

Overview

October 2013

Process for Tribal Governments to Request a Presidential Declaration

The Sandy Recovery Improvement Act of 2013 (SRIA) amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5121 *et seq.*, (Stafford Act) to provide federally recognized Indian tribal governments (tribal governments) the option to request a Presidential emergency or major disaster declaration independent of a state. Tribal governments may still choose to seek assistance, as they have historically under a state declaration request. In accordance with SRIA, the Federal Emergency Management Agency (FEMA) is developing pilot guidance describing the process for Presidential declaration requests from tribal governments.

This Overview is *not the final* pilot guidance to implement direct tribal declarations. Rather this document outlines the *current* procedures to request Presidential declarations authorized by the Stafford Act that will be used until the Tribal Declarations Pilot Guidance is finalized following a consultative process with tribal governments. It may be informative for tribal governments deciding whether to seek supplemental disaster assistance under the Stafford Act. For complete information on requesting a Presidential declaration, refer to [44 Code of Federal Register \(CFR\) Section 206 Subpart B – The Declaration Process](#).

Background on the Stafford Act

The Stafford Act authorizes the President to make certain programs of assistance available to supplement tribal, state, territorial, and local efforts to respond to and recover from an incident that exceeds all available resources and overwhelms the tribal, territorial or state and local governments. The President makes Stafford Act assistance available after declaring an emergency or major disaster. *See section below, Stafford Act Presidential Declarations and Available Assistance.*

The President delegated to FEMA the authority to administer Stafford Act assistance and coordinate response and recovery activities after the President makes a Stafford Act declaration. FEMA processes all declaration requests for the President and recommends to the President whether or not to declare an emergency or major disaster and make Stafford Act assistance available.

While FEMA administers Stafford Act assistance authorized by the President, disaster assistance is also part of the mission of many other federal agencies. These other federal agencies often implement their disaster response or assistance programs pursuant to those agencies' laws, regulations and policies, and such assistance may be available regardless of a Stafford Act declaration. The Stafford Act generally will not be used to provide assistance to respond to an incident that is within the statutory authority of another federal agency unless there are significant unmet needs that other federal assistance does not address and the Stafford Act could address.

Stafford Act Presidential Declarations and Available Assistance

There are two types of Stafford Act declarations:

Emergency declarations are intended to provide immediate and short-term assistance essential to save lives, protect public health, safety, and property, or to lessen or avert the threat of a

catastrophe. Emergency declarations do not authorize long term mitigation or infrastructure restoration assistance that may be included in a major disaster declaration.

Major disaster declarations are issued for catastrophes, in any part of the United States, which in the determination of the President causes such damage to infrastructure and/or primary residences that the response and recovery needs overwhelm the efforts and available resources of tribal, state, and/or local governments, and disaster relief organizations.

There are three types of assistance that may be available to a tribal government as the result of a Stafford Act declaration. The types of assistance authorized for the declaration will depend on the impacts of the incident.

Public Assistance (PA) provides assistance, typically through reimbursement, to tribal or state and local governments and certain private non-profit organizations for emergency work (i.e., debris removal, emergency protective measures) and/or permanent work (i.e., repair, replacement, or restoration of disaster-damaged, government-owned infrastructure). Public Assistance eligibility is based on work and damage which occurred as a direct result of the declared incident.¹ FEMA covers no less than 75 percent of the cost of Public Assistance. The Stafford Act provides the President the authority to adjust the cost share requirement for Public Assistance.

Individual Assistance (IA) is supplemental assistance provided to individuals and households adversely affected by a major disaster or emergency. The President may authorize all or some of the following Individual Assistance programs for a major disaster: Individuals and Households Program, Disaster Unemployment Assistance, Disaster Legal Services, Crisis Counseling Program, and Disaster Case Management Program. Under an emergency declaration, only the Individuals and Households Program can be made available. The Other Needs Assistance provision of the Individuals and Households program has a 25 percent non-federal cost share. *The President does not have the authority to waive this cost share.*

Hazard Mitigation Grant Program (HMGP) provides tribal, state and local governments assistance to implement cost-effective hazard mitigation measures to reduce the risk of loss of life and property from future disasters during the reconstruction process following a disaster. The President may authorize Hazard Mitigation under a major disaster declaration, but such assistance is not available under an emergency declaration. Hazard Mitigation has 25 percent non-federal cost share. *The President does not have the authority to waive this cost share.*

Stafford Act Cost Sharing Requirements

As discussed above, the Stafford Act requires a non-federal cost share for certain assistance authorized by the President.

