition to the listed statutes, Congress also enacted H.R. 4979, the Local Community Recovery Act of 2006 (P.L. 109-218). Congress included in the Post-Katrina Act the text of the changes made by P.L. 109-218 as an amendment to Section 307(a)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

the emergency management modifications adopted by Congress in response to the widespread calls for change.

## Report Limitations

This report summarizes provisions from legislation enacted by the 109<sup>th</sup> Congress with regard to federal emergency management authorities but does not cover all legislation enacted in response to Hurricanes Katrina, Rita, and Wilma. Information on legislation that provided funds, extended benefits, or authorized temporary waivers of statutory or administrative requirements solely for the victims of Hurricane Katrina or other specific disasters is available elsewhere.<sup>5</sup> The focus here is on far-reaching and potentially permanent change in federal approaches to emergency management. Also, the emergency communications provisions in the Post-Katrina Act (Subtitle D, cited as the “21<sup>st</sup> Century Communications Act of 2006”) and the bioterrorism legislation enacted in the closing day of the 109<sup>th</sup> Congress are not summarized in this report.<sup>6</sup>

The content of this report is limited to congressional action. The Bush Administration has taken steps since Hurricane Katrina to revise practices and policies. For example, the framework that guides federal agency activities after a major disaster, the *National Response Plan*, is under review. Preparation for other hazards, notably a pandemic influenza outbreak, continues. Officials, and their leadership duties, have been reconsidered and replaced or reassigned. This report does not reference such administrative actions.

This CRS report is not analytical; its sole purpose is to summarize selected provisions of legislation enacted during the 109<sup>th</sup> and the 110<sup>th</sup> Congresses. In order to provide some context, the report does include background information on the relevant policy areas.

## Report Organization

This report comprises ten sections, as follows:

- the location and status of FEMA and the agency’s authorities;
- the capabilities, responsibilities, and requirements associated with leadership positions;
- modifications to the statutory provisions relevant to the workforce charged with implementing emergency management policies;

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<sup>5</sup> To address the needs of the disaster victims, Congress enacted legislation within weeks of the disasters to provide: supplemental appropriations (P.L. 109-61—H.R. 3645 and P.L. 109-62—H.R. 3673), higher levels of borrowing for the federal flood insurance program (P.L. 109-65—H.R. 3669), increased benefits to low-income families (P.L. 109-68—H.R. 3672), expanded loans to stricken communities (P.L. 109-88—S. 1858), and other benefits intended to provide immediate assistance to victims and their communities. For information on such provisions see, CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by Keith Bea; CRS Report RS22246, *Temporary Assistance for Needy Families (TANF): Its Role in Response to the Effects of Hurricane Katrina*, by Gene Falk; CRS Report RS22344, *The Gulf Opportunity Zone Act of 2005*, by Erika K. Lunder; and CRS Report RL33174, *FEMA’s Community Disaster Loan Program: Action in the 109<sup>th</sup> Congress*, by Nonna A. Noto and Steven Maguire.

<sup>6</sup> For information on emergency communications legislation see CRS Report RL33747, *Emergency Communications Legislation: Implications for the 110<sup>th</sup> Congress*, by Linda K. Moore. For information on the bioterrorism legislation see CRS Report RL33589, *The Pandemic and All-Hazards Preparedness Act (P.L. 109-417): Provisions and Changes to Preexisting Law*, by Sarah A. Lister and Frank Gottron.

- changes in national preparedness system components and requirements (those not specifically included in FEMA's mission);
- new emergency management education and training requirements;
- amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) that provide additional or modified assistance authority to the President;<sup>7</sup>
- changes in procedures governing federal contracting and procurement;
- oversight and review requirements that are expected to reduce fraud and waste practices in emergency response;
- requirements for the production of reports and guidelines; and
- miscellaneous provisions.

## Emergency Management Organizations and Functions

### Background<sup>8</sup>

Since 1979, when the agency was first established, FEMA has been charged with carrying out activities that enable the federal, state, and local governments to address a broad spectrum of emergency management functions. In carrying out its mission, FEMA has (1) funded and coordinated emergency preparedness activities, (2) provided and coordinated immediate federal response to save lives and property, (3) funded the reconstruction of damaged homes and infrastructure to help stricken families and communities recover, and (4) supported hazard mitigation activities to ensure that future disasters do not recur, or are less destructive in the future. These four elements of preparedness, response, recovery, and hazard mitigation constitute what has been generally referred to as the comprehensive emergency management (CEM) system.

As a small independent agency from 1979 through 2000, FEMA exercised responsibility for federal implementation of the CEM concept. For part of that time, from 1993 through 2000, agency officials also used those concepts to organize the agency.<sup>9</sup> Beginning in the spring of 2001 (before the September terrorist attacks), the Bush Administration reorganized FEMA reportedly to take “the agency in a new direction by refocusing its efforts on civil defense and counterterrorism.”<sup>10</sup> After the terrorist attacks, through enactment of the Homeland Security Act

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<sup>7</sup> For more information on the Stafford Act see, CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

<sup>8</sup> By Henry Hogue, Francis X. McCarthy, and Keith Bea of the Government and Finance Division.

<sup>9</sup> For information about the history of the organization of federal emergency management functions, see CRS Report RL33369, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, by Henry B. Hogue and Keith Bea. For a summary of FEMA's CEM mission and the agency's underlying authorities as of February 2000, see CRS Report (Archived) RS20272, *FEMA's Mission: Policy Directives for the Federal Emergency Management Agency*, by Keith Bea, available from author upon request.

<sup>10</sup> Patrick S. Roberts, “FEMA and the Prospects for Reputation-Based Autonomy,” *Studies in American Political Development*, v. 20, Spring 2006: 75. See also discussion of organizational changes, pages 75-78.

of 2002 (HSA), the 107<sup>th</sup> Congress and the Bush Administration continued the reorganization of the agency by divesting it of certain CEM responsibilities. Of particular relevance to this examination, the HSA transferred emergency preparedness functions related to terrorism from FEMA to the Border and Transportation Security (BTS) Directorate.<sup>11</sup>

The reassignment of certain CEM responsibilities, and concomitant organizational changes, continued in 2005, both before and after Hurricane Katrina. Pursuant to the HSA, which authorizes the Secretary to reorganize most parts of the department,<sup>12</sup> Secretary Chertoff initiated what he called the Second Stage Review, or 2SR initiative, in the winter of 2005. After roughly six months, Secretary Chertoff recommended, and Congress approved, the division of responsibility for CEM functions.<sup>13</sup>

Since October 1, 2005, CEM functions have been divided between two components of the department—FEMA and the new Preparedness Directorate (PD). The FEMA Director, who also held the title of Under Secretary for Federal Emergency Management, has reported directly to the Secretary and has overseen three divisions (Response, Mitigation, and Recovery), ten regional offices, and numerous other components. Emergency preparedness functions have been vested in PD, which has been headed by an under secretary who has reported to the Secretary. Major components in this directorate have included the Assistant Secretary of Homeland Security for Infrastructure Protection; the Chief Medical Officer of DHS; the Office of Grants and Training; the U.S. Fire Administration; the Office of the National Capital Region Coordination; the Center for Faith-Based and Community Initiatives; and the Office of Cyber and Telecommunications,<sup>14</sup> which includes the National Communications System and the National Cybersecurity Division. Of note, however, is the exclusion of one preparedness function from the PD portfolio. FEMA has continued to exercise a limited role in coordinating and guiding the efforts of federal agencies to prepare, maintain, and exercise contingency plans to ensure that essential government functions continue after catastrophes.<sup>15</sup>

In examining the lessons learned from Hurricane Katrina, the 109<sup>th</sup> Congress considered this dynamic history of functional and organizational changes. It appears that Congress concluded that while the HSA vested responsibilities of leading and supporting a national, risk-based CEM program in FEMA, the assignment of authorities and the organization of the agency indicated otherwise.<sup>16</sup> Some contended that, as a result of these mission and organizational shifts, FEMA's

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<sup>11</sup> FEMA's responsibility for carrying out the CEM concept was established in HSA Sec. 507, 116 Stat. 2214. The terrorism-related preparedness responsibilities carried out by FEMA prior to enactment of the HSA were transferred to the Office for Domestic Preparedness within BTS in 6 U.S.C. 238(c)(8).

<sup>12</sup> 6 U.S.C. § 452.

<sup>13</sup> For background see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue.

<sup>14</sup> The office and assistant secretary titles are listed in various ways on the DHS website, including Office of Cyber and Telecommunications [http://www.dhs.gov/xabout/structure/editorial\\_0794.shtm](http://www.dhs.gov/xabout/structure/editorial_0794.shtm), Assistant Secretary for Cyber Security and Telecommunications [http://www.dhs.gov/xabout/structure/gc\\_1157655281546.shtm](http://www.dhs.gov/xabout/structure/gc_1157655281546.shtm), and Assistant Secretary for Cyber and Telecommunications Security [http://www.dhs.gov/xnews/speeches/speech\\_0255.shtm](http://www.dhs.gov/xnews/speeches/speech_0255.shtm).

<sup>15</sup> The primary authority for this responsibility rests with two presidential documents, Executive Order 12656, *Assignment of Emergency Preparedness Responsibilities*, issued in 1988, and Presidential Decision Directive 67, *Enduring Constitutional Government and Continuity of Government Operations*, issued in 1998. For background information see CRS Report RL31857, *Executive Branch Continuity of Operations (COOP): An Overview*, by R. Eric Petersen.

<sup>16</sup> See 6 U.S.C. 238(c)(8), 116 Stat. 2191. An examination of the difference between the broad statutory mandate given to FEMA in the HSA and authorities that vested emergency management functions in other federal entities is presented (continued...)

capabilities deteriorated as functions, resources, and responsibilities moved to other DHS units. Others argued that an emphasis on terrorist-caused incidents within DHS dominated planning and allocation decisions and contributed to FEMA's diminished capabilities for all hazards. These findings led to congressional enactment of significant revisions to FEMA's structure and mission in the Post-Katrina Act, as summarized below.

## **The New FEMA: Organization and Mission**

The Post-Katrina Act reorganizes DHS with a reconfigured FEMA (effective March 31, 2007) with consolidated emergency management functions, elevated status within the department,<sup>17</sup> and enhanced organizational autonomy. The organization and many of the authorities and responsibilities assigned to FEMA under the act are summarized in this section of the report, except for authorities specific to preparedness activities. Many of those responsibilities are vested in the President (and are to be carried out by the FEMA Administrator), so they are summarized in the "National Preparedness" section of this report.

## **The New FEMA Components**

Under the Post-Katrina Act, the new FEMA will comprise the Preparedness Directorate and all of the functions of the existing FEMA. This includes, for each of the entities, personnel, assets, components, authorities, grant programs, liabilities, and the functions of their respective Under Secretaries. Several entities from the Preparedness Directorate, noted below in the "Other DHS Entities" sub-section, are excepted from transfer to the newly configured FEMA.<sup>18</sup> In addition, the act provides for 10 regional offices with specified responsibilities and features.<sup>19</sup> It also provides, in statute, for the National Integration Center, specifying the center's responsibilities and role with regard to incident management.<sup>20</sup> In addition to these existing elements, the new FEMA will include two positions and one entity, both newly established by the Post-Katrina Act—a Disability Coordinator,<sup>21</sup> a Small State and Rural Advocate,<sup>22</sup> and a National Advisory

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(...continued)

in CRS Report RL33064, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109<sup>th</sup> Congress*, by Keith Bea.

<sup>17</sup> The new law elevates FEMA within DHS by raising the status of the FEMA Administrator to the Deputy Secretary level, increasing the scope of his or her responsibilities, mandating that he or she report directly to the Secretary, and giving him or her a statutory advisory relationship to the President, the Homeland Security Council, and the Secretary, particularly during disasters. (For more on the new Administrator position, see "New Positions" in the "Emergency Management Leadership" section of this report.)

<sup>18</sup> P.L. 109-295, § 611(13), new section 505 of the Homeland Security Act of 2002 (HSA), 120 Stat. 1400. The transfers are of these entities as they existed on June 1, 2006. Based on information obtained from the DHS website and conversations with DHS officials (both on Nov. 8, 2006), it appears that the agencies to be transferred from the Preparedness Directorate to FEMA will include the U.S. Fire Administration, the Office of Grants and Training, the Office of National Capital Region Coordination, and the Center for Faith-Based and Community Initiatives [http://www.dhs.gov/xabout/structure/editorial\\_0794.shtm](http://www.dhs.gov/xabout/structure/editorial_0794.shtm). DHS officials indicate that the department is developing a reorganization plan that will clarify which portions of the Preparedness Directorate will be transferred as well as the status of those entities remaining outside FEMA.

<sup>19</sup> P.L. 109-295, § 611(13), new HSA Sec. 507, 120 Stat. 1401.

<sup>20</sup> P.L. 109-295, § 611(13), new HSA Sec. 509, 120 Stat. 1405.

<sup>21</sup> P.L. 109-295, § 611(13), new HSA Sec. 513(a), 120 Stat. 1408.

<sup>22</sup> P.L. 109-295, §689g, 120 Stat. 1453.

Council.<sup>23</sup> At the regional level, the Post-Katrina Act provides for the creation of Regional Advisory Councils, Regional Office Strike Teams,<sup>24</sup> and regional Emergency Communications Coordination Working Groups.<sup>25</sup> The act also permits the Administrator to establish Hurricane Katrina and Hurricane Rita recovery offices in Mississippi, Louisiana, Alabama, and Texas.<sup>26</sup>

In addition to the aggregation of these offices and entities into FEMA, the Post-Katrina Act gives FEMA more organizational autonomy than it has had since becoming part of DHS. Like the U.S. Coast Guard and the U.S. Secret Service, FEMA is now classified as a distinct entity within DHS.<sup>27</sup> In addition, the agency is no longer subject to the Secretary's broad reorganization authority under HSA.<sup>28</sup> The act authorizes the FEMA Administrator, as of March 31, 2007, to provide emergency-management-related recommendations directly to Congress after informing the Secretary.<sup>29</sup> (Additional provisions strengthening FEMA's organizational autonomy, related to funding and functions, are noted in the next section.)

### **The New FEMA Missions (Generally)**

As of March 31, 2007, the Post-Katrina Act will restore to FEMA the responsibility to lead and support efforts to reduce the loss of life and property and protect the nation from all hazards through a risk-based system that focuses on expanded CEM components. The statute also adds a fifth component—protection—to the four CEM components, but does not define the term.<sup>30</sup>

The act transfers to the new FEMA all functions previously administered by FEMA, specifically emergency alert systems, continuity of operations, and continuity of government activities, as well as those functions administered by the Preparedness Directorate, as they were administered, effective June 1, 2006. The legislation exempts from the transfer the functions of four Preparedness Directorate units—Office of Infrastructure Protection, National Communications System, National Cybersecurity Division, and the Office of the Chief Medical Officer.<sup>31</sup> In addition, the Post-Katrina Act includes activities and responsibilities for FEMA beyond those first included in the HSA in 2002.<sup>32</sup>

The act also explicitly prohibits substantial or significant reductions, by the Secretary, of the authorities, responsibilities, or functions of FEMA, or FEMA's capability to perform them.<sup>33</sup> Furthermore, the Post-Katrina Act prohibits most transfers of FEMA assets, functions, or

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<sup>23</sup> P.L. 109-295, § 611(13), new HSA Sec. 508(a), 120 Stat. 1403.

<sup>24</sup> P.L. 109-295, § 611(13), new HSA Sec. 507(e)-(f), 120 Stat. 1402.

<sup>25</sup> P.L. 109-295, § 671(b), new HSA Sec. 1805(a), 120 Stat. 1439.

<sup>26</sup> P.L. 109-295, § 638(a), 120 Stat. 1422.

<sup>27</sup> P.L. 109-295, § 611(13), new HSA Sec. 506(a), 120 Stat. 1400. Two organizations—the U.S. Coast Guard and the U.S. Secret Service—were transferred into DHS as “distinct entities” (6 U.S.C. § 381; 6 U.S.C. § 468). The Transportation Security Administration was also maintained as a distinct entity for two years following the enactment of HSA (6 U.S.C. § 234).

<sup>28</sup> P.L. 109-295, § 611(13), new HSA Sec. 506(b), 120 Stat. 1400.

<sup>29</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(c)(4)(B)(iii), 120 Stat. 1398.

<sup>30</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(b), 120 Stat. 1396.

<sup>31</sup> P.L. 109-295, § 611(13), new HSA Sec. 505, 120 Stat. 1400.

<sup>32</sup> P.L. 109-295, § 611(12), revised HSA Sec. 504, 120 Stat. 1398.

