



FEMA

March 12, 2021

Dear Tribal Leader:

On December 14, 2020, the Federal Emergency Management Agency (FEMA) published a proposed rule titled [Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program](#) in the Federal Register. Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster declaration for states, tribes and territories authorizing the Public Assistance program. In the Disaster Recovery Reform Act of 2018 (DRRA), Congress directed FEMA to review those factors, specifically the estimated cost of assistance factor for states and territories, and to update them through rulemaking, as appropriate. Congress also directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors when evaluating a request for a major disaster.

The Sandy Recovery Improvement Act of 2013 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide 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 part of a state's declaration request. In January 2017, following extensive tribal consultation, FEMA published the [Tribal Declaration Pilot Guidance](#) which started the pilot phase of tribal declaration implementation that is ongoing. Tribal governments that make a direct declaration request will continue to be subject to the factors outlined in the *Tribal Declaration Pilot Guidance* and would not be impacted by this proposed rule. However, tribal governments that choose to apply through a state may be impacted by the higher minimum thresholds and state per capita thresholds proposed by this rulemaking.

As published, FEMA proposes to amend the estimated cost of assistance factor in 44 CFR 206.48(a)(1) to raise the per capita indicator and the minimum threshold for states and territories. The proposed revisions would more accurately assess state and territorial disaster response capabilities and comply with the DRRA requirement for FEMA to review its disaster declaration factors.

FEMA would like to hear tribal representatives' comments on the proposed rule and will be hosting a virtual tribal consultation session on Tuesday, March 23, 2021, 2:00-4:00 P.M. ET. During the tribal consultation session, FEMA's Recovery Directorate and the Office of Chief Counsel staff will provide a brief overview of:

- Sections 1232 and 1239 of the DRRA,
- Proposed regulatory changes at 44 CFR 206.48(a) included in the Notice of Proposed Rulemaking (NPRM),
- How to access the NPRM and submit comments, and
- Obtain feedback from tribal representatives.

FEMA remains committed to its responsibility under Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, reaffirmed by President Biden's January 26, 2021 [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), to engage in consultation and collaboration with tribal officials. We look forward to receiving your valuable input.

Please register in advance for the session via [Web-to-Go](#); registration will remain open until the time of the event. After registering, you will receive a confirmation email containing information about joining the session. A reminder email will be sent one business day prior to the event.

Comments provided during the consultation session will be recorded and posted to the rulemaking docket. Additionally, written comments may be submitted through [www.Regulations.gov](#) under Docket ID "[FEMA-2020-0038](#)" through Monday, April 12, 2021. All comments received during the session and submitted through [www.Regulations.gov](#) will be responded to in writing at a later date.

Questions about this session may be directed to FEMA Regional Tribal Liaisons. Contact information for FEMA Tribal Liaisons may be found at [www.fema.gov/about/contact](#).

Respectfully,



Keith Turi  
Assistant Administrator  
Recovery Directorate  
Office of Response and Recovery

cc: Tribal Emergency Managers  
Tribal Associations