Stafford Act Declaration Process

This fact sheet is intended to provide general information regarding the Stafford Act declaration process. All emergency and major disaster declarations are made solely at the discretion of the President of the United States.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207 § 401 states in part that: "All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State." A State also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Republic of Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance through the Compacts of Free Association.

As a result of the Sandy Recovery Improvement Act, federally recognized Indian tribal governments (Tribal Nations) now have the option to request a declaration directly from the President of the United States. In 2017, FEMA developed the Tribal Declarations Pilot Guidance that provides detailed and specific guidance for tribal emergency and major disaster declaration requests. Based on Tribal Nation requests and feedback, FEMA updated the Pilot Guidance and released the 2024 Tribal Declarations Interim Guidance.

FEMA has codified the declaration process at 44 C.F.R. Part 206, Subpart B.

Preliminary Damage Assessment

If it is apparent that a Presidential disaster declaration may be necessary to assist in the recovery of the impacted area, the State, Tribal Nation, or territorial government should contact their FEMA Regional Office and request a joint Federal, State/Tribal Nation/Territorial Preliminary Damage Assessment (PDA). Local government representatives should be included, if possible. Together, the team will conduct a thorough assessment of the impacted area to determine the extent of the disaster, its impact on individuals and public facilities, and the types of federal assistance that may be needed. This information is included in the Governor or Tribal Chief Executive's request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local government, Tribal Nation, or territory and that supplemental federal assistance is necessary.

State, Tribal, Or Territorial Government Resources Overwhelmed

Once the PDA is complete and the State, Tribal Nation, or Territorial government determines that the damage exceeds their resources, the Governor or Tribal Chief Executive may submit a declaration request to the President through their FEMA Regional Office. As part of the request, the Governor or Tribal Chief Executive must take appropriate action under State or Tribal Nation law and direct the execution of the State or Tribal emergency plan. The Governor or Tribal Chief Executive shall provide information on the nature and amount of State and local government, Tribal Nation, or Territorial resources that have been or will be committed to alleviating the results of

the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sectors, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the Governor or Tribal Chief Executive must certify that, for the current disaster, State, Tribal Nation, or Territorial governments obligations and expenditures will comply with all applicable cost-sharing requirements.

Generally, the PDA is completed prior to the submission of the Governor or Tribal Chief Executive's request for a major disaster declaration. However, when a severe or catastrophic event occurs, the Governor or Tribal Chief Executive's request may be submitted prior to completion of the PDA.[1] In such circumstances the major disaster will generally be limited to Public Assistance Category A (debris removal) and/or Category B (emergency protective measures) (which may be further limited to Direct Federal Assistance (DFA)) and Hazard Mitigation Assistance. For high-impact events where the level of damage to residences is overwhelming, the declaration may also include Individual Assistance. Additional forms of assistance may be added at a later date, pending the completion of PDAs.

Declaration Types

There are two types of disaster declarations provided for in the Stafford Act: emergency declarations and major disaster declarations.[2] Both declaration types authorize the President to provide supplemental federal disaster assistance. However, the events related to the two different types of declaration and scope and amount of assistance differ.

Emergency Declarations

The President can declare an emergency for any occasion or instance when the President determines federal assistance is needed. Emergency declarations supplement State and local government, Tribal Nation, or Territorial efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. The total amount of assistance provided for a single emergency may not exceed $5 million. The President shall report to Congress if this amount is exceeded.

REQUIREMENTS[3]

The Governor of the affected State/Territory or Tribal Chief Executive of the affected Tribal Nation must submit a request to the President, through the appropriate Regional Administrator, within five days after the need for assistance becomes apparent, but not longer than 30 days after the occurrence of the incident. The request must be based upon a finding that the situation is beyond the capability of the State, Tribal Nation, or Territorial

[1] 44 C.F.R. §206.33(d)

[2] FEMA has established a third type of declaration, Fire Management Assistance Grant (FMAG) declarations, through regulation. That process differs significantly from the emergency and major disaster processes. More information regarding the FMAG program can be found here: http://www.fema.gov/fire-management-assistance-grant-program