<sup>33</sup> P.L. 109-295, § 611(13), new HSA Sec. 506(c)(1), 120 Stat. 1400.

missions to other parts of DHS.<sup>34</sup> With regard to reprogramming or transfer of funds, the act requires that the Secretary comply with any applicable appropriations act provisions.<sup>35</sup>

Among the specific activities given to FEMA in the Post-Katrina Act are the following:

- leading the nation’s CEM efforts (including protection) for all hazards, including catastrophic incidents;<sup>36</sup>
- partnering with non-federal entities to build a national emergency management system;
- developing federal response capabilities;
- integrating FEMA’s CEM responsibilities;
- building robust regional offices to address regional priorities;
- using DHS resources under the Secretary’s leadership;
- building non-federal emergency management capabilities, including those involving communications; and
- developing and coordinating the implementation of a risk-based all hazards preparedness strategy that addresses the unique needs of certain incidents.<sup>37</sup>

The Post-Katrina Act added 13 responsibilities to those originally set out for FEMA in the HSA, including ensuring first responder effectiveness, supervising grants, administering and implementing the National Response Plan, preparing and implementing federal continuity of government and operations plans (see “Continuity of Government and Operations” below), and maintaining and operating the response coordination center, among others.<sup>38</sup> While implementation of these activities and responsibilities is to build “common capabilities” that will enable the agency to address all hazards through a risk-based management system, the statute also calls for the development of “unique capabilities” that would be needed for events that pose the greatest risk to the nation.<sup>39</sup>

## **Administrative Responsibilities**

In addition to the general responsibilities noted above, the Post-Katrina Act places new authorities intended to address administrative problems identified in the response to Hurricane Katrina within FEMA. The FEMA Administrator is charged with developing a logistics system that will enable officials to track the location of goods and services throughout the transfer process from FEMA to the affected state.<sup>40</sup> The Administrator must also establish a pre-positioned equipment program in at least eleven locations to support state, local, and tribal government disaster

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<sup>34</sup> P.L. 109-295, § 611(13), new HSA Sec. 506(c)(2), 120 Stat. 1400.

<sup>35</sup> P.L. 109-295, § 611(13), new HSA Sec. 506(d), 120 Stat. 1400.

<sup>36</sup> The Post-Katrina Act defines the term “catastrophic incident” in P.L. 109-295, § 602(4), 120 Stat. 1394.

<sup>37</sup> P.L. 109-295, §611(11), new HSA Sec. 503(b)(2), 120 Stat. 1396.

<sup>38</sup> P.L. 109-295, §611(12), HSA revised Sec. 504 (as redesignated), 120 Stat. 1398.

<sup>39</sup> P.L. 109-295, §611(11), HSA new Sec. 503(b)(2)(H), 120 Stat. 1397.

<sup>40</sup> P.L. 109-295, §636, 120 Stat. 1422.

assistance operations.<sup>41</sup> To support agency activities, the Administrator must update and improve FEMA's information technology systems to achieve objectives specified in the statute.<sup>42</sup> Also, the Administrator is authorized to disclose information to law enforcement agencies on individuals sheltered or evacuated in order to identify illegal conduct or address public safety concerns, including those involving sex offender notification requirements. The disclosure of this information must be consistent with Privacy Act requirements.<sup>43</sup>

## **Disaster Response**

The FEMA Administrator has been given new authority that will specifically facilitate disaster response operations. He or she is charged with reaching a formal understanding with non-federal officials on standards for the credentialing of personnel and "typing of resources" needed for the response to a disaster.<sup>44</sup> In addition, the Post-Katrina Act seeks to bolster several of the response teams and related resources through the legislation. Emergency Response Teams are recognized and called on to meet target capability levels, be properly staffed, and in a state of readiness.<sup>45</sup> The Post-Katrina Act also formally authorizes the Urban Search and Rescue teams and sets an authorized level of funding for the system.<sup>46</sup> The act also creates the Metropolitan Medical Response Grant Program and establishes an authorized funding level for the program.

## **Disaster Recovery**

A significant addition to the Stafford Act mission in the Post-Katrina Act is the focus on the reunification of families following an event in the form of the National Emergency Family Registry and Locator System and the Child Locator Center.<sup>47</sup> The Post-Katrina Act calls for the establishment of a family registry and locator system within 180 days after enactment. This would be a voluntary system that would be established by FEMA, in collaboration with the Department of Justice, the National Center for Missing and Exploited Children, the Department of Health and Human Services (HHS), and the American Red Cross. It would be accessible by Internet and a toll-free number and would assist family members and law enforcement in reuniting families. A memorandum of understanding of the working group is to be agreed upon within 90 days of enactment.

The Post-Katrina Act also calls on the Administrator of FEMA to assemble a group of federal and non-governmental players to develop a recovery strategy that will summarize existing programs and assess their utility in the post-disaster environment and discuss key issues of funding and authorities in determining the best use of such programs in meeting unique disaster requirements. The strategy should also address rebuilding, particularly those considerations that will lead to

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<sup>41</sup> P.L. 109-295, §637, 120 Stat. 1422.

<sup>42</sup> P.L. 109-295, §640, 120 Stat. 1423.

<sup>43</sup> P.L. 109-295, §640a, 120 Stat. 1424.

<sup>44</sup> P.L. 109-295, §611(11), 120 Stat. 1406, HSA new Sec. 510.

<sup>45</sup> P.L. 109-295, §633, 120 Stat. 1421, amends Stafford Act Sec. 303.

<sup>46</sup> P.L. 109-295, §634, 120 Stat. 1421.

<sup>47</sup> P.L. 109-295, §689b and §689c, 120 Stat. 1449, 1451.

more “disaster-resistant” construction and reconstruction.<sup>48</sup> For requirements see the “Report and Guideline Development Schedule” section of this report.

To enhance the steady recovery process for the huge event, the Post-Katrina Act also authorizes the establishment of recovery offices in Mississippi, Louisiana, Alabama, and Texas (a Florida office is already in place since the hurricanes of 2004). These offices are intended to encourage the delivery of necessary assistance in a timely and effective manner. The act calls for performance measures including public assistance worksheet completion rates and public assistance reimbursement times. The timing of when these offices will close is left to the discretion of the Director.<sup>49</sup>

### **National Disaster Housing Strategy**

The Post-Katrina Act also calls for a “Housing Strategy” separate from but related to the “Recovery Strategy” previously noted. The group membership developing this strategy will be similar to that of the housing strategy but will also include advocates for the disabled and their housing needs. This strategy should include a review of housing resources, including those departments and agencies with existing housing stock and also a compilation of housing resources available for disaster victims from governments and non-governmental entities. The strategy should also address the low income and special needs populations as well as housing group sites and the repair of rental housing in the affected area to increase the available stock.<sup>50</sup> For requirements see the “Report and Guideline Development Schedule” section of this report.

### **Continuity of Government and Operations**

P.L. 109-295 mandates that the COOP and COG authorities of FEMA “as constituted on June 1, 2006,” be transferred to the new agency.<sup>51</sup> The law also requires that the FEMA Administrator prepare and implement “the plans and programs of the federal government for COOP, COG, and “continuity of plans” responsibilities.<sup>52</sup>

In addition to these legislative mandates that specifically refer to COOP and COG, the legislation also includes provisions that might arguably be related to or affect implementation of the COOP and COG requirements. For example, one of the four specific missions assigned to the new agency includes the requirement to “integrate the Agency’s emergency preparedness ... responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other man-made disaster.”<sup>53</sup> Also, the Disability Coordinator to be appointed by the FEMA Administrator will be required to interact with specified entities, including “other agencies of the federal government” on “the needs of individuals with disabilities in emergency planning requirements....”<sup>54</sup> While not specifically linked to federal COOP and COG activities, these and

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<sup>48</sup> P.L. 109-295, §682, 120 Stat. 1445.

<sup>49</sup> P.L. 109-295, §638, 120 Stat. 1422.

<sup>50</sup> P.L. 109-295, §683, 120 Stat. 1446.

<sup>51</sup> P.L. 109-295, 120 Stat. 1400, revised Sec. 505(a)(1) of the Homeland Security Act.

<sup>52</sup> P.L. 109-295, 120 Stat. 1399, 6 U.S.C. 314(a)(15), revised Sec. 504 of the Homeland Security Act. The term “continuity of plans” is not defined or elaborated upon.

<sup>53</sup> P.L. 109-295, 120 Stat. 1397, new Sec. 503(b)(2)(D) of the Homeland Security Act.

<sup>54</sup> P.L. 109-295, 120 Stat. 1408, new Sec. 513(b)(2) of the Homeland Security Act.

other provisions in the legislation might require a reconsideration or evaluation of current procedures.<sup>55</sup>

## **FEMA Sub-Units and Missions**

The National Integration Center, established within FEMA, will be responsible for a range of duties concerning emergency preparedness capabilities. NIC is charged with the management and maintenance of both the National Incident Management System (NIMS) and the National Response Plan (NRP). In addition, NIC is responsible for the coordination of volunteer activity with the Corporation for National and Community Service and coordination with state, local and tribal governments concerning the deployment of first responders to disaster sites. The NIC is also charged with the revising and releasing of the Catastrophic Incident Annex and the Catastrophic Incident Supplement to the NRP.<sup>56</sup>

The Post-Katrina Act also requires that ten regional offices operate within FEMA, each to be headed by a Regional Administrator. Each Administrator must do the following:

- work with non-federal partners in the region to ensure that the five CEM components are coordinated and integrated,
- develop regional capabilities for a “national catastrophic response system,”
- coordinate the establishment of emergency communications capabilities,
- staff and oversee regional strike teams that comprise the initial response efforts for a disaster and must meet specified criteria and perform specified duties,
- designate one person responsible for developing regional plans that support the National Response Plan,
- foster the development of mutual aid agreements in the region,
- identify gaps in the region concerning the response to individuals with special needs, and
- maintain and operate a Regional Response Coordination Center.

Each Regional Administrator must establish a Regional Advisory Council to provide advice on emergency management issues, identify challenges to any CEM component in the region, and identify gaps or deficiencies. Also, the FEMA Administrator must report to Congress on additional statutory authorities needed to enhance the capabilities of regional strike teams. The statute also establishes area offices for the Pacific and Caribbean jurisdictions as well as for Alaska in the appropriate regional offices.<sup>57</sup>

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<sup>55</sup> COOP and COG activities are, at times, considered part of the larger policy area referred to as “federal preparedness.” Section 653 of P.L. 109-295, 120 Stat. 1430, titled “Federal Preparedness,” requires that federal agencies undertake specified actions to ensure that federal agencies are fully able to perform their specified roles in the National Response Plan and other components of the national preparedness system. See “National Preparedness System” elsewhere in this report for details.

<sup>56</sup> P.L. 109-295, §611(13), Sec. 509(b), 120 Stat. 1405.

<sup>57</sup> P.L. 109-295, §611(13), new HSA Sec. 507, 120 Stat. 1401.

The FEMA Administrator also is responsible for the selection of a Disability Coordinator. This selection is to be made following consultation with appropriate groups including disability interest groups as well as state, local and tribal groups. The Coordinator is charged with assessing the coordination of emergency management policies and practices with the needs of individuals with disabilities, including training, accessibility of entry (both physical and virtual), transportation, media outreach, and general coordination and dissemination of model best practices, including the area of evacuation planning.<sup>58</sup> A related responsibility given to the Director concerns the establishment of a Remedial Action Management Program (RAMP) to be coordinated with both the National Council on Disability and the National Advisory Council. RAMP is to be used to analyze programs and generate after-action reports that are to be distributed to participants in both exercises and real-world events. The RAMP is also responsible for tracking remedial actions as well as long-term trend analysis.<sup>59</sup> In addition, the Coordinator is to work with the FEMA Administrator on the development of guidelines to accommodate individuals with disabilities in emergency response facilities and communications capabilities.<sup>60</sup>

## **Other DHS Entities**

The Post-Katrina Act makes other changes to the DHS organization by rearranging certain existing offices, establishing others, and modifying responsibilities.

The Preparedness Directorate, with the exception of certain offices, will be transferred to the reconfigured FEMA.<sup>61</sup> The offices now in the Preparedness Directorate that will not be transferred to FEMA include the Office of Infrastructure Protection, the National Communications System, the National Cybersecurity Division, and the Office of the Chief Medical Officer (CMO).<sup>62</sup> The Post-Katrina Act does not indicate whether these four units will constitute a new organizational unit, will become stand-alone offices reporting to the Secretary, or will be subsumed by another organizational entity.<sup>63</sup>

The office headed by the Assistant Secretary for Cyber Security and Telecommunications was administratively created by Secretary Chertoff as part of the 2005 DHS reorganization.<sup>64</sup> Entities within this office have included the National Communications System and the National Cybersecurity Division. The Post-Katrina Act establishes a similarly titled office, Assistant Secretary for Cybersecurity and Communications, in statute. The statute does not specify whether

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<sup>58</sup> P.L. 109-295, §611(13), new HSA Sec. 513(b), 120 Stat. 1408.

<sup>59</sup> P.L. 109-295, §650, 120 Stat. 1428.

<sup>60</sup> P.L. 109-295, §689(a), 120 Stat. 1448.

<sup>61</sup> As previously discussed, this understanding is based on the new HSA Sec. 505(a), which provides that “there are transferred to [the newly reconstituted FEMA] the following: ... The Directorate of Preparedness, as constituted on June 1, 2006, including all of its functions, personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Preparedness relating thereto.” It could be argued that Sec. 505(b), which identifies exceptions to this transfer provision, keeps the directorate itself outside of FEMA because it begins with “The following *within the Preparedness Directorate* shall not be transferred” (emphasis added).

<sup>62</sup> P.L. 109-295, § 611(13), new HSA Sec. 505(b), 120 Stat. 1400.

<sup>63</sup> The Secretary retains authority, under HSA, to reorganize these offices. [6 U.S.C. 452] DHS officials have indicated that the department is developing a reorganization plan that will clarify the status of those entities remaining outside FEMA (telephone conversation with DHS official, Nov. 8, 2006).

<sup>64</sup> U.S. Department of Homeland Security, “Secretary Michael Chertoff U.S. Department of Homeland Security Second Stage Review Remarks,” available at [http://www.dhs.gov/xnews/speeches/speech\\_0255.shtm](http://www.dhs.gov/xnews/speeches/speech_0255.shtm), accessed Oct. 18, 2006.

or not the National Communications System and National Cybersecurity Division are to be part of this office. The act does establish an Office of Emergency Communications whose director will report to the Assistant Secretary for Cybersecurity and Communications.<sup>65</sup> The office of the CMO was also administratively created by Secretary Chertoff as part of the 2005 DHS reorganization.<sup>66</sup> The Post-Katrina Act establishes the CMO in the department but it does not specify the organizational location of the office within DHS.<sup>67</sup> The CMO will have the primary responsibility within the Department for medical issues related to natural disasters, acts of terrorism, and other man-made disasters.<sup>68</sup>

The National Infrastructure Simulation and Analysis Center (NISAC), established by the USA PATRIOT Act,<sup>69</sup> was transferred to the Directorate for Information Analysis and Infrastructure Protection, the precursor to the Directorate of Preparedness, when DHS was established.<sup>70</sup> With the relocation of the Preparedness Directorate to FEMA, the Post-Katrina Act has established NISAC within DHS, without further specification of its organizational location. The act also expands NISAC's authority to include "support for activities related to ... a natural disaster, act of terrorism, or other man-made disaster," and it mandates that federal entities with critical infrastructure responsibilities under Homeland Security Presidential Directive 7 establish a formal relationship with NISAC.<sup>71</sup>

The National Operations Center (NOC) is part of the Office of Operations Coordination, an office within DHS separate from FEMA.<sup>72</sup> The Post-Katrina Act establishes NOC, in statute, as "the principal operations center for the Department,"<sup>73</sup> but does not specify the organizational location of the center within DHS.

The Post-Katrina Act also provides for two other entities not specifically located in DHS. The President is directed to establish a National Exercise Simulation Center, with no specified organizational location.<sup>74</sup> In addition, the act establishes an Emergency Communications Preparedness Center. The center is to be jointly operated by DHS, the Federal Communications Commission, the Department of Defense, the Department of Commerce, the Department of Justice, and "the heads of other Federal departments and agencies or their designees."<sup>75</sup> The new statute also directs the Administrator to establish two emergency locator and reunification services: the National Emergency Child Locator Center, to be located within the National Center for Missing and Exploited Children, and the National Emergency Family Registry and Locator System, at an unspecified organizational location.<sup>76</sup>

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<sup>65</sup> P.L. 109-295, § 671(b), new HSA Sec. 1801, 120 Stat. 1433.

<sup>66</sup> U.S. Department of Homeland Security, "Secretary Michael Chertoff U.S. Department of Homeland Security Second Stage Review Remarks," available at [http://www.dhs.gov/xnews/speeches/speech\\_0255.shtm](http://www.dhs.gov/xnews/speeches/speech_0255.shtm), accessed Oct. 18, 2006.

