

State assistance is to be provided to impacted counties under the authority of the State Coordinating Officer, on behalf of the Governor, as head of the State Emergency Response Team (SERT).

### 3.3 FEMA

The Robert T. Stafford *Disaster Relief and Emergency Assistance Act*, Public Law 93-288, as amended (the Stafford Act) was enacted to support state and local governments and their citizens when disasters overwhelm them. This law establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available under the Stafford Act, and sets the conditions for obtaining that assistance.

**Under the Stafford Act, States can request assistance from FEMA to provide emergency transit services that are necessary to help an area recover from the damaging effects of a disaster. In addition, FEMA assistance is available to transit authorities to help replace or build transit buses, equipment and the facilities that have been damaged or destroyed during a disaster.**

#### A. Types of Assistance under the Stafford Act

- Individual Assistance – temporary housing, grants for disaster-related expenses and loans to repair or replace real and personal property. 42 USC 5174.
  - Business Assistance-available when ability to continue operation is terminated or impaired by disaster
- Public Assistance - emergency response and recovery. 42USC 5170a, 5172
- Hazard Mitigation Assistance - designed to reduce future losses to public and private property. 42 USC 5170c.

#### B. Eligible Recipients

- States, local government, certain non-profit organizations, federally recognized Indian tribes or tribal organizations.

#### C. Roles and Responsibilities

- Administered through a coordinated effort between
  - Federal Emergency Management Agency (FEMA),
  - State (grantee), and
  - Applicants (subgrantees).
- FEMA's primary responsibilities
  - Determine amount of funding.
  - Participate in educating applicant on program issues and procedures.
  - Assist applicant with developing projects.
  - Review the projects for compliance
- Grantee's primary responsibilities
  - Determine eligibility for FEMA funds
  - Provide grantee portion of the non-federal share,
  - Notify subgrantee (applicant) that funds are available and disburse funds.
  - Provide technical advice to eligible applicants.
  - Ensure that potential applicants are aware of assistance programs.

- Provide support for damage assessment operations.
- Submit necessary paperwork for grant awards.
- Subgrantee's (applicant) responsibilities
  - Accountable to grantee for use of the funds.
  - Attend Applicants' Briefing on how to apply for Federal assistance and documentation required for the Project Worksheet process.
  - Submit Request for Public Assistance at Applicants' Briefing or not later than 30 days after designation of County.
  - Provide documentation and personnel to work with FEMA and state in damage assessment and project application processes.
  - Must identify all damages to the state and FEMA for reimbursement.

#### D. Scope of Public Assistance

##### 1. Emergency Response Assistance

- Eligible Purposes
  - Debris removal.
  - Emergency protective measures taken before, during, and after a disaster to save lives, protect public health and safety, and protect property, including **temporary public transportation service** to meet emergency needs and provide transportation to governmental offices, employment centers, and such other places as necessary to enable the community to resume its normal pattern of life as soon as possible. 42 U.S.C 5186.
  - **Emergency public transportation** service is intended to supplement but not replace pre-disaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met. See 44 CFR 206.225.

##### 2. Recovery Assistance

- Eligible Purposes
  - Permanent work, *i.e.*, repairs, restoration, or replacement of disaster-damaged public and certain non-private organization facilities, including **public transportation facilities**, up to 100 percent of the costs.

## 3.4 FTA

### 3.4.1 General

**There is broad flexibility under FTA’s planning and capital funding programs for states, metropolitan planning agencies and transit authorities to spend FTA funds for emergency preparedness and response planning and capital security projects, including security training for personnel and conducting emergency response drills under our discretionary planning and research programs and our program management oversight program. FTA is also able to hire contractors to provide assistance to transit grantees in disaster areas for some of the following support activities; transit planning, transit operations support and technical assistance and engineering and project management support.**

Although FTA cannot normally regulate transit operations, SAFETEA-LU now allows the Secretary of Transportation to regulate the charges and operation of public transportation systems that receive FTA funds when there is a disaster or other national emergency.

### 3.4.2 FTA Security and Funding Authorities (Chapter 53 of 49 USC, as amended.)

#### I. Prohibition Against Regulating Operations and Charges

- Prior to enactment of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Federal Transit Administration (FTA) could not regulate the operations and charges of public transportation systems receiving funds under the discretionary or capital investment program.
- Currently, the prohibition applies to all Federal transit grant programs, except that the Secretary of Transportation may regulate the charges and operations of Federally-funded transit systems for national defense purposes or in the event of a national or regional emergency. 49 USC 5344 (b)(1).
- Pursuant to its rulemaking authority, FTA is proposing to establish emergency relief procedures for granting relief from Federal transit regulations in times of national or regional emergencies under 49 CFR 601.40-46.\*

#### II. Capital Security Projects

- Under all Federal Transit Assistance Formula and Discretionary Programs in Chapter 53 of Title 49, U.S.C, capital security projects (including security training for personnel and conducting emergency response drills) are eligible uses of Federal transit capital funds 49 USC 5302(a)(1)(J).

