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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2014-0005]

Individual Assistance Declarations Factors Guidance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the final *Individual Assistance Declarations Factors Guidance*. The Federal Emergency Management Agency (FEMA) published a notice of availability and request for comment for the proposed guidance on September 22, 2016.

DATES: This policy is effective on June 1, 2019.

ADDRESSES: This final guidance is available online at <http://www.regulations.gov> and on FEMA's website at <http://www.fema.gov>. The proposed and final guidance, all related *Federal Register* Notices, and all public comments received during the comment period are available at <http://www.regulations.gov> under docket ID FEMA-2014-0005. You may also view a hard copy of the final guidance at the Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mark Millican, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (phone) 202-212-3221 or (email) FEMA-IA-Regulations@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 1109 of the Sandy Recovery Improvement Act of 2013 requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48(b) that FEMA uses to determine whether to recommend provision of Individual Assistance during a major disaster. On November 12, 2015, FEMA published a notice of proposed rulemaking (NPRM) proposing to implement the requirements of section 1109. 80 FR 70116. On September 22, 2016, FEMA sought comment on its proposed Individual Assistance Declarations Factors Guidance, which is intended to provide additional information to the public regarding the manner in which FEMA is proposing to evaluate a request for a major disaster declaration authorizing Individual Assistance. 81 FR 65369.

Public Comments on the Proposed Guidance

FEMA received 23 comments on the proposed Individual Assistance Declarations Factors Guidance. The majority of the comments were duplicative of comments that were received on the NPRM and are addressed in the *Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster* final rule, which is published elsewhere in today's *Federal Register*. Several comments were specific to the guidance document and are discussed below.

One commenter suggested that Table 2: Number of IA Requests and Granted IA Requests by ICC Ratio could be broken up from a 10-25 range into 10-15, 15-20 and 20-25 ranges for the future. FEMA believes that the ICC ratios should not be stratified any further at this point. Any further stratification is likely to be incorrectly viewed as a threshold by the States which is not what FEMA intended ICC to be used for. FEMA is providing this information to States as a historical reference to help guide States for planning in future disaster situations.

FEMA will update the table as necessary to provide trends and historic data to the States in a timely manner to guide States on what level of damage they should likely be prepared to handle on their own without supplemental Federal assistance. However, it should be noted that there are various other circumstances and factors that may impact the President's determination of whether a major disaster declaration is necessary that are not captured in the ICC ratio.

Another commenter suggested that FEMA modify Table 1: Estimated Cost of Assistance to Declaration Decision Comparative, to use a 50 percent benchmark instead of the breakdown of \$7.5 million or more, \$1.5 to \$7.5 million, and \$1.5 million or less. FEMA has also declined to use a 50 percent benchmark because we feel that the three different benchmarks are more helpful to States for planning purposes. A 50 percent benchmark may inevitably led to certain individuals or States use that benchmark as a hard threshold which FEMA seeks to avoid. In addition, it should be noted that there are various other circumstances and factors that may impact the President's determination of whether a major disaster declaration is necessary that are not captured in the single data point of the estimated cost of assistance.

One commenter asked whether the factors were weighted differently depending on the IA program. In addition, they suggested casualties should have a higher weight for a program such as Crisis Counseling. With respect to IA programs other than IHP, FEMA has not identified a formula similar to the ICC approach described elsewhere in the guidance. Instead, FEMA considers the factors holistically to determine which IA programs would best suit the needs of a community after a disaster. In addition, there is a table in the guidance correlating each Individual Assistance program with the factors that FEMA will consider when evaluating a Governor's request for a major disaster declaration authorizing such program. States may use

this table to better understand how the new IA declaration factors align with the various IA programs.

A commenter requested that FEMA include a statement that not all of the IA programs will be available as soon as a major disaster is declared. FEMA added a clarifying statement to the guidance that authorization of Individual Assistance programs under a major disaster declaration means that such programs are available for the State. FEMA further clarified that a State may be required to submit an additional application or additional information post major disaster declaration to determine which IA programs are necessary, the scope of each IA program, or the amount of each IA program funding.

Another commenter requested that FEMA clarify that the Transportation Infrastructure and Utilities sub-factor to the Impact to Community Infrastructure factor encompasses private roads, bridges, and tunnels as well as public roads, bridges, and tunnels. The commenters felt that this clarification would address situations in rural or other areas where a private road allows individuals access to publicly owned transportation infrastructure. FEMA agrees with the commenter that this clarification was needed and made the requested change to the guidance document.

A commenter proposed that FEMA should use metropolitan statistical areas or census tract-level data instead of county-level data to identify per capita income or the true impact to a local area and the communities within it. Major disasters are generally declared by the President on the county or parish level for ease of administration because county- or parish-level designations clearly delineate which areas within a State are or are not eligible for supplemental Federal assistance. Census tracts are not as well known by disaster survivors. FEMA has chosen to continue to use county-level data to match with how disasters are declared. However, a State

is always welcome to provide any additional relevant information at the census tract level, or at any other level, if such information illustrates the disaster impacted local area or community in a different light than the county-level data.

A commenter requested clarification of what a reasonable commuting distance from the impacted area was for rental resources under the State, Tribal, and Local Government; Non-Governmental Organizations (NGO); and Private Sector Activity sub-factor for the Resource Availability factor. Reasonable commuting distance is defined in regulation at 44 CFR 206.111 as a distance that does not place undue hardship on an applicant. The regulatory definition also takes into consideration the traveling time involved due to road conditions, *e.g.*, mountainous regions or bridges out and the normal commuting patterns of the area.