<sup>67</sup> P.L. 109-295, § 611(13), new HSA Sec. 516, 120 Stat. 1409.

<sup>68</sup> P.L. 109-295, § 611(13), new HSA Sec. 516, 120 Stat. 1409.

<sup>69</sup> 42 U.S.C. § 5195c(d).

<sup>70</sup> 6 U.S.C. § 121(g).

<sup>71</sup> P.L. 109-295, § 611(13), new HSA Sec. 511, 120 Stat. 1406.

<sup>72</sup> DHS refers to NOC on its Office of Operations Coordination website, available at [http://www.dhs.gov/xabout/structure/editorial\\_0797.shtm](http://www.dhs.gov/xabout/structure/editorial_0797.shtm), accessed Nov. 8, 2006.

<sup>73</sup> P.L. 109-295, § 611(13), new HSA Sec. 515, 120 Stat. 1409.

<sup>74</sup> P.L. 109-295, § 664, 120 Stat. 1433.

<sup>75</sup> P.L. 109-295, § 671, new HSA Sec. 1806, 120 Stat. 1440.

<sup>76</sup> P.L. 109-295, §§ 689b(b) and 689c(b), 120 Stat. 1449, 1451.

## Effective Date for Organizational Changes

Most of the organizational developments described above become effective as of March 31, 2007. Others, including the following, became effective upon the enactment of the Post-Katrina Act on October 4, 2006:

- the increase in organizational autonomy for FEMA;
- the establishment of a National Integration Center;
- the establishment of a National Infrastructure Simulation and Analysis Center;
- the establishment of a Disability Coordinator;
- the establishment of a National Operations Center;
- the establishment of a Chief Medical Officer; and
- the designation of a Small State and Rural Advocate.

It could be argued that a provision of the act also eliminated the position of Under Secretary for Preparedness at the time of enactment, but other provisions of the act, and of existing law, cast doubt on this interpretation. (See “Abolished Positions,” below.)

## Emergency Management Leadership

### Background<sup>77</sup>

Several dozen political appointees and career senior executives head the Preparedness Directorate and FEMA. Four leadership positions in these organizations have been established in statute: the Under Secretary for Federal Emergency Management (also known as the FEMA Director),<sup>78</sup> the Under Secretary for Preparedness, the Assistant Secretary for Grants and Training,<sup>79</sup> and the U.S. Fire Administrator.<sup>80</sup> The provisions establishing these positions do not specify any qualifications that must be met by appointees.

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<sup>77</sup> By Henry Hogue, Government and Finance Division.

<sup>78</sup> HSA established, among other positions, an Under Secretary for Emergency Preparedness and Response and an Under Secretary for Information Analysis and Infrastructure Protection (6 U.S.C. § 113(a)(2) and (5)). During the reorganizations of DHS undertaken by Secretary Chertoff in 2005 and 2006, the portfolio of each of these under secretaries has changed. Accordingly, the positions have been renamed as Under Secretary for Federal Emergency Management and Under Secretary for Preparedness, respectively, to reflect these changes.

<sup>79</sup> HSA established the Office for Domestic Preparedness (ODP), to be headed by a director appointed by the President with the advice and consent of the Senate. In 2004, the Secretary consolidated ODP, the Office of State and Local Government Coordination, and other offices at DHS responsible for grant programs to form the Office of State and Local Government Coordination and Preparedness (OSLGCP), which was headed by an executive director. During the reorganization of DHS undertaken by Secretary Chertoff in 2005, most of OSLGCP was moved to the Directorate of Preparedness, and the resulting unit was named the Office of Grants and Training. The executive director of the old office is titled Assistant Secretary for Grants and Training in the Office of Grants and Training.

<sup>80</sup> 15 U.S.C. § 2204(b).

## **Leadership Positions Under the Post-Katrina Act**

The new law abolishes certain statutory positions, establishes several new statutory positions, makes changes to some existing positions, and attaches qualifications to several top leadership positions. These developments are shown, in detail, in **Table 1**, and are discussed below.

**Table I. Statutory Changes to Emergency Management Leadership Positions Under P.L. 109-295**

Position/Location	General Provisions	Compensation/Rank
Administrator/FEMA	Establishes Administrator as a PAS position. <sup>81</sup> [§ 611(11), new HSA Sec. 503(c), 120 Stat. 1397] The Administrator is to be appointed “from among individuals who have ... a demonstrated ability in and knowledge of emergency management and homeland security; and ... not less than 5 years of executive leadership and management experience in the public or private sector.” [§ 611(11), new HSA sec. 503(c)(2), 120 Stat. 1397; § 612(b)(1), 120 Stat. 1410]	Executive Schedule Level II [§ 612(a)(1), 120 Stat. 1410].
Deputy Administrators/ FEMA	Establishes not more than four such PAS positions. [§ 611(13), new HSA Sec. 514(a), 120 Stat. 1409]	Executive Schedule Level III [§ 612 (a)(2), 120 Stat. 1410].
Regional Administrators/ FEMA	Establishes 10 Regional Administrator positions, to which appointments are made by the Administrator “after consulting with State, local, and tribal government officials in the region.” Regional Administrators are to be appointed “from among individuals who have a demonstrated ability in and knowledge of emergency management and homeland security.... the Administrator shall consider the familiarity of an individual with the geographical area and demographic characteristics of the population” served by the office. The FEMA Administrator must require that each Regional Administrator undergo specified training and participate in exercises. [§ 611(13), new HSA Secs. 507(b), 507(c)(3), 120 Stat. 1401, 1402]	Senior Executive Service [§ 611(13), new HSA Sec. 507(b)(1), 120 Stat. 1401]
Assistant Secretary for Cybersecurity and Communications/DHS	Establishes as a statutory position. [§ 611(13), new HSA Sec. 514(b), 120 Stat. 1409] Authority to appoint the Assistant Secretary is not specified.	Not specified.
U.S. Fire Administrator/FEMA	Specifies that the U.S. Fire Administrator “shall have a rank equivalent to an assistant secretary of the Department.” [§ 611(13), new HSA Sec. 514(c), 120 Stat. 1409]	No change from current law. (15 U.S.C. § 2204(b))
Chief Medical Officer/DHS	Establishes as a statutory PAS position. [§ 611(13), new HSA Sec. 516 , 120 Stat. 1409] “The individual appointed as Chief Medical Officer shall possess a demonstrated ability in and knowledge of medicine and public health.”	Executive Schedule Level IV [§ 612(a)(3), 120 Stat. 1410]
Under Secretary for Emergency Preparedness and Response/DHS (previously retitled as the Under Secretary for Federal Emergency Management)	Abolishes position. [§ 612(b)(1), 120 Stat. 1410]	N/A

<sup>81</sup> PAS means Presidentially appointed, with Senate advice and consent.

Position/Location	General Provisions	Compensation/Rank
Under Secretary for Information Analysis and Infrastructure Protection/DHS (previously retitled as the Under Secretary for Preparedness)	It could be argued that a provision of the Post-Katrina Act abolished this position, upon the statute’s enactment, on Oct. 4, 2006. [§ 612(b)(2), 120 Stat. 1410] However, another provision of the Post-Katrina Act, a provision of the Homeland Security Act, and a provision of the Department of Homeland Security Appropriations Act for 2007, within which the Post-Katrina Act is nested, draw into question whether or not it was the intention of Congress to eliminate this position. (See text for more information.)	N/A
Disability Coordinator/FEMA	Establishes position, to which appointments are to be made by the Administrator after “consultation with organizations representing individuals with disabilities, the National Council on Disabilities, and the Interagency Coordinating Council on Preparedness and Individuals with Disabilities.” [§ 611(13), new HSA Sec. 513(a), 120 Stat. 1408]	Not specified.
Members, National Advisory Council/FEMA	The Secretary is to establish the National Advisory Council, and the Administrator is to appoint its members for 3-year fixed terms. Its membership is to include, as much as possible, a geographic and substantive cross section of officials, emergency managers, and emergency responders from state and local governments, the private sector, and non-governmental organizations, including individuals with specified affiliations, experience, and interests. [§ 611(13), new HSA Sec. 508(c), 120 Stat. 1403]	Not specified.
Members, Regional Advisory Councils/FEMA	“Each Regional Administrator shall establish a Regional Advisory Council.... 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.” [§ 611(13), new HSA Sec. 507(e), 120 Stat. 1402]	Not specified.
Members, Regional Office Strike Teams/FEMA	“In coordination with other relevant Federal agencies, each Regional Administrator shall oversee multi-agency strike teams ... 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.... 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.” [§ 611(13), new HSA Sec. 507(f), 120 Stat. 1402] (These teams, as well as national-level emergency support and response teams, are authorized under § 303 of the Stafford Act, as amended by § 633 of this act. [42 U.S.C. § 5144])	Not specified.
Members, Regional Emergency Communications Coordination Working Group	Groups are to include specified federal, state, and local officials. [§ 671(b), new HSA Sec. 1805(b), 120 Stat. 1439]	Not specified
Director, Recovery Office	The Administrator may establish Gulf region recovery offices and appoint their directors. [§ 638(b), 120 Stat. 1422]	Not specified.
Small State and Rural Advocate/FEMA	The President is to designate a Small State and Rural Advocate in FEMA. [§ 689g, 120 Stat. 1453]	Not specified.
Director, Office of Emergency Communications	This director is to report to the Assistant Secretary for Cybersecurity and Communications. The authority to make appointments to this office is not specified. [§ 671(b), new HSA Sec. 1801(b), 120 Stat. 1433]	Not specified.

## **Abolished Positions**

The Post-Katrina Act abolishes the position of Under Secretary for Federal Emergency Management, as of March 31, 2007, and replaces it with the position of FEMA Administrator.<sup>82</sup>

It could be argued that the act also abolished the position of Under Secretary for Preparedness, upon the statute's enactment, on October 4, 2006, by striking a subsection of HSA that established the Under Secretary for Information Analysis and Infrastructure Protection (IAIP).<sup>83</sup> This argument rests on an understanding of the evolution of the Under Secretary for IAIP into the Under Secretary for Preparedness. During the reorganizations of DHS undertaken by Secretary Chertoff in 2005 and 2006, the portfolio of the Under Secretary for IAIP was changed, and the position was renamed as Under Secretary for Preparedness.<sup>84</sup> According to this argument, striking the provision establishing the underlying position—Under Secretary for IAIP—would eliminate the position into which it evolved, the Under Secretary for Preparedness.

However, a provision of HSA, an appropriations act provision, and another provision of the Post-Katrina Act draw into question whether or not it was the intention of Congress to eliminate this position. The Under Secretary for IAIP was established as an advice and consent position by two provisions of HSA, and one of these is unaffected by the new law.<sup>85</sup> Arguably the position continues to exist by virtue of this provision, even if the other provision is stricken. In addition, it could be argued that a provision of the Department of Homeland Security Appropriations Act for 2007, within which the Post-Katrina Act is nested, envisions a continuation of that office. It provides for “salaries and expenses of the immediate Office of the Under Secretary for Preparedness ....”<sup>86</sup> Finally, the Post-Katrina Act charges the Under Secretary of Preparedness with taking “such actions as are necessary to provide for the orderly implementation of any amendment under” the subtitle reorganizing FEMA.<sup>87</sup> If the position of Under Secretary for Preparedness had been eliminated upon enactment, it seemingly would not be possible to follow the dictates of this section.<sup>88</sup>

## **New Positions**

Under the Post-Katrina Act, the status of the Administrator position as head of the newly configured FEMA will be greater than the Under Secretary for Federal Emergency Management or the Under Secretary for Preparedness. Consequently, the agency will have greater status within DHS than it did prior to the act. Whereas the under secretaries have been compensated at Level

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<sup>82</sup> P.L. 109-295, § 612(b)(1) and § 614(b)(5), 120 Stat. 1410, 1411.

<sup>83</sup> P.L. 109-295, § 612(b)(2) and § 614, 120 Stat. 1410, 1411. The former section strikes the provision, and the latter establishes the effective date for the act's provisions.

<sup>84</sup> U.S. Department of Homeland Security, letter from Secretary Michael Chertoff to the Honorable Christopher Cox, Chairman, Committee on Homeland Security, U.S. House of Representatives, Washington, DC, July 13, 2005. In the letter, the Secretary stated, “I intend to separate preparedness resources from response and recovery and combine them in the IAIP Directorate, which will be renamed the Directorate for Preparedness” (p. 4).

<sup>85</sup> 6 U.S.C. § 201(a).

<sup>86</sup> P.L. 109-295, Title III, 120 Stat. 1368.

<sup>87</sup> P.L. 109-295, § 612(f)(1), 120 Stat. 1411.

<sup>88</sup> If the Under Secretary for Preparedness position continues to exist, it is unclear whether or not it will be transferred, together with the Preparedness Directorate, into FEMA.

III of the Executive Schedule, the Administrator's compensation will be at Level II, the deputy secretary level.<sup>89</sup> In addition, the Administrator will report directly to the Secretary, rather than through another department official, such as the Deputy Secretary of DHS.<sup>90</sup> The new statute also provides that the Administrator is to be "the principal advisor to the President, the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States," and he or she is to present, to these parties, the range of options when presenting such advice.<sup>91</sup> The act also permits the President to designate the Administrator as a Cabinet member in the event of "natural disasters, acts of terror, or other man-made disasters."<sup>92</sup> Individuals who are selected for the position of Administrator, who are to be appointed by the President, by and with the advice and consent of the Senate, must meet certain qualifications. (See "Qualifications," below.)

The Post-Katrina Act establishes not more than four deputy administrator positions to assist the Administrator, without specified responsibilities.<sup>93</sup> Appointments to these positions are to be made by the President by and with the advice and consent of the Senate. The act also establishes, within FEMA, the positions of Disability Coordinator<sup>94</sup> and National Advisory Council members,<sup>95</sup> to which appointments are to be made by the Administrator. At the regional level, the act provides for the selection of Regional Advisory Council, Regional Office Strike Team, and Regional Emergency Communications Coordination Working Group members.<sup>96</sup> The act also provides for the establishment of specified Gulf region recovery offices, each with an executive director appointed by the Administrator.<sup>97</sup> In addition, the President is to designate, in FEMA, a Small State and Rural Advocate, newly established by the Post-Katrina Act.<sup>98</sup> The Advocate is to participate in the disaster declaration process and assist small states in the preparation of their emergency or disaster requests, among other activities at the Administrator's discretion. The act also establishes a director of the newly created Office of Emergency Communications, but does not specify the appointing authority for the position.<sup>99</sup>

## **Changes to Existing Positions**

The Post-Katrina Act changes several positions that have already been administratively or statutorily established in DHS. FEMA Regional Administrators were first established when FEMA was created in 1978.<sup>100</sup> The Post-Katrina Act amends HSA to establish 10 Regional

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<sup>89</sup> P.L. 109-295, § 612(a)(1), 120 Stat. 1410.

<sup>90</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(c)(3), 120 Stat. 1397.

<sup>91</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(c)(4)(A), 120 Stat. 1397. Consistent with this role, the Administrator is mandated to provide advice to these parties when advice is requested. [new HSA Sec. 503(c)(4)(B), 120 Stat. 1398]

<sup>92</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(c)(5), 120 Stat. 1398. It is unclear what, if any, new authority this provision conveys, since the President already establishes the membership of his Cabinet. Nonetheless, the provision signals Congress's intention that the FEMA Director should be part of the upper echelon of federal decision-making during disasters.

<sup>93</sup> P.L. 109-295, § 611(13), new HSA Sec. 514(a), 120 Stat. 1409.

<sup>94</sup> P.L. 109-295, § 611(13), new HSA Sec. 513, 120 Stat. 1408.

<sup>95</sup> P.L. 109-295, § 611(13), new HSA Sec. 508, 120 Stat. 1403.

<sup>96</sup> P.L. 109-295, § 611(13), new HSA Sec. 507(e)-(f), 120 Stat. 1402; § 671(b), new HSA Sec. 1805(b), 120 Stat. 1439.

<sup>97</sup> P.L. 109-295, § 638(b), 120 Stat. 1422.

<sup>98</sup> P.L. 109-295, § 689g, 120 Stat. 1453.

<sup>99</sup> P.L. 109-295, § 671(b), new HSA Sec. 1801(b), 120 Stat. 1433.

<sup>100</sup> 5 U.S.C. App., Reorganization Plan No. 3 of 1978, §105.