- **Public Assistance:** no more than 25 percent of the costs for eligible emergency protective measures, debris removal and/or infrastructure repair and replacement awarded as part of the Public Assistance program.

¹ Deferred maintenance and damage from other events are not eligible for assistance.

- **Hazard Mitigation:** 25 percent of the funds awarded through the Hazard Mitigation Grant Program.
- **Individual Assistance:** 25 percent of the disaster assistance awarded for the Other Needs Assistance provision of the Individuals and Households Program.

When requesting a declaration independent of a state, the Chief Executive must certify that the tribal government will comply with all Stafford Act cost sharing requirements.² Therefore, the tribal government must be prepared, budgetarily, to bear as much as 25 percent of disaster costs even before the President makes assistance available.

The total non-federal cost share will depend on the total cost of the authorized assistance. For example, the tribal government and FEMA formulate a Public Assistance project which costs \$1 million. FEMA will obligate to the tribal government \$750,000 – 75 percent of the cost of eligible work for that project. The tribal government will be responsible for the other \$250,000 – 25 percent of the project.

In exceptional and rare circumstances, the President may adjust the non-federal cost share for Public Assistance.

Response After an Incident

Immediately after an incident, the tribal government takes action to respond to the event to save lives, protect property and the environment, stabilize the incident and provide for basic human needs. Typically, the tribal government directs resources to meet post-incident needs through the activation of the tribal emergency plan, a prerequisite to seek a Presidential declaration. The tribal government activates the emergency plan according to appropriate tribal law.

If the tribal government needs additional response resources, then it may also consider whether to request assistance directly from non-governmental organizations, other tribal governments or organizations as well as state and/or local governments. The tribal emergency plan may include agreements with these governments and/or organizations which will help expedite the provision of additional assistance.

While other federal departments and agencies may have their own resources and authorities to support the tribal government's response efforts, assistance and resources from local, state and other tribal governments are often closer and may be obtained significantly faster than federal resources.

Activation of the tribal emergency plan is a Stafford Act requirement

Should the tribal government anticipate that it will request a Stafford Act Declaration independently of a state, the tribal government must activate the tribal emergency plan.

Activation of the state's emergency plan does not satisfy the Stafford Act requirement that the tribal government activate its own emergency plan.

² If the tribal government chooses to be a grantee for Public Assistance or Hazard Mitigation under a state declaration, the tribal government is required to cover the non-federal cost share.

Pre-Assessment of Damages

After response activities stabilize, the tribal government conducts an initial assessment of the damage and impacts caused by the incident, such as the effect and cost of the disaster damage to government infrastructure, affects on government services and/or the impacts to primary residences. If the tribal government identifies needs it cannot meet through its own funding or insurance, then the tribal government should evaluate the availability of assistance from non-governmental disaster relief organizations, for example, the American Red Cross or other members of the [National Voluntary Organizations Active in Disaster](#) (National VOAD). National VOAD is a coalition of over 50 national level faith-based, community-based and other non-governmental organizations, and 55 State/Territory VOADs, which represent Local/Regional VOADs and hundreds of other member organizations throughout the country.

Just as in the response phase, the tribal government may also request assistance from other tribal governments or tribal organizations, the state, and/or local governments, and from other federal agencies with authority to provide assistance, such as the Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), or the Department of Interior (DOI), where appropriate. FEMA can not provide assistance for activities that fall within the specific authority of these other federal agencies. Stafford Act assistance cannot duplicate support available from other sources, including insurance.

Joint Preliminary Damage Assessments

After the tribal government has explored these various options and determines that needs remain, the tribal government may choose to notify the FEMA Regional Administrator³ of those unmet needs and request joint preliminary damage assessments (PDAs). This request should be submitted by the tribal Chief Executive, who is the executive official authorized to make such a request on behalf of the tribal government according to tribal law.

