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### **TESTIMONY**

Before the Senate Homeland Security and Governmental Affairs Subcommittee on Disaster Recovery

Stafford Act Reform: Sharper Tools for a Smarter Recovery

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#### Introduction

Chairwoman Landrieu, Ranking Member Graham, and members of Subcommittee, thank you for the opportunity to testify today. I come before you representing the National Emergency Management Association (NEMA) and the state emergency managers of all 50 states, territories, and Washington, D.C.

As the Committee considers alterations to the Robert T. Stafford Disaster Relief and Assistance Act, overarching themes stand as priorities for NEMA which merit consideration. NEMA believes the Stafford Act should not be radically overhauled, but as is common with many pieces of significant legislation, room for improvement certainly exists. Any changes, however, should preserve the original intent of the law of allowing the President maximum flexibility in providing federal aid to a disaster response.

The Stafford Act stands as the pinnacle piece of legislation affecting the emergency management profession. The original Act was intentionally written in a broad manner to allow maximum flexibility for practitioners and discretion by the President. NEMA continues to support this flexibility. Furthermore, national need must be considered in any amendment to the Act since changes for one state or region do not necessarily translate to other areas and could present adverse effects. Should legislative changes become necessary, implementation at the state level should stand as the single most important undercurrent to any recommended Stafford Act amendments.

In recent years, we have realized most points of contention with the Stafford Act lie not with legislative mandates, but in unnecessarily strict *interpretation* and subsequent application of the law. These interpretations have led to more rigid regulations and policies not accurately reflecting the true intent of the Act. A majority of NEMA members agree the primary issue during disaster response rests not with the Stafford Act overall, but rather with disaster assistance policy.

Fortunately, FEMA leadership has recently taken strides to address these issues. Upon Administrator Fugate's confirmation, the agency was directed to undertake a full-scale review of previous policies and regulatory interpretations to determine if flexibility within the Stafford Act could be restore by internal action or if statutory changes were required. We applaud FEMA's efforts and wish to allow them appropriate time to complete their full review. This current policy review could drive and inform any

potential need for more broad-reaching Stafford Act changes in the future. While NEMA continues to place trust in FEMA leadership during this review process, we continue a doctrine of "trust but verify" and intend to advise accordingly.

Discussions continue within NEMA regarding whether or not the Stafford Act requires amending to address catastrophic disasters, however, we remain steadfast in our belief the Stafford Act does not require broad and sweeping legislative changes at this time. Regardless of when and if the major changes are ever considered to the Stafford Act, NEMA stands united in our belief in the necessity for state governments to remain the sole source of entry for Federal assistance into the states. When devastation at the hand of a disaster occurs, it remains the responsibility of Governors and state governments to support communities by ensuring a seamless response among all levels of government. State responsibility also includes providing resource coordination in a timely and efficient manner, deploying and requesting interstate mutual aid as necessary, and implementing state and federal disaster assistance programs.

In order to effectively address the Stafford Act, we must first look at existing programs which comprise the essential base of the overall Act. Once the foundation is strengthened, I will address certain issue areas commonly arising when considering changes to the Stafford Act including recovery programs, public and individual assistance, and hazard mitigation.

#### **Strengthening the Base**

Before adding regulations to address potential changes to issue areas within the Stafford Act, existing programs require legislative attention. Without these critical programs, the emergency management community on the whole loses effectiveness in aiding post-disaster assistance. Legislation such as H.R. 3377 currently in the House of Representatives takes a significant step toward bringing many Stafford Act issues into one authorizing bill which could be an effective means by which to address these priorities. The bill also takes a tempered approach to addressing more significant Stafford Act issues.

One of NEMA's highest priorities related to the Stafford Act remains the reauthorization of the Emergency Management Assistance Compact (EMAC). When states and U.S. Territories joined together and Congress ratified EMAC (Public Law PL-104-321, 1996), it created a legal and procedural mechanism whereby we can quickly move state owned emergency response resources, like Urban Search and Rescue (USAR) Teams, throughout the country to meet disaster needs. All 50 states, the District of Columbia, and three territories are members of EMAC and have committed their emergency resources in helping neighboring states and territories.

To provide a sense of EMAC's value in the context of search and rescue, during the 2005 season which included hurricanes Katrina, Rita, and Wilma more than 1,300 search and rescue personnel from 16 states searched 22,300 structures and rescued 6,582 people. EMAC staff stood ready to offer support recently during the tsunami threat to Hawaii and tornadoes in Mississippi as well. Fortunately the need for mutual aid was never required in either state, but the knowledge it remains available as a state asset is invaluable to emergency response officials.

The capabilities of EMAC remain sustained by the efforts of all the states and would be bolstered by direct support of EMAC. While EMAC currently receives FEMA grant funding, fulfilling NEMA's request for a \$4 million line item appropriation would codify the program for use in future disasters. These funds provide numerous benefits directly to the states. As the opportunity is afforded, EMAC intends to develop, maintain, and exercise state and regional mutual aid capabilities, train state and local emergency response personnel who may be deployed through EMAC, support the development of specialized emergency response capabilities among the regions, and ensure EMAC remains a viable resource for the states now and in the future. In my opinion, \$4 million in federal funds stands as a minimal investment for maintaining a proven national emergency response capacity that day-to-day is equipped, trained, and ready to provide critical disaster response resources and support between states. All members of EMAC continue to rely on this asset as a critical tool in their response and recovery arsenal.