Administrators who are to carry out specified responsibilities and to incorporate certain features into the regional offices.<sup>101</sup> The Regional Administrators are to be appointed by the FEMA Administrator, and they must meet specified qualifications.<sup>102</sup> (See “Qualifications,” below.) As previously noted, an Assistant Secretary for Cyber Security and Telecommunications position was administratively created by Secretary Chertoff as part of the 2005 DHS reorganization.<sup>103</sup> The Post-Katrina Act establishes, in statute, a similarly titled Assistant Secretary for Cybersecurity and Communications, without specifying the appointing authority for this position. A Chief Medical Officer, also administratively created during the 2005 DHS reorganization, was established in statute as an advice and consent position upon enactment of the Post-Katrina Act.<sup>104</sup> The act also provides that the U.S. Fire Administrator “shall have a rank equivalent to an assistant secretary of the Department.”<sup>105</sup>

## Qualifications

Some of the Post-Katrina Act provisions that establish positions specify qualifications that appointees must meet. Three of the provisions include qualifications related to the appointee’s background and experience. Five provisions list geographic, professional, or other characteristics that must be considered when filling the positions.

The person who serves as FEMA Administrator must now meet specific background and experience requirements. The Administrator is to be appointed by the President “from among individuals who have ... a demonstrated ability in and knowledge of emergency management and homeland security; and ... not less than 5 years of executive leadership and management experience in the public or private sector.”<sup>106</sup> The President’s signing statement for the Post-Katrina Act regarding this requirement indicates a certain degree of contention, as the provision “purports to limit the qualifications of the pool of persons from whom the President may select the appointee in a manner that rules out a large portion of those persons best qualified by experience and knowledge to fill the office.”<sup>107</sup> The statement goes on to say that “The executive

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<sup>101</sup> P.L. 109-295, § 611(13), new HSA Sec. 507(a) and (c)-(f), 120 Stat. 1401.

<sup>102</sup> P.L. 109-295, § 611(13), new HSA Sec. 507(b), 120 Stat. 1401.

<sup>103</sup> U.S. Department of Homeland Security, “Secretary Michael Chertoff U.S. Department of Homeland Security Second Stage Review Remarks,” available at [http://www.dhs.gov/xnews/speeches/speech\\_0255.shtm](http://www.dhs.gov/xnews/speeches/speech_0255.shtm), accessed Oct. 18, 2006.

<sup>104</sup> P.L. 109-295, § 611(13), new HSA Sec. 516(a), 120 Stat. 1409. In a July 21, 2005, letter to the Speaker of the House, President George W. Bush proposed amendments to the FY2006 budget reconfiguring DHS budget accounts in alignment with Secretary Chertoff’s reorganization plan. (U.S. White House Office, letter to the Speaker of the House of Representatives, Washington, DC, July 22, 2005, accompanied by U.S. Office of Management and Budget, “Estimate No. 10, 109<sup>th</sup> Congress, 1<sup>st</sup> Session,” transmitted by Joshua B. Bolton, Director, Washington, DC, July 21, 2005, available at [http://www.whitehouse.gov/omb/budget/amendments/amendment\\_7\\_22\\_05.pdf](http://www.whitehouse.gov/omb/budget/amendments/amendment_7_22_05.pdf), accessed Nov. 17, 2006.) This proposal included provision for a CMO within a Directorate of Preparedness. Conferees on the DHS appropriations bill, “[f]or the most part,” accepted these amendments and, thereby, tacitly approved much of the Secretary’s reorganization plan for the department, including this provision. (U.S. Congress, Committee of conference, *Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2006, and for Other Purposes*, report to accompany H.R. 2360, 109<sup>th</sup> Cong., 1<sup>st</sup> sess. H.Rept. 109-241 (Washington: GPO, 2005), pp. 30, 63.)

<sup>105</sup> P.L. 109-295, § 611(13), new HSA Sec. 514(c), 120 Stat. 1409. This provision does not alter the compensation of the Administrator, which is already set at Level IV of the Executive Schedule (the assistant secretary level). [15 U.S.C. § 2204]

<sup>106</sup> P.L. 109-295, § 611(11), new HSA Sec. 503(c)(2), 120 Stat. 1397.

<sup>107</sup> U.S. President (G.W. Bush), “Statement on Signing the Department of Homeland Security Appropriations Act, (continued...)”

branch shall construe [the provision] in a manner consistent with the Appointments Clause of the Constitution.”<sup>108</sup>

The appointee to the position of Chief Medical Officer will also be required to meet certain professional requirements. The new law stipulates that this individual “shall possess a demonstrated ability in and knowledge of medicine and public health.”<sup>109</sup>

The provision establishing the Regional Administrators positions also sets out specific background and experience requirements. Regional Administrators are to be appointed by the Administrator “after consulting with State, local, and tribal government officials in the region.” They are to be appointed “from among individuals who have a demonstrated ability in and knowledge of emergency management and homeland security... [T]he Administrator [is to] consider the familiarity of an individual with the geographical area and demographic characteristics of the population” served by the office.<sup>110</sup>

The five positions that list geographic, professional, or other characteristics that must be considered when filling the positions are the Disability Coordinator, and members of the National Advisory Council, Regional Advisory Councils, Regional Office Strike Teams, and Regional Emergency Communications Coordination Working Groups. The specific requirements for these and other new positions set out in the statute are shown in **Table 1**.

## Personnel and Workforce

### Background<sup>111</sup>

The Post-Katrina Act includes various statutory authorities to enhance the management and capability of FEMA’s workforce, some of which are arguably similar or parallel to federal policies in place long before Hurricane Katrina struck. Among other provisions, the statute directs the FEMA Administrator to develop a strategic plan on human capital for shaping the agency’s workforce.<sup>112</sup> The Post-Katrina Act also authorizes the Administrator to pay recruitment and retention bonuses<sup>113</sup> to individuals in positions that are difficult to fill or for which the retention of

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2007,” *Weekly Compilation of Presidential Documents*, vol. 42, Oct. 4, 2006, pp. 1742-1743.

<sup>108</sup> Ibid. In response, several Members of Congress wrote to the President urging him to reconsider his position. [U.S. Congress, letter from Senators Mary L. Landrieu, Susan Collins, and Joseph Lieberman to President George W. Bush, Oct. 12, 2006]

<sup>109</sup> P.L. 109-295, § 611(13), new HSA Sec. 516(b), 120 Stat. 1409.

<sup>110</sup> P.L. 109-295, § 611(13), new HSA Sec. 507(b), 120 Stat. 1401.

<sup>111</sup> By Barbara Schwemle, Government and Finance Division.

<sup>112</sup> There is also statutory language applicable government-wide and codified under 5 U.S.C. §306 related to federal workforce strategic plans. Executive agency heads must submit a strategic plan for program activities to the Director of the Office of Management and Budget and Congress at least every three years. The plan must cover at least five years forward from the fiscal year in which it is submitted. Among other elements, a strategic plan must include a comprehensive mission statement on and the goals and objectives for an agency’s major functions and operations. The discussion of goals and objectives must describe the operational processes, skills and technology, human resources, capital resources, and information resources required to fulfill them.

<sup>113</sup> The provisions authorizing the FEMA Administrator to pay recruitment and retention bonuses are the same as those which govern the payment of such bonuses by executive agency heads under 5 U.S.C. §5753 and 5 U.S.C. §5754, (continued...)

an employee's considerable skills is essential and to provide for the professional development of employees by rotating them through various positions within DHS. Additionally, the act provides for the establishment of a Surge Capacity Force composed of individuals who will be deployed to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.<sup>114</sup>

These personnel authorities that enhance general federal personnel statutes principally result from the inadequacies in the number, deployment, and qualifications and training of FEMA employees that were exposed during the agency's response to the Hurricane Katrina and Rita disasters. In addition to these enhancements, new personnel or workforce authorities are summarized below. For information on homeland security education, training, and exercise programs, see the "Homeland Security Education Program" section of the report.

## **Strategic Human Capital Plan**

The FEMA Administrator is to develop a strategic plan on human capital that will be used to shape and improve the agency's workforce. The plan must be submitted to the Senate Committee on Homeland Security and Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines are appropriate within six months of enactment. The plan must include three elements: an analysis of gaps in the workforce, plans to address the gaps in critical skills and competencies, and a discussion of FEMA's Surge Capacity Force. The analysis of workforce gaps will assess the following three matters. First, the critical skills and competencies that FEMA will need to support its mission and responsibilities and to effectively manage the agency over the next 10 years. Second, the skills and competencies that the workforce currently possesses and projected trends given expected retirements and other attrition, Third, the staffing levels for each category of employee, including gaps that must be addressed to ensure that FEMA's workforce continues to possess the critical skills and competencies needed.

The strategic plan must also include the following four components: (1) goals and program objectives for recruiting and retaining employees including the use of recruitment and retention

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respectively. Several additional provisions apply to both types of bonuses under Chapter 57. For recruitment purposes, a bonus may be paid to General Schedule (GS) employees or to employees in a category approved by the Office of Personnel Management (OPM) at the request of the agency head; the required period of service cannot exceed four years; a bonus cannot exceed 25% of basic pay multiplied by the number of years in the required period of service, but, for reasons of a critical agency need, 50% may be substituted for 25%; a bonus cannot exceed 100% of an employee's annual basic pay rate at the beginning of the service period; a bonus may be paid before the individual enters on duty; and agencies must establish a plan for recruitment bonuses before paying them. For retention purposes, a bonus may be paid to GS employees or to employees in a category approved by OPM at the request of the agency head; a bonus may be paid to an individual employee or to a group of employees (based on a high risk that a significant portion of employees in the group would likely leave in the absence of a bonus); a bonus cannot exceed 25% of basic pay (for an individual employee) or 10% (for an employee as part of a group), but, for reasons of a critical agency need, bonuses of up to 50% of basic pay may be paid; and agencies must establish a plan for retention bonuses before paying them.

<sup>114</sup> Prior to Hurricane Katrina, FEMA used two groups of temporary employees to meet the unexpected (surge) needs of catastrophes: Disaster Assistance Employees (DAEs) and Cadre-On-Response Employees (CORE). The DAE detail was normally a brief deployment to disaster sites while the CORE detail lasted up to four years. A third group of temporary employees known as Disaster Temporary Employees (DTEs) was subsequently created to augment the DAEs. All three groups were substantially augmented by local hires at the disaster sites associated with Hurricane Katrina.

bonuses; (2) specific strategies and program objectives to develop, train, deploy, compensate, motivate, and retain employees; (3) specific strategies to recruit staff with experience from serving in multiple state agencies responsible for emergency management; and (4) specific strategies to develop, train, and coordinate and rapidly deploy a Surge Capacity Force. The plan of the Force must provide details on the number and qualifications or credentials of DHS and non-DHS employees serving in the Force; the training the members of the Force experienced the previous year; assessments as to whether the Force is able to perform its responsibilities in all disasters, including catastrophic incidents; and descriptions of additional authorities or resources needed to address Surge Capacity Force deficiencies.

The strategic plan on human capital must be updated annually by May 1 of each year, 2007 through 2012, and submitted to the appropriate congressional committees. The Administrator's assessment, based on results-oriented performance measures, of the department's and agency's progress is to be included in the plan.<sup>115</sup>

## **Career Paths**

The Administrator must ensure that appropriate career paths for the agency's employees are identified. The education, training, experience, and assignments required for employees to progress within FEMA must be included in the information that the Administrator is required to publish on the career paths. All employees must be provided with the opportunity to acquire the education, training, and experience, and as appropriate, participate in the Rotation Program (established under §622(a), discussed below) that will allow them to qualify for promotion. The policy that the Administrator is required to establish on assigning employees to positions must balance the needs of personnel to serve in positions that enhance their careers and those of the agency to have employees serve in a position for a period of time that is sufficient to carry out their duties and to be held responsible and accountable for actions taken.<sup>116</sup>

## **Recruitment**

The FEMA Administrator is authorized to pay a bonus of up to 25% of basic pay to recruit individuals for positions that would otherwise be difficult to fill in the absence of such a payment. Bonuses will be paid in accordance with the strategic human capital plan. The Administrator is to determine the amount of the bonus which is not part of basic pay and will be paid in a lump sum. An employee receiving a bonus must enter into a written service agreement with FEMA that must include the required period of service to be completed, the conditions under which the agreement may be terminated before completion of the service period, and the effect of the termination. Individuals in any of three specified types of positions [those appointed by the President and confirmed by the Senate, those in the Senior Executive Service as noncareer appointees, or those excepted from the competitive service on the basis of being confidential, policy-determining, policy-making, or policy-advocating] are not eligible to receive recruitment bonuses. The authority to pay bonuses ends five years after the enactment of Chapter 101.

FEMA must submit annual reports to the Senate Committee on Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines appropriate

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<sup>115</sup> P.L. 109-295, §621(a), 120 Stat. 1412-1413, new Chapt. 101 to Part III, Subpart I, 5 U.S.C. 10102.

<sup>116</sup> P.L. 109-295, §621(a), 120 Stat. 1413, new Chapt. 101 to Part III, Subpart I, 5 U.S.C. 10103.

on the operation of the bonus program for each of the five years that it will be in effect. Each report is to include the number and dollar amount of bonuses paid to individuals holding positions with each pay grade, pay level, or other pay classification, and a determination of the extent to which the bonuses fulfilled their purpose.<sup>117</sup>

## **Retention**

The FEMA Administrator is authorized to pay a bonus of up to 25% of basic pay to retain an employee whose qualifications or a special need of FEMA makes retention of that person essential. The bonus will be paid on a case-by-case basis and the Administrator must determine that the employee would be likely to leave federal service or take a different position in the federal service in the absence of such a payment. The Administrator is to determine the amount of the bonus, which cannot be part of basic pay and is to be paid in a lump sum. A retention bonus may not be based on any period of service which is the basis for a recruitment bonus.

An employee receiving a bonus must enter into a written service agreement with FEMA that includes the following provisions:

- the required period of service to be completed,
- the conditions under which the agreement may be terminated before completion of the service period, and,
- the effect of the termination.

Individuals in three types of positions [those appointed by the President and confirmed by the Senate, those in the Senior Executive Service as noncareer appointees, or those excepted from the competitive service on the basis of being confidential, policy-determining, policy-making, or policy-advocating] are not eligible to receive retention bonuses. The authority to pay bonuses ends five years after enactment.

The Office of Personnel Management must submit annual reports to the Senate Committee on Homeland Security and Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines appropriate on the operation of the bonus program for each of the five years that it will be in effect. Each report is to include the number and dollar amount of bonuses paid to individuals holding positions with each pay grade, pay level, or other pay classification, and a determination of the extent to which the bonuses fulfilled their purpose.<sup>118</sup>

## **Vacancy Rate Reports**

The Administrator must prepare a report on vacant positions within FEMA and submit, within three months of enactment, the report to the Senate Committee on Homeland Security and Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines appropriate. The report must include data on vacancies by category of positions, the number of applicants for positions which have been announced publicly, the length

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<sup>117</sup> P.L. 109-295, §621(a), 120 Stat. 1414, new Chapt. 101 to Part III, Subpart I, 5 U.S.C. 10104.

<sup>118</sup> P.L. 109-295, §621(a), 120 Stat. 1414-1415, new Chapt. 101 to Part III, Subpart I, 5 U.S.C. 10105.

of time the positions have been vacant, and the time required to fill vacancies. It will also include a plan for reducing both the time required to fill positions and the number of vacant positions, or those anticipated to be vacant. Updates of the report must be submitted to the committees every three months over the next five years and include the Administrator's assessment of FEMA's progress in filling vacant positions.<sup>119</sup>

## **Department Rotation Program**

The Secretary is authorized to establish a program that will rotate employees through various DHS positions. The program is to be in accordance with the department's Human Capital Strategic Plan and established within 180 days after enactment. Under the program, DHS employees in mid-level and senior-level positions will have the opportunity to broaden their knowledge by being exposed to various components of the department. The program is to build professional relationships and contacts throughout the department, provide employees with professional opportunities, incorporate the department's human capital strategic plans and activities, address critical deficiencies, and describe efforts to recruit and retain employees and build succession planning. Rotational programs already in effect are to be incorporated, not replaced, by this new initiative.

The program will apply best practices, including those suggested by the Chief Human Capital Officers Council and will be administered by the Chief Human Capital Officer (CHCO) of DHS who is to exercise the following eight responsibilities:

- oversee the programs' establishment and implementation;
- establish a framework that supports the program's goals and promotes rotations across disciplines;
- establish eligibility requirements and select participants;
- establish incentives, including promotions and employment preferences, to encourage employees to participate;
- ensure that the program provides professional education and training;
- ensure that the program develops employees who are qualified and capable of being future leaders with broad experience within DHS;
- provide for greater interaction among DHS employees; and
- coordinate this initiative with rotational programs already operational in the department.

Employees participating in the program are to retain their allowances, privileges, rights, seniority, and other benefits. The Secretary must submit a report on the program's implementation to the Senate Committee on Homeland Security and Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines appropriate within 180 days after its establishment. The report is to describe the program, including its use in succession planning and leadership development, and document the number of participants.<sup>120</sup>

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<sup>119</sup> P.L. 109-295, §621(a), 120 Stat. 1416, new Chapt. 101 to Part III, Subpart I, 5 U.S.C. 10106.