Another commenter stated that the Disaster Impacted Population Profile factor violates Section 308 of the Stafford Act and recommended that FEMA exclude this factor. Section 308 of the Stafford Act covers nondiscrimination in disaster assistance and states that activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status. FEMA notes that in the current practice and regulation, FEMA considers how a disaster impacts “special populations” such as low-income, the elderly, or the unemployed, and whether such populations may have a greater need for assistance. 44 CFR 206.48(b)(3). FEMA believes that it is important to consider how disasters may disproportionality have a negative impact on certain populations. For instance, a disaster may disproportionality impact individuals who are 65 years or older because they may live on a fixed income with less disposable income and therefore may have a difficult time paying for repairs to a disaster damaged home. Information on the percentage of the population that are non-English speaking assists FEMA in structuring their

outreach efforts to ensure that any messaging is conducted in the appropriate language for the disaster impacted population.

Another comment stated that with respect to the Impact to Community Infrastructure factor, FEMA should define what “impact” to community infrastructure means, and what a “significant” disruption is. The commenter also requested that FEMA provide additional guidance regarding how it would assess this factor. For purposes of evaluating the impact of a major disaster on a community’s infrastructure, FEMA considers any covered activity (such as search and rescue) or disruption (such as power loss) to be sufficiently significant to fall under this factor if that activity or disruption lasts for more than 72 hours. With respect to impact of the disaster on life-saving and life-sustaining services, FEMA is specifically seeking information on disruption to services such as, but not limited to, police, fire/EMS, hospital/medical, sewage, and water treatment services because prolonged disruption may affect the viability of a community and necessitate survivor relocation. Regarding the impact of the disaster on transportation infrastructure and utilities, FEMA is seeking information on the number of roads, bridges, tunnels, and public transit closures and utility outages of water, power, sewage, and gas that last longer than 72 hours. A State is welcome to provide any additional information that highlights the impact of the disaster on the State and local community infrastructure.

A commenter stated that FEMA should exclude the “casualties” factor or explain how it is weighted. FEMA does not believe that it is appropriate to exclude the casualties factor because it is an important factor to help determine the level of trauma that a community and State suffered from a disaster. A large amount of injured, missing, or deceased individuals can indicate a heightened need for supplemental Federal assistance because casualties are indicative of the level of trauma in the disaster affected areas. Regarding the weight given to the casualties

factor, FEMA has not assigned any percentage or given weight to the factor. FEMA considers casualties holistically along with the other factors in the final rule to determine the need of supplemental Federal assistance for a State and local community.

A commenter recommended that FEMA move the table that correlates each IA program to the factors considered earlier in the guidance as well as add a column with a tentative timeline for each IA program. FEMA declined to move table earlier in the document because it is important to have an understanding of the factors considered in evaluating the need for a major disaster authorizing IA before associating each factor with the applicable IA program. In addition, FEMA has declined to add a tentative timeline because the timeline of the IA programs varies from disaster to disaster based on numerous factors such as the size and scope of the recovery.

A commenter asked that FEMA include in the guidance the calculations that are used to determine the estimated cost of assistance so that States can do the calculation themselves based on local and State level damage assessments to assist in their evaluation of whether or not to request a joint FEMA-State preliminary damage assessment. Currently, the estimated cost of assistance is calculated by FEMA during completion of the joint FEMA-State preliminary damage assessment. Previously, FEMA was not consistent in sharing the results of the estimated cost of assistance with the affected States. FEMA clarified in the guidance that it would provide the estimated cost of assistance to the State during and after the preliminary damage assessment. Regarding the calculations, that is beyond the scope of the Individual Assistance Declarations Factors guidance and is more appropriately considered in any potential future updates to the preliminary damage assessment guidance and materials.

A commenter to the proposed guidance recommended that FEMA include in the regulation and guidance sub-factors related to the number of rental units impacted, the degree of damage, the percent of disaster impacted rental units occupied by persons of low and moderate income, and other similar data. FEMA has declined to include this sub-factor because during the disaster response phase it may be hard to capture this granularity of detail especially the percent of disaster impacted rental units occupied by persons of low and moderate income. If a State is able to collect this level of detailed data during the preliminary damage assessment phase they are welcome to provide this information and FEMA will consider it when evaluating the State's request for supplemental Federal assistance.

Changes to the Proposed Guidance

FEMA made four changes to the proposed guidance based on comments received on both the NPRM and the proposed guidance. First, as discussed above, FEMA added a clarifying statement that a major disaster declaration merely authorizes Individual Assistance; additional applications or additional information are required to determine the program scope or program funding amount. Second, also as discussed above, FEMA clarified that it will evaluate the impact of the disaster on both private and public roads under the "Transportation Infrastructure and Utilities" sub-factor in the "Impact to Community Infrastructure" factor. Third, as discussed in the final rule preamble, FEMA removed the "Planning After Prior Disasters" and the "State Services" sub-factors in the "Resource Availability" factor based on comments received on the NPRM. Fourth, as discussed above in the *Public Comments on the Proposed Guidance* section FEMA clarified that it would provide the estimated cost of assistance to the State during and after the Preliminary Damage Assessment. Finally, FEMA also made changes to the two

tables that are found in the guidance document based on an updated data set that was used in the final rule.

The final guidance does not have the force or effect of law.

Authority: Pub. L. 113-2.

Peter Gaynor,
Deputy Administrator,
Federal Emergency Management Agency.

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