[3] 44 C.F.R. §206.35

government and that supplemental federal emergency assistance is necessary to save lives and protect property, public health and safety, or to lessen or avert the threat of a disaster. In addition, the request must include:

- Confirmation that the Governor or Tribal Chief Executive has taken appropriate action under State/Territory or Tribal Nation law and directed the execution of the State/Territory or Tribal emergency plan;
- A description of the State and local government, Tribal Nation, or Territorial government efforts and resources utilized to alleviate the emergency;
- A description of other federal agency efforts and resources utilized in response to the emergency; and
- A description of the type and extent of additional federal assistance required.

Assistance Available Under Emergency Declarations:

- Public Assistance (PA) – Only Categories A (debris removal) and B (emergency protective measures) may be authorized under an emergency declaration. Categories C-G (permanent work) are not available under an emergency declaration. Emergency declarations often include only emergency protective measures and will typically be limited to DFA, absent damage assessments showing significant need for financial assistance. This assistance is generally provided on a 75% federal, 25% non-federal cost sharing basis.
- Individual Assistance (IA) – The Individuals and Households Program (IHP) and the Crisis Counseling Assistance and Training Program are the only forms of IA that may be authorized under an emergency declaration. Authorization of these programs under an emergency is rare. Housing Assistance under IHP and the Crisis Counseling Assistance and Training Program are provided at a 100% federal share, while Other Needs Assistance under IHP requires a 25% non-federal cost share.
- The Hazard Mitigation Grant Program (HMGP) is not available for emergency declarations.

Pre-Disaster Emergency Declarations[4]

Governors and Tribal Chief Executives can request emergency declarations in advance of, or in anticipation of the imminent impact of, an incident which threatens a specific geographic area with such severity of destruction it could result in a major disaster. Such requests must meet all statutory and regulatory requirements for an emergency declaration request. Requests must demonstrate that the existence of critical emergency protective measure needs prior to impact are beyond the capability of the State, Tribal Nation, or Territory. These requests may also identify specific unmet emergency needs that DFA can meet. Pre-disaster declarations are typically limited to emergency protective measures (Category B), which are limited to DFA and reimbursement for mass care, including evacuation and shelter support. If other types of assistance are requested, FEMA may require damage assessments and cost estimates to determine if that additional assistance is warranted.

[4] This section provides guidance regarding the circumstances under which pre-disaster emergency declarations may be considered and the types of assistance which may be made available, as required by Stafford Act Section 502(c) (42 U.S.C. § 5192(c)).

Emergency Declarations with Federal Primary Responsibility

When an emergency exists for which the primary responsibility rests with the Federal government, the President may declare an emergency without a request from the Governor of the affected State/Territory or the Tribal Chief Executive of the affected Tribal Nation. Such an emergency declaration does not prevent the Governor or Tribal Chief Executive from subsequently requesting a major disaster declaration for other unmet needs caused by the event.

Major Disaster Declarations

The President can declare a major disaster for any natural event, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, fire, flood, or explosion, that the President determines has caused damage of such severity that it is beyond the combined capabilities of state and local governments to respond. A major disaster declaration provides a wide range of federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work.

REQUIREMENTS[5]

The Governor of the affected State/Territory must submit the request to the President through the appropriate Regional Administrator within 30 days of the occurrence of the incident or within 30 days of the end of the incident period, whichever is later. The Tribal Chief Executive of the affected Tribal Nation must submit the request to the President through the appropriate Regional Administrator within 60 days of the occurrence of the incident or within 60 days of the end of the incident period. The request must be based upon a finding that the situation is beyond the capability of the State and affected local governments, Tribal Nation, or Territory and that supplemental federal assistance is necessary. In addition, the request must include:

- Confirmation that the Governor or Tribal Chief Executive has taken appropriate action under State/Territory or Tribal Nation law and directed execution of the State/Territory or Tribal emergency plan;
- An estimate of the amount and severity of damage to the public and private sector;
- A description of the State/Territory and local government or Tribal Nation efforts and resources utilized to alleviate the disaster;
- Preliminary estimates of the type and amount of Stafford Act assistance needed; and
- Certification by the Governor or Tribal Chief Executive that the State/Territory and local governments or Tribal Nation will comply with all applicable cost sharing requirements.