<sup>120</sup> P.L. 109-295, §622(a), 120 Stat. 1416-1417, new HSA Sec. 844.

## **Surge Capacity Force**

The Administrator is directed to prepare a plan to establish and implement a Surge Capacity Force to be deployed to disaster sites, including those classified as catastrophic incidents. The plan must be submitted to the Senate Committee on Homeland Security and Governmental Affairs and those committees of the House of Representatives that the Speaker of the House determines appropriate within six months of enactment. Generally, individuals in the Force will be trained and deployed under Stafford Act authority. If the Administrator determines, however, that these existing authorities are inadequate, he or she will report to Congress on additional and necessary authorities.

DHS employees (who are not employees of FEMA) and employees of other federal departments and agencies will be designated by the Secretary to serve on the Force. Individuals capable of deploying rapidly and efficiently to disasters, and others who are full-time employees who are highly trained and credentialed to lead and manage, must be represented on the Force in sufficient numbers. Personnel serving on the Force must receive appropriate and continuous training on FEMA's programs and policies.

Force members are not counted against any personnel ceiling applicable to FEMA and may receive travel expenses (including per diem in lieu of subsistence, at rates authorized for other civilian federal employees) when participating in training related to their service on the Force. As soon as practicable after enactment, the Administrator is to develop and implement the procedures for designating employees who are DHS employees (but not employees of FEMA) and non-DHS federal employees to serve on the Force, along with other elements of the plan needed to establish that portion of the Force consisting of these individuals.<sup>121</sup>

## **National Preparedness**

### **Background<sup>122</sup>**

As enacted by Congress in November 2002, the HSA directed the Secretary of Homeland Security, through the FEMA Director, to improve the Nation's emergency preparedness and response capabilities. Two of the responsibilities set out in the statute were (1) "building a comprehensive national incident management system" to enable federal and non-federal agencies to respond to emergencies, and (2) "consolidating existing federal government emergency response plans into a single, coordinated national response plan."<sup>123</sup>

Within months of the enactment of the HSA, President Bush issued Homeland Security Presidential Directive-5 (HSPD-5), which required the DHS Secretary to develop and administer a National Incident Management System (NIMS) and a National Response Plan (NRP).<sup>124</sup> Soon thereafter, the President issued HSPD-8 as a "companion" to HSPD-5 in order to identify the

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<sup>121</sup> P.L. 109-295, §624, 120 Stat. 1419-1420.

<sup>122</sup> By Shawn Reese and Keith Bea, Government and Finance Division.

<sup>123</sup> P.L. 109-296, §502, 116 Stat. 2212, 6 U.S.C. 312.

<sup>124</sup> U.S. President (Bush), "Management of Domestic Incidents," Homeland Security Presidential Directive - 5, Feb. 28, 2003.

procedures to be followed by federal agencies in preparing for a terrorist attack or significant disaster.<sup>125</sup> HSPD-8 directed the Secretary to develop a national preparedness goal (NPG) applicable to catastrophes regardless of cause (“all-hazards”) and to establish readiness priorities and targets that balance the risk of the threats against the resources needed to prevent or respond to catastrophic events. The directive also required that the NPG include readiness metrics and support components that would facilitate assessment of the preparedness efforts for “major events, especially those involving acts of terrorism.”<sup>126</sup> Taken together, the requirements for these documents, plans, and components constituted an attempt to guide construction of a national preparedness system (NPS).

Roughly one year later, DHS released some of the elements of the nascent NPS. In March 2004, then-Secretary Ridge announced completion of the NIMS document, which established a framework to guide interagency and intergovernmental responses to complex emergencies.<sup>127</sup> The following December, DHS issued the *National Response Plan*, which assigns specific emergency response functions and activities to federal agencies and the American Red Cross.<sup>128</sup> During 2004 and 2005, DHS released draft, interim, and amended versions of the component documents that provide specific directions or expectations for the NPS. These components included:

- National Preparedness Goal (not finalized as of 2006),
- National Preparedness Guidance,
- Planning Scenarios (15),
- Universal Task List, and
- Target Capabilities List.

These federal mandates, plans, and directives comprise essential elements of the national system or approach for emergency preparedness and response. In addition, state governments have authorized a range of activities and practices to improve their preparedness capabilities;<sup>129</sup> non-governmental groups have developed assessment systems and preparedness standards towards which agencies aspire.<sup>130</sup> As a supplement to these non-federal efforts, DHS and other federal entities provide financial and technical assistance to state, local, and tribal governments. The Office for Grants and Training (G&T) within DHS (to be transferred from the Preparedness Directorate to FEMA, as summarized in the first section of this report) administers the majority of grants and training provided by DHS. These include such grants as the State Homeland Security Grant Program, the Law Enforcement Terrorism Prevention Program, the Urban Area Security Initiative.<sup>131</sup> All of these efforts, federal and non-federal, are intended to enhance the Nation’s

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<sup>125</sup> U.S. President (Bush), “National Preparedness,” Homeland Security Presidential Directive 8, Dec. 17, 2003.

<sup>126</sup> *Ibid.*, Sec. 6.

<sup>127</sup> U.S. Department of Homeland Security, *National Incident Management System* (Washington: 2004), available at <http://www.dhs.gov/xlibrary/assets/NIMS-90-web.pdf>, visited Nov. 1, 2007.

<sup>128</sup> U.S. Department of Homeland Security, *National Response Plan* (Washington: 2004), available at [http://www.dhs.gov/xprepresp/committees/editorial\\_0566.shtm](http://www.dhs.gov/xprepresp/committees/editorial_0566.shtm), visited Nov. 1, 2007.

<sup>129</sup> For summary information on state statutory policies for emergency preparedness, response, and recovery, see CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea, L. Cheryl Runyon, and Kae M. Warnock.

<sup>130</sup> See CRS Report RL32520, *Emergency Management Preparedness Standards: Overview and Options for Congress*, by Keith Bea.

<sup>131</sup> See CRS Report RL32348, *Selected Federal Homeland Security Assistance Programs: A Summary*, by Shawn (continued...)

preparedness capability for emergency response to terrorist attacks, natural disasters, and accidental events caused by human error or inattention.<sup>132</sup>

## **National Preparedness System**

The Post-Katrina Act requires that the President establish a national preparedness goal and national preparedness system (NPS) and complete, revise, and update (as necessary) the goal to ensure the nation's ability to prevent, respond to, recover from, and mitigate against disasters of all kinds, including acts of terrorism.<sup>133</sup> The goal must be consistent with NIMS and the NRP.<sup>134</sup> Additionally, the President, through the FEMA Administrator, is to establish a National Preparedness System that will enable the nation to meet the National Preparedness Goal. Components of the NPS must include:

- target capabilities and preparedness priorities,
- equipment and training standards,
- training and exercises,
- comprehensive assessment systems,
- a remedial action management program,
- a federal response capability inventory,
- reporting requirements, and
- federal preparedness.<sup>135</sup>

Existing documents, planning tools, and guidelines are to be used by the FEMA Administrator in establishing the NPG and the NPS to the extent practicable.<sup>136</sup> In implementing the NPS, the FEMA Administrator is to establish an assessment system to continually evaluate the preparedness capabilities of the nation. As part of this system, NPS elements must contain performance metrics and outcome measures.<sup>137</sup>

## **National Planning Scenarios**

The President, through the Administrator, is authorized (but not required) to include planning scenarios that reflect the risks presented by all-hazards in the NPS. The scenarios, if developed, are to provide a foundation for the development of target capabilities to meet the NPG and must

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<sup>132</sup> Summary information on NIMS, the NRP, and support components developed by the Administration is presented in CRS Report RL32803, *The National Preparedness System: Issues in the 109<sup>th</sup> Congress*, by Keith Bea.

<sup>133</sup> P.L. 109-295, §642, §643(a), 120 Stat. 1425. Definitions used in the statute that are applicable to the NPS are defined at P.L. 109-295, §641, 120 Stat. 1424.

<sup>134</sup> P.L. 109-295, §643(b), 120 Stat. 1425.

<sup>135</sup> P.L. 109-295, §644(a)(b), 120 Stat. 1425.

<sup>136</sup> P.L. 109-295, §654, 120 Stat. 1432.

<sup>137</sup> P.L. 109-295, §649, 120 Stat. 1428.

reflect the full range of “representative hazards” that require the identification and definition of tasks required to respond accordingly.<sup>138</sup>

## **Target Capabilities and Preparedness Priorities**

The Post-Katrina Act requires the FEMA Administrator, in coordination with others, to complete and update guidelines that are “specific, flexible, and measurable” to define risk-based target capabilities for federal, state, local, and tribal governments. As part of this process, DHS is to conduct terrorism risk assessments that include:

- variables of threat, vulnerability, and consequences related to population, areas of high population density, critical infrastructure, coastline, and international borders; and
- current threat assessments available from the DHS Chief Intelligence Officer.

The guidelines used in establishing the target capabilities are to include preparedness priorities that balance all-hazard risks with federal, state, local, and tribal resources to prevent, respond to, recover from, and mitigate against the hazards, and requires DHS to support the development of mutual aid agreements between states.<sup>139</sup>

In addition, the statute requires that the federal response capabilities inventory be accelerated and that a database be established. The statute also sets out the required contents of the inventory. With specific reference to Department of Defense (DOD) resources, the FEMA Administrator is to coordinate with the Secretary of Defense preparation of a list of organizations and functions within DOD that may be used to support civil authorities.<sup>140</sup>

## **Preparedness Grants**

The Post-Katrina Act amends the Stafford Act by requiring that emergency preparedness grants awarded by FEMA to the states be based upon plans that include a catastrophic incident annex modeled after the comparable annex in the NRP. In addition, the state plan annexes must be consistent with the NPG, NIMS, and other plans and strategies. Such state annexes must be developed in consultation with local officials, including regional commissions.<sup>141</sup> Also, the statute requires that within 15 months of enactment, and annually after that, the states that receive DHS preparedness assistance must report on the state’s preparedness level.<sup>142</sup>

The SAFE Ports Act authorizes the DHS Secretary to make available a risk assessment tool to be used to update required Maritime Security Plans,<sup>143</sup> and correspondingly modifies existing law by directing that grants be distributed based on risk rather than distribution parity.<sup>144</sup> The statute also

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<sup>138</sup> P.L. 109-295, §644(c), §645, 120 Stat. 1425.

<sup>139</sup> P.L. 109-295, §646, 120 Stat. 1426. This provision codifies into law language similar to that found in Section 6 of HSPD-8.

<sup>140</sup> P.L. 109-295, §651, 120 Stat. 1429.

<sup>141</sup> P.L. 109-295, §631, 120 Stat. 1420, amends Sec. 613 of the Stafford Act (42 U.S.C. 5196b).

<sup>142</sup> P.L. 109-295, §652(c), 120 Stat. 1430.

<sup>143</sup> P.L. 109-347, §111, amends 46 U.S.C. 70103(b).

<sup>144</sup> P.L. 109-347, §112, amends 46 U.S.C. 70107. The statute replaces the text “for making a fair and equitable (continued...)”

adds new eligible activities for which such grants may be used, including training or exercises for the prevention of and response to terrorist attacks, establishing terrorist threat information sharing mechanisms, and purchasing equipment needed to manage classified information. The DHS Secretary is to ensure that each grant is used to supplement and support the applicable Area Maritime Transportation Security Plan, and is coordinated with any applicable state or urban area homeland security plan.<sup>145</sup> Any entity subject to an Area Maritime Transportation Security Plan would be an eligible applicant.<sup>146</sup> The act establishes that the bases of the new port security grants will include national economic, energy, and strategic defense concerns identified through the most current risk assessments available.<sup>147</sup>

## **Federal Preparedness**

DHS is not the only federal agency responsible for the development, maintenance, and execution of the National Preparedness System (and its components). The Post-Katrina Act requires that the President ensure that each federal agency with NRP responsibilities have capabilities to:

- meet operational responsibilities of the national preparedness goal, including retaining personnel with decisionmaking authority, creating organizational structures that meet NRP missions, holding sufficient resources, and maintaining command and control communications;
- comply with NIMS;
- develop, train, and exercise response personnel; and
- develop operational plans and corresponding capabilities to respond to all-hazard incidents to ensure a coordinated federal response.<sup>148</sup>

The act identifies requirements for NRP operational plans and requires the President to ensure that the FEMA Administrator develops “prescribed NRP mission assignments” for federal agencies. Finally, the President is required to certify compliance of NRP requirements for every federal agency with NRP responsibilities. This provision does not limit the authority of the Secretary of Defense in command, control, or allocation of Department of Defense resources.<sup>149</sup>

## **Evacuations**

Although evacuation planning and exercises are not specifically identified as National Preparedness System components, they constitute an integral part of overall national preparedness. The Post-Katrina Act authorizes DHS to approve states’ and localities’ use of State Homeland Security Grant Program (SHSGP) and Urban Area Security Initiative (UASI) funding for establishing evacuation programs and plans, preparing for the execution of evacuation plans,

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allocation of funds” with “for the allocation of funds based on risk.”

<sup>145</sup> P.L. 109-347, §112 (f).

<sup>146</sup> P.L. 109-347, §112 (g).

<sup>147</sup> P.L. 109-347, §112 (d)-(e).

<sup>148</sup> P.L. 109-295, §653 (a), 120 Stat. 1430.

<sup>149</sup> P.L. 109-295, §653 (b-d), 120 Stat. 1431-1432.

and conducting evacuation exercises. The act also authorizes the FEMA Administrator to establish evacuation standards and requirements, and the Administrator is required to provide assistance (upon request) to a state, local, or tribal government to assist in the planning of evacuation of hospitals, nursing homes, and other institutions that house individuals with special needs.<sup>150</sup> In another provision, the statute requires that the FEMA Administrator, in coordination with appropriate federal departments, provide evacuation preparedness technical assistance to state, local, and tribal governments.<sup>151</sup>

Not only does the Post-Katrina Act address evacuation planning, but the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act) amends the Stafford Act by requiring FEMA to ensure state and local emergency preparedness operational plans (including evacuation plans) take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.<sup>152</sup> The PETS Act also authorizes the FEMA Administrator to provide funding to state and local governments for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that would accommodate people with their pets and service animals that would be used following an evacuation.<sup>153</sup>

## Education and Training

### Background<sup>154</sup>

National preparedness includes homeland security education and training and the associated standards. Federal homeland security education and training programs are varied and are provided by numerous federal agencies and departments. Among these departments and agencies are the Departments of Defense, Energy, Homeland Security, Health and Human Services, Justice, and Transportation, and the independent Environmental Protection Agency. Each department and agency provides specific homeland security education and training targeted to given categories of recipients. Training recipients include federal, state, and local government personnel, emergency responders, and private and public critical infrastructure personnel. The programs train individuals to prepare for, respond to, and recover from terrorist attacks. Some of the training programs are designed for personnel working in critical infrastructure sectors. Others are intended for personnel who are not identified with specific critical infrastructure but respond to terrorist attacks, regardless of location or target. Given the DHS mission to secure the nation from terrorist attacks, the department arguably has primary federal responsibility for providing homeland security education and training to federal, state, and local emergency responders. Accordingly, DHS provides education and training to a wide range of critical infrastructure

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<sup>150</sup> P.L. 109-295, §611, 120 Stat. 1407, new HSA Sec. 512. For more information, see CRS Report RL32348, *Selected Federal Homeland Security Assistance Programs: A Summary*, by Shawn Reese.

<sup>151</sup> P.L. 109-295, §632, 120 Stat. 1421.

<sup>152</sup> P.L. 109-308, §2, amends Sec. 613, Stafford Act (42 U.S.C. 5196b).

<sup>153</sup> P.L. 109-308, §3, amends Sec. 611, Stafford Act (42 U.S.C. 5196). Also of note, the appropriations legislation for DHS includes another provision concerning pets and animals. Section 536 of P.L. 109-295, which is part of the “General Provisions” title of the statute, requires that DHS consider the needs of individuals with pets and service animals in emergency management.

<sup>154</sup> By Shawn Reese, Government and Finance Division.

personnel, law enforcement and other emergency responders, government (federal, state, and local) personnel, and medical personnel.