- Joint PDAs evaluate the magnitude and impact of the damage to determine whether Stafford Act assistance may be needed. Specifically, PDAs evaluate damage to tribal infrastructure and/or primary residences on tribal lands impacted by the incident and estimate the cost of available Stafford Act assistance for that damage. The Stafford Act cannot be used to repair infrastructure owned or maintained by federal agencies, so PDAs will not estimate the costs to repair that infrastructure.
- A joint PDA team will include personnel from FEMA and the tribal government and typically also includes personnel from other agencies and organizations that can evaluate damages and determine unmet needs, such as other federal partners (i.e., Small Business Administration) and non-governmental disaster relief organizations. The tribal government may also consider including other federal agencies or state and local government representatives, where appropriate.

³ FEMA regions work closely with tribal, state, territorial, and local leadership and emergency management partners in the areas they serve to prepare for, protect against, respond to and recover from all hazards. Each FEMA region is led by a FEMA Regional Administrator.

- It is important to note that in most cases, the results of the joint PDA will be required to support the tribal government's request for a declaration and to inform FEMA's recommendation to the President whether a declaration is warranted. **If a joint PDA request is not made to the FEMA Regional Administrator in advance of a request for a disaster declaration, then the declaration request may be delayed until joint damage assessments are completed.**
- Requests for emergency and major disaster declarations must be submitted **within 30 days** of the date of the incident, so the request for PDAs should be submitted with sufficient time to conduct the assessments and also allow time for the tribal government to determine whether it would like to submit a request for a Stafford Act declaration. See "Declaration Request Procedures" section for more information on time requirements.

Informed by the results of the Preliminary Damage Assessment, the Chief Executive may determine that supplemental assistance under the Stafford Act is needed.

Considerations Prior to Submitting a Declaration Request

Tribal governments should consider whether to seek a Presidential emergency or major disaster declaration on their own or to be included in a state declaration request. Considerations may include:

- *Impacts.* The tribal government should consider whether the impacts from the incident are consistent with the factors FEMA uses to make recommendations to the President whether or not to make Stafford Act assistance available. The tribal government should again consider whether unmet needs can be addressed by other resources, such as insurance, non-governmental organizations, or assistance from other tribal governments and/or organizations, state or local governments or other federal agencies. Most Stafford Act assistance addresses immediate threats to life safety and damaged infrastructure and housing. Events resulting in purely economic impacts are unlikely to receive declarations, as the Stafford Act provides only limited authority to address such impacts.
- *Non-federal cost share requirement for Stafford Act assistance.* The tribal government that requests Stafford Act declarations must certify that it will cover the non-federal cost share. Public Assistance has a not more than 25 percent non-federal cost share; Other Needs Assistance provision of the Individuals and Households Programs has a 25 percent non-federal cost share; Hazard Mitigation has a 25 percent non-federal cost share.
 - After the President declares an emergency or major disaster declaration for a state, some states cover all or part of the cost share for Public Assistance and HMGP subgrantees and also covers the cost share for the Other Needs Assistance provision of the Individuals and Households Program.
- *Tribal Hazard Mitigation Plan requirement.* When a tribal government chooses to request a Presidential declaration on its own or serve as a grantee as part of a state declaration, a FEMA-approved Tribal Mitigation Plan is required prior to receiving Hazard Mitigation grants and Public Assistance permanent work.
 - If electing to be a subgrantee under a state declaration, then the tribal government may be eligible to receive Public Assistance through the state without a Tribal Mitigation Plan. In addition, a tribal government participating as a subgrantee under

a state declaration may be eligible to receive Hazard Mitigation funds for planning grants without a mitigation plan. The tribal government must have an approved Tribal Mitigation Plan in order to apply for and receive Hazard Mitigation project grants.

