

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Federal Coordinating Officers
Regional Directors
Acting Regional Directors

ATTENTION: Regional Response and Recovery Division Directors
Regional Mitigation Division Directors

FROM: Daniel A. Craig
Director
Recovery Division

David I. Maurstad
Acting Director
Mitigation Division

DATE: 02-MAY-05

SUBJECT: Implementation Procedures for States, Territories, and
Indian Tribal Governments Without an Approved State
Mitigation Plan - Follow-up Guidance

On April 13, 2005, we provided guidance to you regarding procedures for processing requests for major disaster declarations after May 1, 2005, for States and Territories that **do not have** a FEMA approved State Mitigation Plan (SMP). In that memorandum, we indicated that more specific information on the following issues would be provided: formal submittal of an approvable SMP, applicability of the procedures to Indian tribal governments, and Fire Management Assistance declarations.

The following guidance is supplementary to the procedures outlined in the April 13 memorandum, and applies to major disaster declarations and Fire Management Assistance declarations for all States, Territories, and Indian tribal governments that do not have an approved SMP, including State-level plans for tribes.

FEMA regulations at 44 C.F.R. § 201.4 require SMPs to be updated and resubmitted to FEMA for review and approval every three years. Therefore, these procedures will be implemented at any time in the future that a State, Territory, or Indian tribal government does not have a current, FEMA-approved SMP, including an updated plan as required by three years from the date of approval of the prior plan.

We have made appropriate revisions to all of the declarations-related documents that are affected by the amended declarations procedures. The relevant revised templates are attached to this guidance. **These versions must be used effective immediately, for all**

major disaster and Fire Management Assistance declaration requests. Please ensure that all staff are informed of the new requirements, and that previous versions of the templates are no longer used. This includes informing the State of the revised template for the Governor's request for major declarations.

Formal Submittal of an Approvable SMP

For major disaster declarations, States without an approved SMP have 30 calendar days from the date of declaration to submit formally an approvable SMP for FEMA review and approval. In order to meet this requirement, the State must submit a SMP that, at a minimum, meets all of the requirements for SMPs identified at 44 C.F.R. § 201.4 (with the exception of formal adoption by the State), as indicated on the most recent plan review crosswalk prepared by the regional Mitigation Division. The 30-day period should be used, as needed, for the State to provide the plan to FEMA for additional review and comment to ensure that any final revisions necessary to meet these requirements are made. However, at the end of the 30 days, the plan submitted by the State must be *approvable pending adoption*. This is the designation that indicates FEMA Regional Mitigation staff have conducted a final review of the plan and determined that it meets all requirements and is, therefore, ready to be formally adopted.

FEMA will consider a plan formally submitted only if it is transmitted to the FEMA Regional Director with a letter from the director of the State emergency management agency, or higher official. The transmittal must also: include a copy of the final Regional plan review crosswalk that indicates this version of the plan is approvable pending adoption; and express the State's commitment to formally adopt the plan no later than 45 calendar days from the date the plan is submitted to FEMA.

If the State submits its SMP, meeting the conditions above, within 30 days, FEMA will begin work on the Public Assistance (PA) Project Worksheets (PW) for both emergency and permanent work. Permanent work PWs (Categories C-G) will be held in a Hazard Mitigation Plan queue in NEMIS until a SMP is adopted. FEMA will only authorize PA Categories C-G and HMGP upon FEMA approval of the SMP. This occurs after formal adoption by the State and must occur within 45 days of submission of the SMP to FEMA.

If the State does not submit its SMP within 30 days of the date of declaration, or if it does not formally adopt the plan within 45 days of the date it submitted the SMP to FEMA, FEMA will notify the State that it has denied the request for assistance under PA Categories C-G and HMGP. If the assistance is denied, FEMA will stop work on the PWs, and no funds will be obligated.

Applicability to Indian Tribal Governments

Federally recognized Indian tribal governments are not able to receive a disaster declaration, since the Stafford Act declarations process specifically applies to States. However, once a State has received a disaster declaration, an Indian tribal government may indicate its intention to apply directly to FEMA, as a grantee. In this case, FEMA may enter into a FEMA-Tribal Agreement with the tribe.

The procedures outlined here will be implemented only in those cases where an Indian tribal government chooses to act as a grantee for declarations after May 1, 2005, and does not have a current, FEMA-approved SMP at the time the FEMA-Tribal Agreement is signed. This includes a FEMA-approved updated plan by three years from the date of approval of the prior plan.

The Federal Coordinating Officer (FCO), in coordination with the Regional Mitigation Division Director, will determine the status of the Indian tribal government's SMP during initial discussions with the tribe. The FEMA-Tribal Agreement will authorize only PA Categories A and B, and Individual Assistance (IA), as appropriate, and will indicate that FEMA may add PA Categories C-G and HMGP upon FEMA approval of the SMP that has been adopted by the tribal government.

The Indian tribal government will have 30 calendar days from the date of signing the FEMA-Tribal agreement to submit formally an approvable SMP to FEMA for review and approval. In order to meet this requirement, the tribal government must submit a SMP that, at a minimum, meets all of the requirements for SMPs identified at 44 C.F.R. § 201.4 (with the exception of formal adoption by the tribal government), as indicated on the most recent plan review crosswalk prepared by the regional Mitigation Division. The 30-day period should be used, as needed, for the tribal government to provide the plan to FEMA for additional review and comment to ensure that any final revisions necessary to meet these requirements are made. However, at the end of the 30 days, the plan submitted by the Indian tribal government must be *approvable pending adoption*. This is the designation that indicates FEMA Regional Mitigation staff have conducted a final review of the plan and determined that it meets all requirements and is, therefore, ready to be formally adopted.