DHS uses numerous agencies, offices, institutes, and partners to provide homeland security education and training for federal, state, and local government personnel. DHS training is provided at such facilities as the Federal Law Enforcement Training Center (FLETC), National Fire Academy (NFA), and Emergency Management Institute (EMI). FLETC is an interagency law enforcement center that provides training for federal law enforcement agencies. The Federal Emergency Management Agency (FEMA) administers EMI and NFA training activities. NFA trains fire and emergency response personnel to enhance their abilities to respond to fires and related emergencies. EMI's training program consists of resident and non-resident courses aimed at enhancing emergency management practices.<sup>155</sup>

The Office of Grants and Training (G&T) has the primary responsibility within DHS for preparing for potential terrorist attacks against the United States.<sup>156</sup> G&T provides terrorism and WMD training through DHS training institutions and partners that include the Training and Data Exchange Group (TRADE), the National Domestic Preparedness Consortium (NDPC), federal departments, and private and professional organizations.<sup>157</sup>

## **Education and Training Institutions**

The Post-Katrina Act transfers the Noble Training Center to the Center for Domestic Preparedness, which is part of NDPC.<sup>158</sup> The Noble Training Center trains emergency managers and public health professionals to respond to mass casualty events resulting from natural and man-made disasters. The act also directs the President to establish a National Exercise Simulation Center that will provide catastrophic event modeling and simulation training to elected officials, emergency managers, and emergency response providers at all levels of government.<sup>159</sup>

## **Homeland Security Training and Exercise Programs**

The Post-Katrina Act directs the FEMA Administrator to carry out training programs to implement the national preparedness goal, National Incident Management System, National Response Plan, and other related plans and strategies. This mandate is to be carried out “in coordination with the heads of appropriate federal agencies, the National Council on Disability, and the National Advisory Council.”<sup>160</sup> Moreover, when developing and implementing the national program, the FEMA Administrator is to “work with government training facilities,

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<sup>155</sup> U.S. Department of Homeland Security, “Working with DHS,” available at <http://www.dhs.gov/dhspublic/display?theme=82>, visited Oct. 27, 2004.

<sup>156</sup> P.L. 107-296 (Homeland Security Act of 2002), Sec. 430(d).

<sup>157</sup> U.S. Department of Homeland Security, Office for Domestic Preparedness, “Training Overview,” available at <http://www.ojp.usdoj.gov/odp/training.htm>, visited Oct. 27, 2004.

<sup>158</sup> P.L. 109-295, §663, 120 Stat. 1433. The Noble Training Center provides training to emergency managers and public health professionals for responding to a mass casualty event resulting from natural and man-made disasters. For more information, see U.S. Department of Homeland Security, Federal Emergency Management Agency, “Noble Training Center: Overview,” available at <http://training.fema.gov/emiweb/ntc/>. The CDP is affiliated with the Office of Grants and Training, which is one of the Preparedness Directorate Offices that will become part of the new FEMA.

<sup>159</sup> P.L. 109-295, §664, 120 Stat. 1433.

<sup>160</sup> P.L. 109-295, §648(a)(1), 120 Stat. 1427.

academic institutions, private organizations, and other entities that provide specialized, state-of-the-art training for emergency managers or emergency response providers;” and to “utilize, as appropriate, training courses provided by community colleges, State and local public safety academies, State and private universities, and other facilities.”<sup>161</sup>

The act also directs FEMA Administrator to 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;”<sup>162</sup> and it sets forth a number of requirements for the national exercise program. The program is to be “as realistic as practicable, based on current risk assessments, including credible threats, vulnerabilities, and consequences, and designed to stress the national preparedness system.” It is to be designed, to the extent practicable, “to simulate the partial or complete incapacitation of a State, local, or tribal government.” The program is to be carried out, as appropriate, “with a minimum degree of notice to involved parties regarding the timing and details of such exercises, consistent with safety considerations.” It is to be designed so as to “provide for systematic evaluation of readiness” and “to address the unique requirements of populations with special needs.”<sup>163</sup>

The national exercise program is to “provide assistance to State, local, and tribal governments with the design, implementation, and evaluation of exercises” that conform to the requirements noted above; that are “consistent with any applicable State, local, or tribal strategy or plan”; and that “provide for systematic evaluation of readiness.”<sup>164</sup>

Finally, the act requires the Administrator to perform periodic national level exercises “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 “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.” These national level exercises are to be performed at least biennially.<sup>165</sup>

The FEMA Administrator is also directed to carry out a national exercise program to test and evaluate the plans and systems. The program must be as realistic as practical, based on current risk assessments, and is to be designed to stress the National Preparedness System and to simulate the partial or complete incapacitation of a state, local, or tribal government. Other elements of the exercise program are that it is to be carried out with a minimum degree of notice to replicate a true emergency, be designed to provide for a systematic evaluation of preparedness, address the unique requirements of populations with special needs, be consistent with non-federal strategies or plans, and facilitate an evaluation of systematic preparedness.<sup>166</sup> The statute also requires that DHS conduct a national level exercise biennially to test and evaluate federal, state, local, and tribal government preparedness capabilities.<sup>167</sup>

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<sup>161</sup> P.L. 109-295, §648(a)(2), 120 Stat. 1427.

<sup>162</sup> P.L. 109-295, §648(b)(1), 120 Stat. 1427.

<sup>163</sup> P.L. 109-295, §648(b)(2)(A), 120 Stat. 1427.

<sup>164</sup> P.L. 109-295, §648(b)(2)(B), 120 Stat. 1428.

<sup>165</sup> P.L. 109-295, §648(b)(3), 120 Stat. 1428.

<sup>166</sup> P.L. 109-295, §648(b), 120 Stat. 1427.

<sup>167</sup> P.L. 109-295, §648(b)(3), 120 Stat. 1428.

The Post-Katrina Act also requires that the FEMA Administrator enter into agreements with organizations to provide funding to emergency response providers to provide education and training in life support first aid to children.<sup>168</sup>

For information on a training program focused on the prevention of fraud, waste, and abuse, see the “Oversight and Accountability” section of this report.

In addition to these exercise and training efforts to be carried out by FEMA, the Coast Guard is required to administer training and exercise programs. The SAFE Ports Act requires the DHS Secretary, in coordination with the Coast Guard Commandant, to establish a Port Security Training Program. This training program is to enhance the emergency preparedness capabilities of facility owners who are required to submit an Area Maritime Transportation Security Plan. The SAFE Port Act establishes training standards, and requires that the program be consistent with, and support, NIMS, NRP, the National Infrastructure Protection Plan, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other national preparedness initiatives. Finally, the SAFE Ports Act requires that vessel and facility security plans provide a strategy and time line for conducting training, and that the Coast Guard consult with other DHS agencies and federal departments.<sup>169</sup>

In conjunction with the Port Security Training Program, the DHS Secretary, in coordination with the Coast Guard Commandant, is to establish a Port Security Exercise Program. The purpose of this exercise program is to test and evaluate the capabilities of federal, state, and local governments, commercial seaport personnel and management, emergency response providers, and the private sector for all types of hazards. The DHS Secretary is to ensure that, on a periodic basis, port security exercises are conducted at facilities that are required to submit an Area Maritime Transportation Security Plan. Following an exercise, these facilities are to prepare an improvement plan.<sup>170</sup> The statute also sets out a requirement that exercises be scheduled and held at high-risk facilities.<sup>171</sup>

## **Homeland Security Education Program**

In addition to the aforementioned programs, as well as those presently administered by DHS, the Post-Katrina Act directs the DHS Secretary to establish a graduate-level Homeland Security Education Program in the National Capitol Region. This program is to provide homeland security education and training for senior federal, state, and local officials with homeland security and emergency management responsibilities. The program administrator is to use existing DHS homeland security educational resources, and attendees must meet commitment requirements in the statute.<sup>172</sup>

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<sup>168</sup> P.L. 109-295, §639, 120 Stat. 1423.

<sup>169</sup> P.L. 109-347, §113.

<sup>170</sup> P.L. 109-347, §114.

<sup>171</sup> P.L. 109-347, §115.

<sup>172</sup> P.L. 109-295, §623, 120 Stat. 1418, new HSA Sec. 845

## Equipment and Training Standards

The Post-Katrina Act requires that DHS, in coordination with other federal departments and the National Advisory Council, support the development, promulgation, and updating of national consensus voluntary standards for homeland security equipment and training.<sup>173</sup> The national voluntary consensus standards for equipment must meet certain specifications (consistency with the NPG and existing voluntary standards, consider threats not previously contemplated, and focus on attributes such as maximizing operability, efficiency, and safety, among others), while those for training are to be developed by the FEMA Administrator and be consistent with the training actually provided.<sup>174</sup>

## Stafford Act Assistance Amendments

### Background<sup>175</sup>

The Stafford Act authorizes federal assistance for state and local governments, certain nonprofit organizations, and families or individuals after state and local governments are overwhelmed by natural disasters and fires, floods, or explosions, regardless of cause. The statute gives the President the discretion to issue a major disaster or an emergency declaration in response to a gubernatorial request for assistance. Once the President issues a major disaster declaration, the following are among the types of assistance that may be provided (generally by FEMA in conjunction with support provided by other federal agencies) depending upon the scope of the disaster and the needs of the stricken community:

- technical assistance that saves lives and protects health;
- public assistance grants to repair or replace public infrastructure and facilities;
- cash grants to help families and individuals meet immediate and personal needs;
- financial aid for those made homeless by the disaster, or direct housing assistance in the form of trailers if temporary housing is unavailable;
- unemployment assistance;
- loans to communities suffering a loss of tax revenue;
- crisis counseling; and
- legal aid for low income victims.<sup>176</sup>

The Homeland Security Act of 2002 designates FEMA as the federal entity responsible for administering the Stafford Act.<sup>177</sup>

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<sup>173</sup> P.L. 109-295, §647, 120 Stat. 1426. For more information on homeland security standards and the processes involved in setting such standards, see CRS Report RL32520, *Emergency Management Preparedness Standards: Overview and Options for Congress*, by Keith Bea.

<sup>174</sup> P.L. 109-295, §647, 120 Stat. 1426.

<sup>175</sup> By Francis X. McCarthy and Keith Bea, Government and Finance Division.

<sup>176</sup> For a capsule summary of Stafford Act programs see CRS Report RL31734, *Federal Disaster Recovery Programs: Brief Summaries*, by Carolyn V. Torsell.

The Post-Katrina Act, along with other laws enacted by the 109<sup>th</sup> Congress, significantly amends the Stafford Act by clarifying some sections, waiving previous requirements, and re-working or creating new authorities. The changes to the act reflect experiences gained after Hurricane Katrina and the perceived need for legal remedies to make Stafford Act programs more flexible and responsive to events of a catastrophic nature. While expanding federal assistance authorities, the amendments seek to maintain state, local, and individual emergency management responsibility and accountability. In short, the Post-Katrina Act expands federal disaster assistance authority, but leaves the basic tenets of the Stafford Act (such as Presidential discretion, need for state requests, restrictions on eligibility) unchanged.

## **Expedited Federal Assistance**

The Post-Katrina Act authorizes the President to support precautionary evacuation measures and accelerate the delivery of federal emergency response and recovery aid after the President has issued a major disaster or emergency declaration. The amendments expand areas for technical and advisory assistance to address problems of delay and communication identified in Katrina response efforts. The President may provide federal assistance in the absence of a specific request from state officials. If unrequested federal assistance is provided, federal officials must attempt to coordinate the delivery of such aid with state officials; but they must not delay the delivery of needed aid because of the coordination efforts.<sup>178</sup>

## **Aid to Individuals**

The Post-Katrina Act addresses several policy areas that direct federal disaster assistance to individuals and families that encounter special circumstances or unique needs in the disaster environment. For example, the act provides authority for the provision of assistance to and accommodation for individuals with disabilities by including the definition of “individual with a disability” from the Americans With Disabilities Act of 1990 in the Stafford Act.<sup>179</sup> The statute also provides that durable medical equipment, such as that needed by those who are disabled, is an eligible form of essential assistance.<sup>180</sup> The statute also requires that the FEMA Administrator develop guidelines within 90 days of enactment concerning the accommodation of individuals with disabilities with regard to emergency facilities and equipment.<sup>181</sup>

The Post-Katrina Act also addresses concerns about federal aid to individuals by adding two new population classes—those disabled and those with limited English proficiency—to the discrimination prohibition provisions of the Stafford Act.<sup>182</sup> A related section of the statute amends the Stafford Act by directing FEMA to work with state and local governments to identify

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<sup>177</sup> Prior to enactment of the Post-Katrina Act, FEMA’s mandate to implement the Stafford Act was codified at 6 U.S.C. 317(a)(1). For more information on the Stafford Act see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

<sup>178</sup> P.L. 109-295, §681, Stafford Act amended Sec. 402 and 502, 120 Stat. 1444.

<sup>179</sup> P.L. 109-295, §688(3), Stafford Act amended Sec. 102, 120 Stat. 1448.

<sup>180</sup> P.L. 109-295, §689(b), Stafford Act amended Sec. 403, 120 Stat. 1449.

<sup>181</sup> P.L. 109-295, § 689(a). For more information see CRS Report RS22254, *The Americans with Disabilities Act and Emergency Preparedness and Response*, by Nancy Lee Jones.

<sup>182</sup> P.L. 109-295, §689a, Stafford Act amended Sec. 308, 120 Stat. 1448.

groups with limited English proficiency as well as individuals with disabilities or other special needs. The Director of FEMA must ensure that information is made available to such groups before and during a disaster, and must develop and maintain an informational clearing house of model language assistance as well as best practices for the state and local governments working with these individuals.<sup>183</sup>

The statute authorizes new types of assistance for those adversely affected by a major disaster. The President is authorized to provide transportation assistance to those displaced from their residences because of a major disaster or emergency, including that needed to move among alternative temporary shelters or to return to their original residence. The President is also authorized to provide case management services to state, local, or qualified private organizations that provide assistance to victims.<sup>184</sup> Also of note, the FEMA administrator is charged with taking specified actions to reunite separated families and help agencies locate missing family members; see the “The New FEMA Missions (Generally)” section of this report.

## **Housing Assistance**

The Post-Katrina Act expands FEMA authority to provide housing assistance after a major disaster through amendments to the Individual and Household Program (IHP) authorized by Section 408 of the Stafford Act.<sup>185</sup> First, in order to be considered eligible for housing assistance, victims of major disasters or emergencies who are disabled now must be unable to access or inhabit their homes, as opposed to the previous provision which required that residences generally be “rendered uninhabitable.”<sup>186</sup> Second, alternative housing sites provided to victims must meet physical accessibility requirements.<sup>187</sup> Third, the statute eliminates the statutory ceilings on financial aid to be provided for housing repair and replacement,<sup>188</sup> but does not eliminate the overall cap of \$25,000 that may be provided to each individual or household under Section 408.<sup>189</sup> Fourth, the amendments strike the reference to remote areas for FEMA’s authority to construct “permanent” housing and adds the phrase “semi-permanent.”<sup>190</sup> Fifth, the statute includes as newly eligible housing assistance costs both utility costs (excluding telephone service) and security deposits.<sup>191</sup>

The disposal of temporary housing units (generally referred to as “FEMA trailers”) is authorized by the statute if the trailers were owned by FEMA on October 4, 2006 (the date of enactment).

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<sup>183</sup> P.L. 109-295, §689e, new Stafford Act Sec. 616. Note that Title VI of the Stafford Act has not been amended by the Post Katrina Act to delete references to the FEMA “Director.”

<sup>184</sup> P.L. 109-295, §689f, new Stafford Act Sec. 425 and Sec. 426. Note that the SAFE Ports Act also added a new Sec. 425 to the Stafford Act (“Essential Service Providers”).

<sup>185</sup> 42 U.S.C. 5174.

<sup>186</sup> P.L. 109-295, §689(c), Stafford Act amended Sec. 408, 120 Stat. 1451.

<sup>187</sup> P.L. 109-295, §689(c), Stafford Act amended Sec. 408, 120 Stat. 1457.

<sup>188</sup> P.L. 109-295, §686, Stafford Act amended Sec. 408(c), 120 Stat. 1448.

<sup>189</sup> The Stafford Act provides for annual cost of living adjustments to the funding ceiling. Effective October 1, 2006, the maximum amount that may be provided to an individual or household under the IHP authority is \$28,200. See 71 *Federal Register* 59514.

<sup>190</sup> P.L. 109-295, §685, Stafford Act amended Sec. 408(c), 120 Stat. 1447.

<sup>191</sup> P.L. 109-295, §689d, Stafford Act amended Sec. 408, 120 Stat. 1452.

Such disposal activities are to be coordinated with the Department of the Interior or other federal agencies to facilitate the transfer of the units to tribal governments.<sup>192</sup>

The act also established a new initiative to improve the delivery of housing assistance to disaster victims. The Individuals and Households Pilot Program authorizes the President, through the FEMA Administrator, to increase the use of existing rental housing to provide temporary housing for victims of major disasters. Through the pilot program, which expires December 31, 2008, the Administrator is to provide for the repair and improvement of multi-family rental properties in disaster areas to increase the rental stock available to disaster victims in the immediate area.<sup>193</sup> The FEMA Administrator may enter into lease agreements with the owners of multi-family units to achieve FEMA's housing goals, with specified restrictions.

