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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2013-0006]

Solicitation for Comments Regarding Current Procedures to Request Emergency and Major Disaster Declarations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: On Tuesday, January 29, 2013, President Obama signed the Sandy Recovery Improvement Act of 2013, which includes a provision amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide federally recognized Indian tribal governments the option to make a request directly to the President for a Federal emergency or major disaster declaration, or to seek assistance, as they do presently, under a declaration for a State. In support of preliminary implementation of this provision, the Federal Emergency Management Agency (FEMA) is engaging in a comprehensive consultation effort with federally recognized Indian tribal governments. To initiate that consultation, FEMA is soliciting comments regarding FEMA procedures for declaration requests from Indian tribal governments.

DATES: Comments must be received by [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be identified by docket ID FEMA-2013-0006 and may be submitted by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472-3100.

FOR FURTHER INFORMATION CONTACT: Jessica Stewart, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-3888.

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy Notice” link in the footer of <http://www.regulations.gov>.

You may submit your comments and material by the methods specified in the ADDRESSES section of this notice. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: A copy of this notice is available in docket ID FEMA-2013-0006. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, click on “Advanced Search,” then enter “FEMA-2013-0006” in the “By Docket ID” box, then select “FEMA” under “By Agency,” and then click “Search.” Submitted comments may also be inspected at

FEMA, Office of Chief Counsel, Regulatory Affairs Division, 500 C Street, SW.,
Washington, DC 20472-3100.

II. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) authorizes the President to make certain Federal assistance available to support State, tribal, and local efforts to respond to and recover from a disaster. The President makes disaster assistance available after he declares that an emergency or major disaster has occurred and that Federal assistance is needed to supplement State and local government resources. In the past, the Stafford Act allowed only the Governor of a State to make a request for a declaration by the President for an emergency or major disaster.

On Tuesday, January 29, 2013, President Obama signed the Sandy Recovery Improvement Act of 2013, that included a provision amending the Stafford Act to provide Federally recognized Indian tribal governments the option to choose whether to make a request directly to the President for a Federal emergency or major disaster declaration, or to seek assistance, as they do presently, under a declaration for a State.

Specifically, the amendment permits the “Chief Executive” of an “affected Indian tribal government” to submit a request for a declaration to the President that a major disaster or emergency exists consistent with the requirements listed in Stafford Act section 401 (major disasters) and 501 (emergencies). The amendment also stipulates that an Indian tribal government may be eligible to receive assistance through a declaration made by the President at the request of a State, so long as the Indian tribal government does not receive a separate declaration from the President for the same incident.

FEMA plans to establish a pilot program for managing requests from Indian tribal governments; during development of this pilot program, FEMA will engage in a comprehensive consultation effort with Indian tribal governments.

III. Current Requirements and Processes for State Declaration Requests

Below you will find an explanation of the current regulatory requirements (located in Title 44 of the Code of Federal Regulations) for a Governor's request for an emergency or major disaster declaration and the factors FEMA uses to make a recommendation to the President about whether supplemental Federal assistance is needed. These regulations are currently framed with respect to States.

As an initial step in consultation with Indian tribal governments and outreach to other stakeholders, FEMA asks Indian tribal governments for their thoughts and comments on how these requirements and factors may or may not be appropriate as applied to requests from Indian tribal governments during the pilot program. The input provided will inform the development of the pilot program to process declaration requests from Indian tribal governments. FEMA welcomes comments on any or all of the topics addressed in this Notice. Comments are also welcomed on any other issues that may not be covered in the below topics.

Types of Declarations and Assistance

Stafford Act assistance is intended to supplement State and local resources. States must establish in their requests that the event is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments. (42 U.S.C. 5121(2))

Emergency Declarations: Emergency Declarations are to supplement efforts in providing short-term emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe. (42 U.S.C. 5191)

Major Disaster Declaration: A major disaster declaration may provide a wide range of Federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work. (42 U.S.C. 5170)

Types of FEMA disaster assistance that may be made available by major disaster declarations:

- **Individual Assistance** - Assistance to individuals and households. (More information can be found at: <https://www.fema.gov/individual-assistance-program-tools>) (42 U.S.C. 5174);
- **Public Assistance** - Assistance to State, Indian tribal and local governments and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities. (More information can be found at: <https://www.fema.gov/public-assistance-local-state-tribal-and-non-profit>) (42 U.S.C. 5170b and 5172); and
- **Hazard Mitigation Assistance** – Assistance to State and local governments and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards. (More information can be found at <https://www.fema.gov/hazard-mitigation-assistance>) (42 U.S.C. 5170c).