\* Section 5141 of title 42, USC (Section 301 of the Stafford Act, Pub. L. 92-288, as amended) provides that “(a) ny Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistant under such programs if the inability to meet such conditions is a result of the major disaster.”

### **III. Security Planning**

- Prior to SAFETEA-LU, States were required to jointly consider safety and security factors in statewide transportation planning.
- SAFETEA-LU separated factors for purposes of consideration to highlight heightened concerns with security at all levels of Government. 49 USC 5304(d)(1)(C).
- Funds available to carry out planning activities may be used for statewide and metropolitan emergency response and recovery planning in areas impacted by disasters of national significance.

### **IV. Research**

- Research funds are available for research, development, demonstration, deployment projects, and evaluation of technology related to public transportation emergency response and recovery activities in areas impacted by disasters of national significance.

### **V. Security under the Urbanized Area Formula Grant program**

- Under the urbanized area Formula Grants program, a recipient must certify that it has the legal, financial, and technical capacity for carrying out the program, including the safety and security aspects of the program. 49 USC 5307(d)(1)(A).
- Recipients must certify that they will spend one percent of the funds apportioned to them for security projects, unless they decide that the expenditure for security projects is not necessary and FTA accepts the certification. 49 USC 5307(d)(1)(J).
  - Expenditures of a capital grant funds are limited to capital security projects.
  - Expenditures of operating assistance grant funds are limited to operating expenses for security purposes.

### **VI. Program Management Oversight**

- Given the new security concerns—and in keeping with actual practice in the field—major capital investment projects must have a project management oversight (PMO) plan that includes safety and security management. 49 USC 5327(a)(13).
- Program Management Oversight may include expenditures for damage assessments in areas impacted disasters of national significance.

### **VII. Investigation Authority**

- FTA has authority to investigate safety hazards and security risks.
- FTA may assist grantees on security matters and investigate security concerns without notice of a specific breach of security at a transit system. 49 USC 5329.

## VIII. Relationships between Federal Agencies

- Memorandum of Understanding (MOU) was signed by Departments of Transportation (DOT) and Homeland Security (DHS) on September 28, 2004, which defines and clarifies the respective transit security roles and responsibilities of each department.
- As required by SAFETEA-LU, FTA and the Transportation Security Agency (TSA), an agency within DHS, signed an Annex to the MOU on public transportation security on September 8, 2005. Pub. L. 109-59, section 3028(b).
- The Annex
  - recognizes DHS's role as lead agency on public transportation security matters;
  - provides for DHS funding of certain FTA programs during the immediate period of increased risk (including training courses, the Public Transportation Information Sharing and Analysis Center, an emergency drill grant program, and stakeholder sessions);
  - lists DHS as the agency responsible for vulnerability and criticality assessment programs;
  - establishes procedures during emergency situations, including information and intelligence sharing;
  - establishes specific procedures for coordination on regulations, legislation, budget requests, public statements, research activities, and TSA security directives; and
  - establishes mechanism for temporarily detailing employees between TSA and FTA
- Neither the MOU nor Annex is sensitive security information.

## VIII. Other

- FTA and DHS are jointly finalizing a notice of proposed rulemaking mandated by SAFETEA-LU, which outlines requirements and characteristics of public transportation security grants, including funding priorities and eligible activities, methods for awarding grants and limitations on administrative expenses. Pub. L.109-59, section 3028(c).
- It is anticipated DHS will administer its security grants and FTA will provide technical assistance with developing the application and eligibility process.

<b>3.4.3 Section 7025 of The Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and Hurricane Recovery, 2006 (PUB.L. 109-234)</b>
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### I. Section 7025

- Section 7025 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, states:

“For recipients of assistance under chapter 53 of title 49, United States Code, directly affected by Hurricane Katrina, the Secretary may waive the Federal matching share requirements for Federal transit assistance programs under such chapter, including the Federal matching share requirements contained in existing Federal assistance grant agreements:

*Provided, That the Secretary may allow such recipients to use such assistance for operating assistance, notwithstanding the terms and conditions contained in existing Federal assistance grant agreements: Provided further, That the authority of the Secretary hereunder shall expire two years after the date of enactment of this section, unless determined otherwise by the Secretary for a compelling need."*

## **II. Explanation of Section 7025**

- FTA has the authority until June 15, 2008 to waive the Federal matching share requirements for Federal transit assistance awarded in existing grants to recipients directly affected by Hurricane Katrina, unless FTA determines that its authority should continue based on a compelling need.
- FTA is responsible for determining those recipients directly affected by Katrina.
- FTA has the authority until June 15, 2008 to waive the Federal matching share requirements for Federal transit assistance grant to be awarded to recipients directly affected by Hurricane Katrina, unless FTA determines that its authority should continue based on a compelling need.
- FTA may waive the deferred local match accumulated to date on existing grants.
- FTA may not reimburse any eligible recipient any portion of the local share already expended.
- FTA has the authority through June 15, 2008 to permit recipients directly affected by Katrina to use funds in existing capital grants and yet to be awarded grants for operating assistance, unless FTA determines that its authority should continue based on a compelling need.