## **Public Assistance**

Public Assistance (PA) is the Stafford Act term that covers debris removal, public safety activities, emergency protective measures, and infrastructure repair in the wake of a disaster.

## **Definitions**

The Post-Katrina Act expands the universe of non-governmental institutions potentially eligible for assistance by amending Stafford Act definitions provisions and expanding the discretion of the President to determine whether a private nonprofit facility is eligible for Stafford Act Assistance. First, the statute deletes the requirement that eligible private non-profit facilities that serve specified functions (education, utility, irrigation, emergency, medical, rehabilitation, and temporary custodial care) provide “essential services of a governmental nature to the general public.”<sup>194</sup> The President now has the discretion to define the facilities that provide such services and the services do not necessarily have to be available only to the general public. Second, the Post-Katrina Act adds the allowance for a second tier of private nonprofit facilities potentially eligible for assistance (museums, zoos, performing arts facilities, community arts centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, and those that “provide health and safety services of a governmental nature”) as long as they provide “essential services of a governmental nature to the general public, as defined by the President.”<sup>195</sup> The second tier facilities identified in the statute are similar to those set out in the definitions of private nonprofit facilities identified in regulations, not the statute.<sup>196</sup>

Another definition change is the addition of the word “education” to the listing in the section that defines critical services, which enables private non-profit organizations to apply directly for a FEMA PA grant without having to apply for a Small Business Administration loan.<sup>197</sup>

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<sup>192</sup> P.L. 109-295, §689k, 120 Stat. 1456.

<sup>193</sup> P.L. 109-295, § 689i, 120 Stat. 1454.

<sup>194</sup> P.L. 109-295, § 688(1), Stafford Act amended Sec. 102(9), 120 Stat. 1448.

<sup>195</sup> *Ibid.*

<sup>196</sup> 44 CFR §206.221(e)(7).

<sup>197</sup> P.L. 109-295, § 689h, Stafford Act amended Sec. 406, 120 Stat. 1453.

## Grants and Loans

Another amendment in the Post-Katrina Act concerns the “in-lieu” grants authorized if a state or local government determines that a damaged facility should not be repaired or replaced. The SAFE Ports Act deletes the clause that authorized a 90% in-lieu grant (that is, 90% of the federal share of the estimate of repairing or replacing the facility) solely to areas with soil instability, and increased the amount of the grant that may be provided to any jurisdiction to 90%.<sup>198</sup> Also, the SAFE Ports Act amends the Stafford Act to authorize the President to expedite payments for debris removal to state or local governments or owners of qualified private non-profit facilities.<sup>199</sup>

Another form of Stafford Act assistance available to units of local government has been amended. The Community Disaster Loan (CDL) program provides loans to local governments that, because of a major disaster, suffer significant losses in tax revenue.<sup>200</sup>

## Pilot Program

Perhaps most significantly, the legislation authorizes the FEMA Administrator to conduct a PA pilot program intended to provide incentives for local and state government involvement in debris removal and the acceleration of repair work.<sup>201</sup> This program increases the federal share for alternate projects, provides for an increased federal share for debris removal for those local governments that have pre-approved debris and wreckage removal plans and contractual agreements in place prior to the event, and reimburse base wages for state and local and extra hires involved in this work. The pilot project calls on the Director to establish new procedures that provide a financial incentive for the recycling of debris. FEMA must report to the appropriate Congressional Committees on the effectiveness of this program by March 31, 2009.

## Mutual Aid

The Post-Katrina Act provides new authority for the FEMA Administrator with regard to state emergency assistance mutual aid agreements. For one, the Administrator is authorized to support the development of mutual aid agreements within the states.<sup>202</sup> Second, the Administrator has new authority to award grants to administer provisions of the Emergency Management Assistance Compact (EMAC).<sup>203</sup> The grants must be used for specified purposes, including implementing recommendations from recent hurricane after-action reports, credentialing and typing emergency responders, administering compact operations, and coordinating with federal and non-federal entities. Also, the FEMA Administrator is required to consult with the EMAC administrator to enhance coordination when assistance is requested.<sup>204</sup>

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<sup>198</sup> P.L. 109-347, §609, Stafford Act amended Sec. 406.

<sup>199</sup> P.L. 109-347, §610, Stafford Act amended Sec. 407.

<sup>200</sup> For background on CDL see CRS Report RL33174, *FEMA's Community Disaster Loan Program: Action in the 109<sup>th</sup> Congress*, by Nonna A. Noto and Steven Maguire.

<sup>201</sup> P.L. 109-295, §689j, 120 Stat. 1455.

<sup>202</sup> P.L. 109-295, §646(f). This provision is contained in the section that requires the development of target capabilities and preparedness priorities, but does not expressly link the support for mutual aid agreements to those tasks.

<sup>203</sup> For background, see CRS Report RS21227, *The Emergency Management Assistance Compact (EMAC): An Overview*, by Keith Bea.

<sup>204</sup> P.L. 109-295, §661.

## **Hazard Mitigation**

The Hazard Mitigation Grant Program (HMGP), authorized by Section 404 of the Stafford Act, authorizes the President to provide grants to states in which major disasters have been declared.<sup>205</sup> These funds must be used for activities that prevent future disasters or reduce their impact if they cannot be prevented. The Post-Katrina Act adjusts the percentage amounts for HMGP awards by establishing a scale that authorizes a higher percentage (15% of the total Stafford Act assistance in a state) for major disasters in which no more than \$2 billion is provided, to 10% for assistance that ranges from more than \$2 billion to \$10 billion, and 7.5% for major disasters that involve Stafford Act assistance from more than \$10 billion to \$35.3 billion.<sup>206</sup>

## **Administrative Changes**

The Post-Katrina Act provides the President discretion to appoint one Federal Coordinating Officer (FCO) for a multi-state event. The President also has the authority to appoint deputy FCO's as needed. Traditionally, one FCO has been named for each separate disaster declaration in each respective state.<sup>207</sup> The statute also amends the Stafford Act by requiring that the President designate a Small State and Rural Advocate in FEMA, who is to ensure that rural community needs are met in the declaration process and help small states prepare declaration requests, among other duties. The FEMA Administrator must report to Congress within 180 days of enactment on whether regulations for declarations meet the needs of smaller states and comply with Stafford Act prohibitions on the use of formulas in the declaration process.<sup>208</sup>

Other administrative changes concern the authority and capabilities of organizations charged with the response to the major disaster site. The Post-Katrina Act authorizes the President to establish at least three national response teams and others as deemed necessary (including regional response teams) and requires that FEMA team members possess essential capabilities, training skills, and equipment.<sup>209</sup> The SAFE Ports Act amends the Stafford Act by adding a new definition, "essential service providers" to the Stafford Act. Persons who are affiliated with municipal governments or private (profit and non-profit) entities who will help restore essential services to a stricken area are not to be impeded when they seek access to a disaster site. Federal agency heads must comply with applicable federal laws and regulations in implementing this provision.<sup>210</sup>

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<sup>205</sup> 42 U.S.C. 5170c.

<sup>206</sup> P.L. 109-295, §684, Stafford Act amended Sec. 404, 120 Stat. 1447.

<sup>207</sup> P.L. 109-295, §687, Stafford Act amended Sec. 302, 120 Stat. 1448.

<sup>208</sup> P.L. 109-295, §689g, new Stafford Act Sec. 326, 120 Stat. 1453.

<sup>209</sup> P.L. 109-295, §633, Stafford Act amended Sec. 303. Note that the statute refers to the "Director" of FEMA, whereas the position is identified elsewhere as "Administrator."

<sup>210</sup> P.L. 109-347, §607, new Stafford Act Sec. 425. Note that the Post Katrina Act also added a new Sec. 425 ("Transportation Assistance") to the Stafford Act.

## **Pets and Service Animals**

The Post-Katrina Act amends the IHP provisions of the Stafford Act by authorizing search, rescue, care, and shelter of pets and service animals as a type of essential assistance to be provided after a major disaster declaration.<sup>211</sup>

## **110<sup>th</sup> Congress Stafford Act Legislation**

### **H.R. 1144**

Congress is considering legislation that would affect the implementation of two Stafford Act provisions by creating exceptions to standard policy. H.R. 1144, the Hurricanes Katrina and Rita Federal Match Relief Act of 2007, would ease financial burdens on the states affected by the two named hurricanes by waiving cost share requirements in the Stafford Act and striking a loan repayment provision. While the legislation does not include amendments to the Stafford Act, it might arguably serve as a precedent for future congressional actions or might be modified to include Stafford changes.

First, the legislation would waive the Stafford Act cost share requirements for disaster assistance grants awarded because of damages caused by Hurricanes Katrina and Rita in Louisiana and Mississippi. The Stafford Act requires that the federal share of public assistance, debris removal, and emergency assistance grants be at least 75% of eligible costs. The President exercises discretionary authority on whether the federal share will be as much as 100% of eligible costs or in between 75% and 100%. Presidents have historically issued waivers of cost share requirements for the most severe catastrophes; Congress has not previously legislated such waivers.<sup>212</sup> In addition, the Stafford Act mandates that states provide 25% of the cost of the assistance provided to individuals and families. Again, Congress has not previously waived this cost share requirement. H.R. 1144 would result in the waiver of all major disaster cost share requirements for the specified states.

Second, besides the cost share waiver provision, H.R. 1144 would amend language previously approved by the 109<sup>th</sup> Congress (P.L. 109-88) which authorized higher levels of community development loans (CDL) than normally provided to stricken communities. The statute does not limit the CDL expansion to particular states or disasters. Such loans are provided to help communities provide essential services to citizens and are meant to replace taxes and revenues lost because of major disasters. As originally enacted by the 109<sup>th</sup> Congress, the statute required repayment of those loans. Under H.R. 1144 the repayment requirement would be stricken.

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<sup>211</sup> P.L. 109-295, §689(b), Stafford Act amended Sec. 403, 120 Stat. 1449. Identical emendations are included in the Pets Evacuation and Transportation Act of 2006, Sec. 4, P.L. 109-308.

<sup>212</sup> For historical information on cost share waivers, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

## Procurement

### Background<sup>213</sup>

Contractors played an essential role in the government's response, relief, and reconstruction activities following Hurricane Katrina. However, in the aftermath of the hurricane, several procurement practices came to the attention of Members of Congress, as well as the public. Chief among the issues raised were the dearth of advance (or pre-existing) contracts; the federal government's use of noncompetitive contracts; the proliferation of subcontracting tiers to five or six levels; and the concern that, despite a Stafford Act requirement that a preference be given to local firms for disaster recovery activities following an emergency or disaster, local companies were largely overlooked in Hurricane Katrina contracting. Legislation enacted by the 109<sup>th</sup> Congress addressed these procurement issues.

### Advance Contracting

The head of FEMA is required to prepare and submit a report to the appropriate congressional committees on recurring disaster response requirements (that is, goods and services) that can be contracted for in advance and those that cannot be contracted for in advance. The Administrator is to use the information compiled for this report in developing and implementing a contracting strategy for FEMA that involves advance contracts and that takes into consideration the local preference set out in Section 307 of the Stafford Act, as amended by P.L. 109-295.<sup>214</sup>

### Subcontracting Tiers

The Secretary of Homeland Security is required to promulgate regulations designed to limit the use of subcontractors or subcontracting tiers on any cost-reimbursement contract, task order, or delivery order that exceeds the simplified acquisition threshold and that facilitates response to or recovery from a natural or man-made disaster, or a terrorist incident.<sup>215</sup> At a minimum, the regulations are to preclude a contractor from using subcontracts for more than 65% of the cost of the contract, unless the Secretary determines the requirement is not feasible or practicable.<sup>216</sup>

### Using Local Firms, Organizations, and Individuals

Agencies that use non-local firms for debris removal, distribution of supplies, and other recovery or reconstruction activities must justify, in writing, the use of non-local companies.<sup>217</sup> Additionally, following the declaration of an emergency or a major disaster, agencies involved in response, relief, and reconstruction activities are required, unless it is neither feasible nor

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<sup>213</sup> Authored by Elaine Halchin, Government and Finance Division.

<sup>214</sup> P.L. 109-295, § 691, 120 Stat. 1457-1458.

<sup>215</sup> The simplified acquisition threshold is \$100,000. (FAR 2.101.) The FAR is the *Federal Acquisition Regulation*, found at <http://www.acquisition.gov/far/index.html>.

<sup>216</sup> P.L. 109-295, § 692, 120 Stat. 1458.

<sup>217</sup> In amending Sec. 307 of the Stafford Act, Sec. 694 of P.L. 109-295 (120 Stat. 1459-1460) retains Sec. 307, as amended by P.L. 109-218, and adds provisions that address the implementation of the section.

practicable, to transition such work from existing contracts to contracts with local firms, organizations, and individuals. This provision does not require an agency to breach or renegotiate a contract in effect before a disaster or emergency occurs.<sup>218</sup> Agency heads are required to develop requirements to facilitate compliance with Section 307.<sup>219</sup>

## **Noncompetitive Contracts**

“Noncompetitive contracts,” which are popularly known as “sole source” or “no-bid” contracts, are contracts that have been awarded under other than full and open competition.<sup>220</sup> The Post-Katrina Act requires the Secretary of Homeland Security to draft regulations to limit to 150 days the duration of any noncompetitive contract that is needed to meet an urgent and compelling need, that is in an amount greater than the simplified acquisition threshold, and that facilitates response to or recovery from a natural or man-made disaster or a terrorist incident.<sup>221</sup> For each noncompetitive disaster assistance contract awarded by FEMA, the Administrator is required to submit a report to Congress.<sup>222</sup>

## **Contractor Registry**

The Post-Katrina Act requires that the FEMA Administrator establish and maintain, on the agency’s website, a registry of companies that remove debris, distribute supplies, or carry out reconstruction and other disaster relief activities. Inclusion in the registry is voluntary, and contractors will provide information about their businesses for the registry. Federal agencies are required to consult the registry when conducting acquisition planning for the specified emergency relief activities.<sup>223</sup>

## **Oversight and Accountability**

### **Background<sup>224</sup>**

In the aftermath of the Gulf Coast hurricanes in 2005 Congress passed legislation that, among other purposes, funded oversight activities of the DHS Office of Inspector General (OIG).<sup>225</sup> Such federal offices, which exist in nearly 60 federal establishments and designated entities, exercise independence to carry out their mandate to combat waste, fraud, and abuse.<sup>226</sup> As part of the

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<sup>218</sup> P.L. 109-295, § 694, 120 Stat. 1459-1460; Stafford Act new Sec. 307.

<sup>219</sup> P.L. 109-347, § 611, 120 Stat. 1387-1388.

<sup>220</sup> See FAR Subpart 6.3 for the seven circumstances under which other than full and open competition may be permitted and the procedures that govern the use of this type of procurement.

<sup>221</sup> P.L. 109-295, § 695, 120 Stat. 1460.

<sup>222</sup> P.L. 109-295, § 691(d), 120 Stat. 1458.

<sup>223</sup> P.L. 109-295, § 697; 120 Stat. 1461-1462. While FEMA had established such a registry in the fall of 2006, the Post-Katrina Act statutorily establishes the registry and broadens its scope.

<sup>224</sup> By Frederick M. Kaiser, Government and Finance Division.

<sup>225</sup> P.L. 109-62, 119 Stat. 1991. The statute provided that \$15 million would be provided to the DHS OIG, appropriated a total of over \$50 billion for disaster assistance in the Gulf Coast, and mandated reporting requirements.

<sup>226</sup> 5 U.S.C. Appendix. IG responsibilities include conducting and supervising audits and investigations; providing (continued...)

continuing effort to oversee the expenditure of federal funds in the Gulf Coast, the Inspector General (IG) for DHS has created an in-house position of assistant inspector general specializing in the Hurricane Katrina recovery effort and has taken the lead in coordinating efforts among peers in relevant agencies by means of a “Homeland Security Roundtable.” In addition, the Department of Justice has established a Hurricane Katrina Contract Task Force, which includes relevant offices of inspector general, to coordinate investigations and audits in this matter. The prevention of fraud, waste, and abuse in the Gulf Coast recovery effort remains a major congressional concern.

## **Oversight and Accountability of Federal Disaster Expenditures**

The Post-Katrina Act authorizes the Administrator to 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 relevant oversight of activities.”<sup>227</sup> Agencies are authorized to use funds for specified purposes, including auditing expenditures, assessing agency management control procedures, and reviewing contracts, among others. Funds cannot be used to fund agency oversight activities that are used to monitor funds directly appropriated to the agency for disaster assistance. To the extent practicable, evaluations and audits are to be performed by the IG of the agency that acts upon the mission assignment, but the statute authorizes oversight under contractual arrangements. The statute also requires recipient agencies to develop oversight plans describing the use of the funds and requires preparation of a risk assessment to identify areas with the greatest risk of fraud, waste, or abuse. Federal agencies must report annually to the Administrator and appropriate committees of Congress on the use of the funds.