Preliminary Damage Assessments

In support of requests for a major disaster declaration, Preliminary Damage Assessments (PDAs) are conducted to estimate the extent of the disaster and its impact on individuals and public facilities. A PDA is not required for an emergency declaration request. The PDA team may be comprised of personnel from FEMA, the State's emergency management agency, Territorial, Indian tribal and affected local government officials and other Federal agencies (e.g., the U.S. Small Business Administration). The team's work begins with assessing the emergency costs incurred by the units of government, the uninsured damage to public facilities, and the impacts on individuals' lives, homes and businesses. This information is included in the Governor's request to the President.

Requirements for Submitting Declaration Requests

Governors submit declaration requests to the President through the appropriate FEMA Regional Administrator. The Stafford Act requires a Governor of an affected State to base his/her declaration request on the finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor must also take appropriate response action under State law, direct execution of the State's emergency plan, have or will commit resources to alleviate the results for the disaster, and certify that the State will comply with all cost sharing requirements.

In order for FEMA to make Public Assistance, Individual Assistance, and Hazard Mitigation available to eligible areas, Governors must have the following agreements and/or plans:

- In order to receive Public Assistance, Governors must have an approved Administrative Plan. (44 CFR 206.207)
- In order to receive Public Assistance Categories C-G and Hazard Mitigation Grant Program assistance, States must have an approved or approvable State mitigation plan. (44 CFR 201.4(a))
- In order to receive Other Needs Assistance under the Individual and Household Program, Governors must choose an administrator to provide the assistance and, depending on the choice, have an approved Other Needs Assistance Administrative Plan. (44 CFR 206.120)
 - o Within 72 hours of a disaster declaration, a State may submit modifications of the Administrative Plan. (44 CFR 206.120(e))
- States and local governments must comply with the “Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments.” (44 CFR Part 13)

FEMA is soliciting comments on whether there are circumstances that may prevent a Chief Executive of an Indian tribal government from complying with these current requirements and processes for declaration requests during the pilot program.

IV. Other Needs Assistance Administrative Plan Requirement for Individuals and Households Program

The Federal Assistance to Individuals and Households Program (IHP) (44 CFR 206.110-206.120) provides financial assistance, such as funding to repair damaged homes or replacement of household items, and if necessary, direct assistance to eligible individuals and households. IHP is intended to help disaster-impacted individuals and

households who have uninsured or under-insured housing and other needs and are unable to meet such expenses or needs through other means.

Housing Assistance under IHP is administered directly by FEMA. However, the delivery of Other Needs Assistance (ONA) under IHP is contingent upon the State choosing an ONA Administrative Option. The State may either request FEMA to administer ONA or they may request a grant so they can administer ONA. Currently, most States opt to have FEMA administer ONA instead of choosing to administer it themselves. In order for eligible disaster survivors to receive assistance for clothing, personal property, transportation and other non-housing related needs, States must select an option for administering ONA.

FEMA is soliciting comments on whether there are circumstances that may prevent a Chief Executive of an Indian tribal government from selecting an ONA Administrative Option during the pilot program. In addition, FEMA welcomes comments on the ability of an Indian tribal government to administer ONA on its own.

V. Mitigation Plan Requirement

The Stafford Act requires Indian tribal governments to have a FEMA-approved mitigation plan as a condition of receipt of hazard mitigation assistance (42 U.S.C. 5165). Assistance programs impacted include Public Assistance Categories C-G and the Hazard Mitigation Grant Program. The State or Tribal Mitigation Plan outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area, as well as actions to reduce losses from future disasters (44 CFR 201.7).

For States that do not have a FEMA-approved State Mitigation Plan, FEMA allows 30 days from the date of the declaration for the State to submit to FEMA an approved or approvable State Mitigation Plan.

FEMA welcomes comments on whether 30 days is an appropriate amount of time for Indian tribal governments to submit an approved or approvable Tribal Mitigation Plan during the pilot program. FEMA also welcomes comments on whether there are circumstances that may prevent an Indian tribal government from submitting a Tribal Mitigation Plan, or a request for an extension within this time.

VI. Timelines to Submit Declaration Requests

FEMA's regulations require a Governor to submit a request for an emergency or major disaster declaration within 30 days of the date of the incident. FEMA's regulations allow Governors to request additional time to submit emergency and major disaster declaration requests. The extension request must be submitted within 30 days after the incident and must include a reason for the additional time needed.

FEMA is soliciting comments to determine whether 30 days is an appropriate amount of time for the Chief Executive of an Indian tribal government to submit a request or ask for an extension during the pilot program. FEMA welcomes comments on whether there are circumstances that may prevent the Chief Executive of an Indian tribal government from submitting such a request, or a request for an extension within this time.