[5] 44 C.F.R. §206.36

ASSISTANCE AVAILABLE UNDER MAJOR DISASTER DECLARATIONS

Not all programs are activated for every disaster. The determination of which programs are authorized is based on the types of assistance specified in the Governor or Tribal Chief Executive's request and the needs identified during the joint PDA. FEMA disaster assistance programs are as follows:

Individual Assistance

Assistance to individuals and households, which may include:

- Individuals and Households Program
- Crisis Counseling Assistance and Training Program
- Disaster Case Management
- Disaster Unemployment Assistance
- Disaster Legal Services
- Mass Care and Emergency Assistance or Voluntary Agency Liaison Coordination

Public Assistance

Assistance to State and local governments, Tribal Nations, Territories, and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities, which may include the following categories:

- Category A - Debris removal
- Category B - Emergency protective measures
- Category C – Roads and bridges
- Category D – Water control facilities
- Category E – Buildings and equipment
- Category F – Utilities
- Category G – Parks, recreational, and other facilities

Hazard Mitigation Assistance

Assistance to State and local governments, Tribal Nations, Territories, and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards.

State and Territory Evaluation Factors

When evaluating requests for major disasters and providing analysis to the President, FEMA considers the following factors:[6]

[6] 44 CFR 206.48. The regulation includes a chart titled "Average Amount of Assistance per Disaster." This chart is out of date and is no longer relevant to the declarations process.

Public Assistance Program

1. Estimated cost of the assistance
2. Localized impacts
3. Insurance coverage in force
4. Hazard Mitigation
5. Recent multiple disasters
6. Other federal agency assistance programs

Individual Assistance Program

1. State fiscal capacity and resource availability
2. Uninsured home and personal property losses
3. Disaster impacted population profile
4. Impact to community infrastructure
5. Casualties
6. Disaster-related unemployment

Due to the unique circumstances that Tribal Nations face, Tribal Nation major disaster declaration requests are reviewed under separate evaluation factors. For more information on major disaster declaration factors for Tribal Nations, please see the Tribal Declarations Interim Guidance (fema.gov).

APPEALS

The Governor can appeal the denial of a major disaster or emergency declaration request. The appeal must be submitted within 30 days of the date of the denial letter and should include additional information justifying the need for supplemental federal assistance.

The Tribal Chief Executive can appeal the denial of a major disaster or emergency declaration request. The appeal must be submitted within 60 days of the date of the denial letter[7] and should include additional information justifying the need for supplemental federal assistance.

Post Declaration Actions

Add-ons: The Governor or Governor's Authorized Representative (GAR) can request designation of additional areas and programs within 30 days of the declaration or the end of the incident period, whichever is later. The Governor or GAR may submit an extension request within the 30-day period, providing a valid reason supporting an extension.

The Tribal Chief Executive or the Tribal Chief Executive's Authorized Representative (TAR) can request designation of additional programs or additional geographical areas within 60 days of the end of the incident period of the declaration or within 60 days of the declaration, whichever is later, unless an extension is approved. If an extension is needed, the Tribal Chief Executive or Tribal Chief Executive's Authorized Representative may submit a time extension request within the 60-day period. The time extension request should be in writing and include the reason for the delay and the amount of additional time needed. FEMA will respond to the extension request within 7 days.

[7] 139 Stafford Act § § 401 and 501; 42 U.S.C. § § 5170 and 5191.

The request for programs should be submitted to the FCO who will submit their recommendation to FEMA Headquarters through the FEMA Regional Administrator.

Appeals: Post-declaration determinations for states and Tribal Nations are typically eligible for a one-time appeal. For states, appeals must be filed within 30 days of the denial letter, while Tribal Nation appeals are due within 60 days. FEMA may grant extensions to these deadlines upon request from the state, territory, or Tribal Nation. Requests for extensions must be submitted by states within the 30-day period and by Tribal Nations within the 60-day period.