## **Fraud, Waste, and Abuse Controls**

The Post-Katrina Act directs the Administrator to develop and maintain internal management controls of FEMA disaster assistance programs to prevent fraud and waste by collecting information on disbursements to identify applications from persons ineligible for assistance. Databases developed for this purpose are to be reviewed to assure the presence of internal management controls. The statute also requires that the President or his designee develop verification measures to identify eligible recipients of aid under the Individuals and Household Programs (IHP) of the Stafford Act.<sup>228</sup> (For more information on IHP see the “Housing Assistance” section of this report.)

## **Fraud Prevention Training Programs**

The Post-Katrina Act requires that the FEMA Administrator develop and implement a training program to prevent fraud, waste, and abuse of federal funds in response to or recovery from a

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(...continued)

leadership and coordination and recommending policies for activities designed to promote economy, efficiency, and effectiveness; and providing a means for keeping the agency head and Congress fully and currently informed about problems and deficiencies in the administration of agency programs and operations.

<sup>227</sup> P.L. 109-295, §693, 120 Stat. 1458-1459. A mission assignment is a task, generally given by FEMA officials to the appropriate federal agency, to deliver a necessary good or service. Funding for mission assignments derive from the Disaster Relief Fund administered by FEMA.

<sup>228</sup> P.L. 109-295, § 696, 120 Stat. 1460-1461.

disaster.<sup>229</sup> (For information on other training programs see the “Education and Training” section of this report.)

## **Report and Guideline Development Schedule**

### **Background<sup>230</sup>**

The Post-Katrina Act includes 16 reporting requirements that must be met by the DHS Secretary, the FEMA Administrator, and officials in other federal entities. These requirements are intended to ensure that Congress receives information on the implementation of specified new policies, among which are those directed at ensuring that a qualified workforce exists, guidelines for enhanced aid to individuals and families are developed, and that preparedness initiatives are undertaken.

### **Requirements**

The following summaries of reporting requirements in the Post-Katrina Act are organized below in two ways. First, the subheadings identify the entity or official assigned responsibility for the report. Second, within each of these subsections, the reporting requirements are listed based upon the time span given administration officials to complete the report, with the earliest required reports identified first.

#### **FEMA Requirement**

The statute authorizes the FEMA Administrator to pay recruitment bonuses for certain positions. For each of the five years the bonus authority remains in place, the Agency (no specific official identified) is to submit an annual report to Congress detailing the operations of the recruitment bonus program and providing a description of the use of the authority to provide pay bonuses.<sup>231</sup>

#### **DHS Secretary Requirements**

The statute requires that the Secretary of the department issue reports on department-wide staffing as well as progress made in emergency communications.

- Within 120 days of enactment the DHS Secretary is to report to Congress on the staff and resource needs the Office of Emergency Communications requires to fully implement the new “Emergency Communications” title of the HSA. The Comptroller General is to review this report and submit findings to Congress no later than 60 days after receiving the DHS report.<sup>232</sup>

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<sup>229</sup> P.L. 109-295, § 698, 120 Stat. 1462.

<sup>230</sup> By Natalie Keegan, Government and Finance Division.

<sup>231</sup> P.L. 109-295, §621(a), 120 Stat. 1414, 5 U.S.C. new Sec. 10104(f).

<sup>232</sup> P.L. 109-295, §671(b), 120 Stat. 1435, new HSA Sec. 1801(f).

- Within 180 days of the establishment of a rotation program, the DHS Secretary is required to prepare a report that provides a description of the program, the number of participating employees, and the role of succession planning in the program.<sup>233</sup>
- Within one year of enactment, the DHS Secretary, through the Director of the Office of Emergency Communications, is required to provide Congress with biennial progress reports that describe the findings of the baseline assessment of interoperability issues; evaluate the Department's efforts to enhance the communications interoperability of emergency managers, emergency response providers, and government officials for all hazard events; identify best practices; and evaluate the feasibility of establishing a mobile communications capability modeled on the Army Signal Corps.<sup>234</sup>

*SAFE Port Act Reporting Requirements.* The SAFE Port Act requires that the DHS Secretary (acting through the Coast Guard Commandant) submit a report to Congress no later than 180 days after enactment that describes the methodology used to allocate grant funds.<sup>235</sup>

## **FEMA Administrator Requirements**

The Post-Katrina Act assigns the majority of the law's reporting requirements to the FEMA Administrator. The reports include subjects such as administrative operations, standards and guidelines, and the lessons learned from new programs and strategies.

- Within 90 days of enactment the Administrator is to coordinate with the National Advisory Council, the National Council on Disability, the Interagency Coordinating Council on Preparedness and Individuals with Disabilities, and the Disability Coordinator to develop guidelines to accommodate individuals with disabilities.<sup>236</sup>
- Within 180 days of enactment the Administrator is to provide Congress with guidelines that define the risk-based target capabilities of the federal, state, local, and tribal governments defining their level of preparedness for preventing, responding to, recovering from, and mitigating all hazards.<sup>237</sup>
- Within 180 days of enactment the Administrator is to submit to Congress a report detailing how disaster declaration regulations meet the needs of the states with populations less than 1,500,000 and how the regulations comply with statutory restrictions on the use of arithmetic formulas and sliding scales based on income and population.<sup>238</sup>

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<sup>233</sup> P.L. 109-295, §622(a), 120 Stat. 1417, new HSA Sec. 844(a)(5).

<sup>234</sup> P.L. 109-295, §671(b), 120 Stat. 1437, new HSA Sec. 1803(d).

<sup>235</sup> P.L. 109-347, §112(h).

<sup>236</sup> P.L. 109-295, §689(a), 120 Stat. 1448-1449.

<sup>237</sup> P.L. 109-295, §646(a) and (b), 120 Stat. 1426.

<sup>238</sup> P.L. 109-295, §689g(b), 120 Stat. 1453. The restriction on the use of formulas and sliding scales is found at 42 U.S.C. 5163.

- Within 270 days of enactment the Administrator is to submit a report to the appropriate congressional committees describing the National Disaster Housing Strategy, and must submit updated reports to Congress when changes are made to the strategy and periodically, but at least once every five years.<sup>239</sup>
- Within 270 days of enactment the Administrator is to provide Congress with a report on the implementation of improvements to information technology systems.<sup>240</sup> This report is to include a description of actions taken, improvements made, and funding needed for improvements to FEMA's information technology.
- Within 270 days of enactment the Administrator is to submit to Congress a report describing the National Disaster Recovery Strategy and the authorities necessary to implement the Strategy.<sup>241</sup>
- Within 270 days of enactment the Administrator is to submit a report to Congress on the status of the Child Locator Center, with details on funding issues, difficulties in establishing the Center, and the status of cooperative agreements.<sup>242</sup>
- Within 270 days of enactment the Administrator is to submit to Congress a report on the status of the National Emergency Family Registry and Locator System.<sup>243</sup>
- Within 12 months of enactment the Administrator is required to provide a federal preparedness report to Congress. The report must detail the level of preparedness for all hazards, provide an assessment of how the national preparedness system is supported through federal assistance, include the results of a comprehensive assessment conducted under the Post-Katrina Act, and provide a list of needed resources, projected expenditures, and achievements.<sup>244</sup>
- No later than March 31, 2009, the Administrator is to submit a report to Congress on the effectiveness of the Public Assistance Pilot Program.<sup>245</sup> The report must include assessments of benefits and costs, the identification of obstacles to debris recycling, and recommendations for further authority.
- The Administrator is required to prepare and submit to Congress annual catastrophic resource reports. These reports must, among other matters, identify the resources needed to undertake planning, training, regional office enhancement, surge capacity, logistics, state and local preparedness, and responsiveness to the National Response Plan.<sup>246</sup>

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<sup>239</sup> P.L. 109-295, §683(d), 120 Stat. 1447.

<sup>240</sup> P.L. 109-295, §640(b), 120 Stat. 1423.

<sup>241</sup> P.L. 109-295, §682(c), 120 Stat. 1446.

<sup>242</sup> P.L. 109-295, §689b(d), 120 Stat. 1451.

<sup>243</sup> P.L. 109-295, §689c(f), 120 Stat. 1452.

<sup>244</sup> P.L. 109-295, §652(a), 120 Stat. 1429.

<sup>245</sup> P.L. 109-295, §689j(b), 120 Stat. 1456.

<sup>246</sup> P.L. 109-295, §652(b), 120 Stat. 1429.

## **Federal Communications Commission Requirement**

The Post-Katrina Act mandates that the Federal Communications Commission (FCC) meet one reporting requirement.

- Within 180 days of enactment the Chairman of the FCC is to submit a report to Congress on the status of the 911 and E911 plans of the state, local, and tribal governments.<sup>247</sup>

## **Other Provisions**

### **Background<sup>248</sup>**

In addition to the provisions summarized above that directly affect the administration of emergency management, Congress enacted other statutory changes in light of the experiences gained from Hurricane Katrina's impact. The following provisions establish new policies and will be applicable in future catastrophes that meet specified criteria.

### **Effective Date**

All provisions of the Post-Katrina Act took effect on the date of enactment (October 4, 2006), except for amendments pertaining to the following, which take effect March 31, 2007:

- many, but not all, amendments to the Homeland Security Act that set out new or revised FEMA operations, structures, officers, and procedures, and
- technical and conforming amendments concerning the codification of leadership positions.<sup>249</sup>

### **Authorizations**

The statutes enacted by the 109<sup>th</sup> Congress contain several authorization provisions.

- The Post-Katrina Act authorizes funding increases for FEMA for fiscal years 2008 through 2010. Using FY2007 as the base year, the statute augments total agency funding by 10% each fiscal year over the previous year's appropriation.<sup>250</sup>
- The statute also authorizes appropriations for the Emergency Management Performance Grant (EMPG) program and for the administration of the Emergency Management Assistance Compact (EMAC). EMPG funding of \$375

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<sup>247</sup> P.L. 109-295, §674, 120 Stat. 1444.

<sup>248</sup> By Keith Bea, Government and Finance Division.

<sup>249</sup> P.L. 109-295, §614, 120 Stat. 1411.

<sup>250</sup> P.L. 109-295, §699, 120 Stat. 1462.

million is authorized for FY2008.<sup>251</sup> EMAC funding of \$4 million is authorized for FY2008, and remains available until expended.<sup>252</sup>

- The SAFE Ports Act authorizes an appropriation of \$400 million for each fiscal year from FY2007 to FY2011 for the new Port Security Grant program.<sup>253</sup>

## **National Weather Service**

The provisions of the Post-Katrina Act do not alter or affect the authorities of the National Weather Service.<sup>254</sup>

## **Education Grants**

The Secretary of Education is authorized to waive normal statutory requirements for the repayment of grant assistance if students of higher education institutions are forced to withdraw from the academic program because of disasters. In order to qualify, students must live, work, or receive their education in an area included in a Stafford Act major disaster declaration and must withdraw during the year in which the disaster occurred or the next academic year.<sup>255</sup>

## **Federal Judiciary**

The Federal Judiciary Emergency Special Sessions Act of 2005 authorizes circuit courts of appeals and bankruptcy courts to hold special sessions in any place within the United States outside the circuit under emergency conditions. The statute requires that the Committees on the Judiciary of the Congress be notified of a decision to exercise this authority and that reasonable notice be provided to the U.S. Marshals Service. Similar authority is granted to district courts, except defendants must consent to criminal trials held outside the state in which the crime was committed.<sup>256</sup>

## **National Guard**

The John Warner National Defense Authorization Act provides new authority for the calling up and assignment of duties to national guard troops. Members of the Armed Forces reserves who are members of the National Guard and in full-duty status are authorized to perform duties, as assigned, due to the intentional or unintentional release of toxic or poisonous material that does or might result in catastrophic losses. The statute also authorizes the use of such troops in a potentially or actually catastrophic disaster in the United States.<sup>257</sup> In addition, the statute replaces

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<sup>251</sup> P.L. 109-295, §662, 120 Stat. 1433. The statute authorizes FY2008 funding of \$175 million above the amount appropriated for FY2007 (\$200 million).

<sup>252</sup> P.L. 109-295, §661(d), 120 Stat. 1433.

<sup>253</sup> P.L. 109-347, §112 (d)-(e).

<sup>254</sup> P.L. 109-295, §613, 120 Stat. 1411.

<sup>255</sup> P.L. 109-67, Sec. 2, Higher Education Act of 1965 amendment, modified provision at 20 U.S.C. 1091b(b)(2), 119 Stat. 2001-2002.

<sup>256</sup> P.L. 109-63, 119 Stat. 1993-1996.

<sup>257</sup> P.L. 109-364, §527, modified provision at 10 U.S.C. 12310(c).

the Insurrection Clause that authorized the President to use “the militia or armed forces” to suppress insurrections.<sup>258</sup> The new provision authorizes the President to use the National Guard to restore public order if a “natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident” prevents state authorities from maintaining public order. In addition, the act authorizes the President to direct the Secretary of Defense to provide specified supplies and equipment, under limitations, to those affected by such situations.<sup>259</sup>

## **Firearms Seizure**

Federal officials, and those operating under federal law or with federal funds, may not seize lawfully held firearms, require their registration, or prohibit possession or carrying of firearms in major disaster or emergency conditions, as defined by the Stafford Act. The statute provides for the temporary surrender of firearms in rescue or evacuation vehicles, protects the right of individuals to seek redress, and sets out judicial remedies for individuals.<sup>260</sup>

## **Acronyms**

The following terms identify the acronyms used in this CRS report.<sup>261</sup>

**CDL:** Community Disaster Loan

**CEM:** Comprehensive Emergency Management System

**CHCO:** Chief Human Capital Officer

**CMO:** Chief Medical Officer

**COG:** Continuity of Government

**COOP:** Continuity of Operations

**CORE:** Cadre-On-Response Employees

**DAE:** Disaster Assistance Employees

**DHS:** Department of Homeland Security

**DOD:** Department of Defense

**EMAC:** Emergency Management Assistance Compact

**EMI:** Emergency Management Institute

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<sup>258</sup> 10 U.S.C. 333, derived from a 195 statute at 70A Stat. 15.

<sup>259</sup> P.L. 109-364, §1076, new 10 U.S.C. 333.

<sup>260</sup> P.L. 109-295, §557, new Stafford Act Sec. 706.

<sup>261</sup> By Natalie Keegan, Government and Finance Division.

**FCC:** Federal Communications Commission

**FCO:** Federal Coordinating Officer

**FEMA Trailers:** Temporary Housing Units

**FEMA:** Federal Emergency Management Agency

**FLETC:** Federal Law Enforcement Training Center

**G&T:** Office for Grants and Training

**GAO:** Government Accountability Office

**HHS:** Health and Human Services

**HSPD-5:** Homeland Security Presidential Directive-5

**HSPD-8:** Homeland Security Presidential Directive-8

**HSA:** Homeland Security Act

**IHP:** Individual and Household Program

**NDPC:** National Domestic Preparedness Consortium

**NFA:** National Fire Academy

**NIC:** National Integration Center

**NIMS:** National Incident Management System

**NISAC:** National Infrastructure Simulation and Analysis Center

**NOC:** National Operations Center

**NPG:** National Preparedness Goal

**NPS:** National Preparedness System

**NRP:** National Response Plan

**PA:** Public Assistance

**PETS Act:** Pets Evacuation and Transportation Standards Act of 2006

**Post-Katrina Act:** Post-Katrina Emergency Management Reform Act of 2006

**RAMP:** Remedial Action Management Program

**SAFE Port Act:** Security and Accountability for Every Port Act of 2005

**SHSGP:** State Homeland Security Grant Program

**Stafford Act:** Robert T. Stafford Disaster Relief and Emergency Assistance Act

**TRADE:** Training and Data Exchange Group

## **Author Contact Information**

Keith Bea, Coordinator  
Section Research Manager  
kbea@crs.loc.gov, 7-8672

L. Elaine Halchin  
Specialist in American National Government  
ehalchin@crs.loc.gov, 7-0646

Henry B. Hogue  
Analyst in American National Government  
hhogue@crs.loc.gov, 7-0642

Frederick M. Kaiser  
Specialist in American National Government  
fkaiser@crs.loc.gov, 7-8682

Natalie Keegan  
Analyst in American Federalism and Emergency  
Management Policy  
nkeegan@crs.loc.gov, 7-9569

Francis X. McCarthy  
Analyst in Emergency Management Policy  
fmccarthy@crs.loc.gov, 7-9533

Shawn Reese  
Analyst in Emergency Management and Homeland  
Security Policy  
sreese@crs.loc.gov, 7-0635

Barbara L. Schwemle  
Analyst in American National Government  
bschwemle@crs.loc.gov, 7-8655