VII. Public Assistance

The Stafford Act recognizes that primary responsibility for emergency management is at the local level; thus, Stafford Act assistance is intended to be available

only as a supplement to other governmental and non-governmental resources. The Act instructs Governors to base their declaration requests on the finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Stafford Act is not intended to provide assistance for every event that impacts a State or county, so FEMA established evaluation factors based on this principle.

When Governors request that the President declare a major disaster which authorizes Public Assistance, FEMA uses the following criteria to make a recommendation to the President whether assistance is warranted.

- Estimated cost of the assistance
- Localized impacts
- Insurance coverage in force
- Hazard Mitigation
- Recent multiple disasters
- Programs of other Federal assistance

Estimated cost of the assistance

For State requests, FEMA evaluates the estimated cost of Federal and non-Federal public assistance against the statewide population, to give some measure of the per capita impact within the State. This provides a sense of proportional impact of on the population of the State. We use a figure of \$1.37 per capita (FY13) as an indicator that the disaster is of such size that might warrant Federal assistance (adjusted annually based on the Consumer Price Index).

FEMA is soliciting comments on whether the estimated cost of assistance is an appropriate factor to evaluate Indian tribal government requests for Public Assistance during the pilot program. FEMA welcomes comments on whether requests should be evaluated based on per capita, and if not, how Indian tribal government population size should be considered. FEMA also welcomes comments on what considerations FEMA should evaluate in determining the appropriate damage indicators for Indian tribal government requests.

FEMA has also established a minimum of \$1 million in public assistance estimated damages per disaster, based on the belief that we can reasonably expect even the least populated States to cover this level of public assistance damage.

FEMA is soliciting comments on whether an Indian tribal government can reasonably be expected to cover that level of public assistance damage during the pilot program. FEMA welcomes comments on whether there should be a similar, if lower, minimum threshold applied to Indian tribal government requests. FEMA also welcomes comments on whether such a minimum damage amount should depend on the population of the requesting Indian tribal government, and/or on other information.

Localized impacts

For State requests, FEMA evaluates the impact of the disaster at the county and local government level, as well as the impact on American Indian/Alaska Native (AI/AN) Indian tribal government levels. This is because, at times, there are extraordinary concentrations of damages that might warrant Federal assistance, even if the statewide per capita is not met. This is particularly true in situations where critical facilities are involved, or where localized per capita impacts might be extremely high.

Insurance coverage in force

For State requests, FEMA considers the amount of insurance coverage that is in force, or should have been in force, as required by law and regulation at the time of the disaster.

Hazard Mitigation

For State requests, FEMA also considers the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration.

Recent multiple disasters

For State requests, FEMA evaluates the 12-month disaster history to better understand the overall impact on the State or locality. FEMA considers declarations under the Stafford Act, as well as declarations made by the Governor, and the extent to which the State has spent its own funds on those disasters.

Programs of other Federal assistance

For State requests, FEMA also considers the programs of other Federal agencies because at times, their programs of assistance might more appropriately meet the needs created by the disaster.

FEMA is soliciting comments on whether these factors (localized impacts, insurance coverage in force, hazard mitigation, recent multiple disasters, and programs of other Federal assistance) are appropriate for the evaluation of Indian tribal government requests for Public Assistance during the pilot program. FEMA also welcomes comments on whether there are additional factors that may be appropriate for FEMA to

consider when evaluating the level of impact and tribal capability to respond to and recover from an event for Public Assistance requests from Indian tribal governments.

VIII. Individual Assistance

When the Governor of a State requests that the President declare a major disaster that authorizes Individual Assistance, FEMA uses the following criteria to determine whether Federal assistance is needed.

- Concentration of damages
- Trauma
- Special populations
- Voluntary agency assistance
- Insurance

Concentration of damages

For State requests, FEMA evaluates the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

Trauma

FEMA considers the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

- Large numbers of injuries or deaths;
- Large scale disruption of normal community functions and services; and
- Emergency needs such as extended or widespread loss of power or water.

Special populations

FEMA considers whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance.

FEMA also considers the effect on American Indian and Alaskan Native tribal populations in the event that there are any unique needs for people in these governmental entities.

Voluntary agency assistance

FEMA considers the extent to which voluntary agencies and State or local programs meet the needs of the disaster survivors.

Insurance

FEMA considers the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

FEMA is soliciting comments on whether these Individual Assistance factors are appropriate for FEMA to consider when evaluating an Indian tribal government request for Individual Assistance during the pilot program. FEMA also welcomes comments on whether there are additional factors that may be appropriate for FEMA to consider when evaluating Indian tribal government requests for Individual Assistance.