- *Compliance with records management and auditing requirements.* If the tribal government receives a Presidential declaration, then the tribal government will be responsible for the distribution and oversight of funding that FEMA obligates to the disaster. As such, the tribal government must have the capability to act as a grantee and manage grantee responsibilities under federal laws and regulations. For more information, see [44 CFR Part 13](#).
- *Staffing needs after a declaration is made.* The tribal government will need staff to partner with FEMA to administer Public Assistance and Hazard Mitigation grants and support the implementation of Individual Assistance programs.
 - Specifically, staff will be needed to develop Public Assistance projects, participate in environmental and historic preservation reviews, identify and implement eligible mitigation projects, and submit grant applications for desired Individual Assistance programs. Tribal governments must also identify a Hazard Mitigation Officer to administer the Hazard Mitigation Grant Program, and for those tribal governments who participate in the National Flood Insurance Program, a Floodplain Manager will be needed to help with post-event development in the floodplains.

Availability of Technical Assistance for Tribal Governments

FEMA Regional Administrators and staff are available to answer questions about Stafford Act declarations, Stafford Act assistance, the declarations request process, and declaration and program requirements.

FEMA Regional Offices can provide technical assistance to the Chief Executive and tribal government throughout the declaration process and can also provide technical assistance in the development of Hazard Mitigation plans and other administrative requirements to receive Stafford Act assistance.

FEMA encourages tribal governments to coordinate with the appropriate FEMA Regional Administrator when it considers whether to request a declaration.

Declaration Request Procedures

Once the tribal government determines its capabilities are overwhelmed, all available tribal resources are exhausted, and joint PDAs are completed, the Chief Executive may consider submitting a request for a Stafford Act declaration.

The Chief Executive's request and accompanying support documentation is the tribal government's opportunity to describe an incident, the incident's impacts, and demonstrate that an incident exceeds all available resources and overwhelms the tribal or state and local governments.

The declaration request must be submitted through the FEMA Regional Administrator to the President **within 30 days of the date of the incident**. Should the tribal government need additional time to submit a declaration request, the Chief Executive must submit a time extension request within that 30 day time limit.

The request must include [FEMA Form 010-0-13: Request for Presidential Disaster Declaration: Major Disaster or Emergency](#). The form includes the minimum necessary information and certifications legally required by the Stafford Act for a declaration request and must be signed by the Chief Executive. A [cover letter, addressed to the President through the FEMA Regional Administrator](#), in support of the Chief Executive's request should accompany the form.

FEMA will then evaluate the request and make a recommendation to the President. The President then evaluates the request and determines whether Stafford Act assistance is warranted. The President has the sole authority to make a Stafford Act declaration.

Once the President makes a determination, FEMA will expeditiously notify the Chief Executive of the decision.

If the President denies the request or denies part of the request, then the tribal government may appeal the decision. The appeal should be submitted **within 30 days of the date of the denial and should include additional information to support the appeal**. The Chief Executive may request a time extension within this 30 day time limit if the tribal government needs additional time to submit the appeal.

For more information, please see *Frequently Asked Questions: Process for Tribal Governments to Request a Presidential Declaration*.

Declaration Request Process

Incident affects the tribal government.

Tribal government activates the tribal emergency plan and dedicates resources to response activities.



Tribal government collects initial damage estimates to identify needs, seeks resources for unmet needs from non-governmental organizations, other tribal governments or organizations, state and local governments, and federal agencies for non-Stafford Act assistance.



Tribal government requests joint PDAs

Tribal government determines that needs remain after all other resources exhausted. Chief Executive requests Joint Preliminary Damage Assessments (PDAs) from the FEMA Regional Administrator to evaluate damages and potential need for Stafford Act assistance. Joint PDAs conducted.



Tribal government reviews results of joint PDAs.

If the tribal government determines Stafford Act assistance may be needed, the tribal government should then determine whether to submit a request for a Presidential declaration on its own or to be considered part of a state declaration request, if the state is requesting a declaration.



Within 30 days of the date of the incident, the Chief Executive submits a declaration request to the President through the FEMA Regional Administrator. The request is based on damage assessment findings, describes impacts of the disaster and specifies requested programs, among other requirements.



FEMA reviews the request and sends its recommendation to the President.



President makes a determination. FEMA notifies the Chief Executive of the President's decision. If the President denies the request or denies part of the request, then the tribal government may appeal the decision. The appeal should be submitted **within 30 days of the date of the denial** and should **include additional information to support the appeal.**