FEMA will consider a plan formally submitted only if it is transmitted to the FEMA Regional Director with a letter from the director of the Indian tribal government emergency management agency, or higher official. The transmittal must also: include a copy of the final Regional plan review crosswalk that indicates this version of the plan is approvable pending adoption; and express the Indian tribal government's commitment to formally adopt the plan no later than 45 calendar days from the date the plan is submitted to FEMA.

If the Indian tribal government submits its SMP, meeting the conditions above, within 30 days, FEMA will begin work on the Public Assistance (PA) Project Worksheets (PW) for both emergency and permanent work. Permanent work PWs (Categories C-G) will be held in a Hazard Mitigation Plan queue in NEMIS until a SMP is adopted. FEMA will authorize PA Categories C-G and HMGP upon FEMA approval of the SMP. This occurs after formal adoption by the tribal government and must occur within 45 days of submission of the SMP to FEMA.

If the Indian tribal government does not submit its SMP within 30 days of the date of signing the FEMA-Tribal Agreement, or if it does not formally adopt the plan within 45 days of the date it submitted the SMP to FEMA, FEMA will notify the tribal government

that it has denied the request for assistance under PA Categories C-G and HMGP. If the assistance is denied, FEMA will stop work on the PWs, and no funds will be obligated.

Fire Management Assistance Declarations

Assistance under the Fire Management Assistance Grant Program (FMAGP) is contingent upon a State, Territory, or Indian tribal government meeting the mitigation planning requirements of section 322 of the Stafford Act, as implemented at 44 C.F.R. Part 201. However, the FMAGP declarations process does not involve the same program procedures that a major disaster declaration does. Fire declarations operate on a real time basis, and project worksheets do not capture damage from the event, but rather reflect the expenses incurred in the mitigation, management, and control of the declared fire.

A State, Territory, or Indian tribal government intending to apply directly to FEMA for assistance under the fire declaration and that does not have an approved SMP per 44 C.F.R. § 204.51 (d) (2) must submit formally an approvable SMP for FEMA review and approval within 30 calendar days of the date of the FEMA-State/Tribal Agreement for the FMAGP, or of the Amendment of the Agreement, Exhibit E. In order to meet this requirement, the State or Indian tribal government must submit a SMP that, at a minimum, meets all of the requirements for SMPs identified at 44 C.F.R. § 201.4 (with the exception of formal adoption by the State or tribal government), as indicated on the most recent plan review crosswalk prepared by the regional Mitigation Division. The 30-day period should be used, as needed, for the State, Territory, or tribal government to provide the plan to FEMA for additional review and comment to ensure that any final revisions necessary to meet these requirements are made. However, at the end of the 30 days, the plan submitted by the State, Territory, or tribal government must be *approvable pending adoption*. This is the designation that indicates FEMA Regional Mitigation staff have conducted a final review of the plan and determined that it meets all requirements and is, therefore, ready to be formally adopted.

FEMA will consider a plan formally submitted only if it is transmitted to the FEMA Regional Director with a letter from the director of the State, Territory, or Indian tribal government emergency management agency, or higher official. The transmittal must also: include a copy of the final Regional plan review crosswalk that indicates this version of the plan is approvable pending adoption; and express the State, Territory, or tribal government's commitment to formally adopt the plan no later than 45 calendar days from the date the plan is submitted to FEMA.

If the State, Territory, or Indian tribal government does not submit its SMP within 30 days of the date of the amendment of the FEMA-State/Tribal Agreement, or if it does not formally adopt the plan within 45 days of the date it submitted the SMP to FEMA, FEMA will notify the State, Territory, or tribal government that it has denied the request for assistance under the fire management assistance declaration.

Incorporation of the SMP verification requirement will be reflected in the following procedural changes. At the time of the Governor's request for a fire management assistance declaration; the Region must identify if the affected State, Territory, or Indian

tribal government has a formally approved SMP. The Region should include this information in the Fire Management Assistance Summary and Recommendation provided to Headquarters. Additionally, the Summary and Recommendation shall provide a brief assessment of the State, Territory, or Indian tribal government's ability to submit an approvable SMP within the 30 calendar days following the date of amendment of the FEMA-State/Tribe Agreement, if there is no approved plan. Regional staff should coordinate with the Regional Mitigation Division Director to provide this assessment. The Region will notify those States, Territories, or Indian tribal governments that do not have an approved SMP at the time of the fire management assistance declaration that they have 30 calendar days from the amendment of the FMAGP FEMA-State/Tribal Agreement to formally submit an approvable SMP and that, if they fail to do so, they will not receive assistance under the declaration. This applies to all verbal and written fire management assistance declaration requests and approvals.

In Conclusion

Please ensure that appropriate staff are aware of the new requirements, at both the Regional and State levels. Regional Mitigation staff are further directed to implement the procedures identified in Attachment B, below, effective immediately. Please contact either one of us if you have any questions, or Magda Ruiz for declarations issues (202-646-3629); Chuck Stuart for Public Assistance issues (202-646-3691); Ann Piesen (202-646-3925) for Fire Management Assistance issues; Terry Baker for State Mitigation Plan issues (202-646-4648); or Jonathan Smith for HMGP/Mitigation Declarations issues (202-646-2847).

The procedures outlined above have been reflected in all relevant declarations documents. Attached to this memorandum please find the following attachments:

For Major Disaster Declarations

Attachment A-Governor's Request Letter Template

Attachment B -Modification of the Regional Mitigation Declaration Review Process

For Fire Management Assistance Grant Declarations

Attachment C -Decision Checklist for Fire Management Assistance Declaration Request

Attachment D -Fire Management Assistance Regional Summary and Recommendation

Attachment E -Exhibit E Amendment to the FEMA-State Agreement for FMAGP

Attachments removed