IX. Designating Areas Eligible for Assistance, Definition of Tribal Lands

After the President declares that an emergency or major disaster exists in a State, areas within the State are designated as eligible for assistance. FEMA's regulatory definition of "designated area" eligible for assistance under each program (Public Assistance, Individual Assistance, and the Hazard Mitigation Grant Program) is "any emergency or major disaster-affected portion of a State which has been determined

eligible for Federal assistance.” (44 CFR 206.2(a)(4)) In practice, FEMA typically identifies counties, parishes, independent cities, and Indian tribal governments as “designated areas” eligible for assistance.

FEMA is soliciting comments on how FEMA should designate Tribal areas eligible for assistance for any or each of the FEMA assistance programs (Public Assistance, Individual Assistance, and the Hazard Mitigation Grant Program) and what FEMA should use as the definition of Tribal lands during the pilot program.

X. Appeals

When a request for an emergency or major disaster declaration is denied, the Governor may appeal the decision. The appeal must be submitted within 30 days of the date of the letter denying the request. The Governor can make only one appeal. The Governor should include in the appeal additional information which supports his/her request for supplemental Federal assistance.

When certain areas that were requested by the Governor are not designated, the Governor or Governor’s Authorized Representative may appeal the decision. The appeal must be submitted within 30 days of the date of the letter denying the request. The Governor has only one appeal. The Governor or the Governor’s Authorized Representative should include in the appeal additional information which supports his/her request.

When types of assistance that are requested by the Governor are not authorized, the Governor may appeal the decision. The appeal must be submitted within 30 days of the date of the letter denying the request. The Governor has only one appeal. The

Governor should include in the appeal additional information which supports his/her request.

FEMA is soliciting comments on whether this same appeal process would be appropriate for Tribal requests during the pilot program.

XI. Cost Share Adjustments

The Stafford Act directs FEMA to pay “not less than” 75-percent of the eligible costs for essential assistance (Stafford Act Section 403, 42 U.S.C. 5170b), repair, restoration, and replacement of damaged facilities (Stafford Act Section 406, 42 U.S.C. 5172), and debris removal (Stafford Act Section 407, 42 U.S.C. 5173). FEMA’s regulations outline the criteria FEMA uses to recommend to the President an adjustment to the Federal cost share.

FEMA will recommend the President adjust the Federal cost share from 75-percent to not more than 90 percent when actual Federal obligations under the Stafford Act meet or exceed \$133 (2013) per capita of State population. When recommending a cost share adjustment to the President, FEMA also considers the impact of major disaster declarations in the State during the previous 12-months.

If warranted by the needs of the disaster, FEMA may recommend up to 100 percent Federal funding for emergency work under section 403 of the Stafford Act (essential assistance) and section 407 of the Stafford Act (debris removal), including direct Federal assistance, for a limited time in the initial days of the disaster irrespective of the per capita impact.

FEMA is soliciting comments on whether the per capita threshold used for States would be appropriate for evaluating whether to recommend a cost share adjustment for

Tribal declarations during the pilot program. FEMA also welcomes comments on what other factors may be appropriate for FEMA to consider when evaluating potential cost share adjustments for Tribal declarations.

XII. Notification of State and Tribes

Once the President has made a declaration determination (e.g., emergency, major disaster, denial), the Regional Administrator will notify the Governor as well as other Federal agencies and other interested parties.

FEMA is soliciting comments on how FEMA can ensure that all interested parties, including the Governors of affected States, the Chief Executive of affected Indian tribal governments, and other Federal agencies are properly notified and informed regarding declaration requests and determinations during the pilot program.

XIII. Disaster Unemployment Assistance

Disaster Unemployment Assistance (DUA) (44 CFR 206.141 and 20 CFR 625) provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance (UI). FEMA has delegated to the Secretary of Labor the responsibility of administering the DUA program and payment of DUA benefit assistance.

Under the current program regulations, applicants are required to first apply and exhaust UI through the State workforce agency. Levels of UI are based on State formulas, which may be different for each State.

FEMA is soliciting comments on an Indian tribal government's ability to administer DUA and the use of State workforce agency to apply for regular UI in the absence of a tribal equivalent of a workforce agency during the pilot program.

XIV. Disaster Legal Services

Disaster Legal Services (DLS) (44 CFR 206.164) provides legal assistance to low-income individuals who, prior to or as a result of the disaster, are unable to secure

legal services adequate to meet their disaster-related needs. These services are typically

provided to survivors through an agreement with the Young Lawyers Division of the American Bar Association.

FEMA is soliciting comments on the current access to legal services during disasters, if Indian tribal governments have a relationship with the Young Lawyers Division of the American Bar Association, and/or restrictions on who can provide legal advice to tribal members during the pilot program.

Authority: Pub. L. 113-2.

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.

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