Much like EMAC, USAR Teams also provide valuable assistance in the wake of a disaster. FEMA should be provided clear authority for USAR and protecting the local department and task force members when injuries or other liabilities occur as a result from their rescue efforts. Without these protections, the local and state departments supporting the USAR Task Forces face potentially unfunded costs for sustaining these teams. USAR teams also provide a significant cost savings to the federal government since they require low annual costs, but provide high situational value after a disaster. But our responsibilities to citizens comes not only after a disaster strikes, but also in appropriate mitigation efforts before.

A lack of authorizing language and unnecessary earmarks to the Pre-Disaster Mitigation Grant Program (PDM) stands to weaken a critical emergency management program. While PDM was reauthorized for one year in the FY 2010 Appropriations bill, the program is in desperate need of a multi-year reauthorization. PDM is a valuable tool allowing states to take advantage of the opportunity to mitigate loss of life and property before a disaster occurs. In 2005, the Multi-Hazard Mitigation Council published

a study that found for every \$1 FEMA invested into mitigation projects, society saves approximately \$4. The key to the value of the programs is that pre-disaster mitigation is coordinated through the Governors and state hazard mitigation plans. We applaud the efforts of the full Committee to quickly move S.3249 to the Senate floor. This authorization bill, with the Coburn amendment discouraging earmarks, will provide states an important tool to mitigate the effects of a disaster before a disaster even occurs.

## **Building Upon the Foundation**

Once appropriate authorizations have been addressed to strengthen the base of the Stafford Act, the time may come to build upon the foundation and explore other areas of the Act. In the wake of a significant disaster, we all too often respond by implementing new laws or regulations to address shortcomings of the impacted state or jurisdiction. In reality, however, the challenges facing one state do not necessarily translate nationwide and the Stafford Act must continue to adequately apply to the diverse range of states and disasters.

As the Committee addresses any recovery issues, we would urge caution in creating undue additional layers of bureaucracy. New task forces, coordinating councils, or federal offices cannot substitute for knowledgeable and properly trained Federal Coordinating Officers (FCO) or planning efforts states should already have in place. FEMA currently maintains a strong system of policies, procedures, and dedicated public servants to assist states. For the time being, NEMA believes any new function placed within the Agency must be complimentary to the existing system not additive. Also, we urge caution against codifying in the Stafford Act entities such as recovery offices which should be reserved for the response to significantly larger events. As an Association, NEMA would prefer to allow FEMA the time to complete the National Disaster Recovery Framework and implement some of those recommendations. The framework was developed with the extensive stakeholder outreach and once the final report is submitted in June, we would prefer to allow FEMA time to implement the new strategy.

Many issues regarding public or individual assistance can be addressed through FEMA policies and regulations. For example, FEMA already increases the small projects threshold on an annual basis. This should continue to be done through policy as there is no need to clutter the Stafford Act with such provisions. An example where legislation might be required is in the reinstatement of the Public Assistance (PA) Pilot Program. In consultations with other Congressional committees and our own Legal Committee, we believe FEMA does maintain the authority to restart this program, but FEMA has determined otherwise. Such decisions stand as an example of overly strict interpretations of existing laws.

The PA Pilot Program ended on December 31, 2008, pending a report by FEMA to Congress. FEMA officially submitted the required report on May 20, 2009. During the pilot period, 3,965 applications in 78 disasters participated in at least one procedure of the Pilot Program. The PA Pilot Program was not an independently funded grant program, but rather a means by which to disperse funds from the Disaster Recovery Fund (DRF). This Congressional initiative could be expanded to allow FEMA to develop new programs to realize additional efficiencies and cost savings in any number of other programs.

Other public assistance issues such as advancing public assistance funds to fund emergency and permanent work or direct reimbursement for straight-time labor should not be addressed in the Stafford Act. The thresholds for public assistance are already increased annually, and any other increase should only be considered through policy. Furthermore, when response officials commit to a life of public service, we do not believe their jurisdiction should be reimbursed for labor costs.

Hazard mitigation remains a subject in which changes could be helpful, but again caution must be exercised to avoid over-stepping those initiatives states should already have in place. For example, a small advance in hazard mitigation funds soon after a disaster in order to hire staff, assess damages, and begin identifying eligible projects could prove beneficial. Additional hazard mitigation efforts, however, such as planning and program development should be completed by states well before the declaration of a disaster.

#### Conclusion

As you can see, the Stafford Act is a complex tool for the federal government to assist state governments in the wake of a disaster. Prudence must be practiced, however, as too many changes to the Act could dilute the original intent and create additional bureaucracies. Also, national need must be considered in any amendment to Stafford since changes for one state or region do not necessarily translate to other areas and could present adverse effects. Should legislative changes become necessary, implementation at the state level should stand as the single most important undercurrent to any recommended Stafford amendments.

I welcome any questions you may have, and NEMA will continue offering support to this Committee and your staff as any legislative effort moves forward in the process.