

Overview of the Second Draft of the Tribal Declarations Pilot Guidance

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.

In 2013 and 2014, FEMA sought input from tribal governments to inform the development of the Tribal Declarations Pilot Guidance. FEMA published the second draft pilot guidance in the Federal Register for a public comment period and tribal consultation to get further input from tribal governments and other interested stakeholders. Comments received during the consultation can be found here <http://www.fema.gov/summary-comments-first-draft-tribal-declarations-pilot-guidance>.

The following summarizes the second draft of the pilot guidance.

Table of Contents

- Public Assistance Criteria – Impact of the Disaster
- Public Assistance Criteria – Estimated Cost of Assistance
- Public Assistance Criteria – Minimum Damage Amount
- Individual Assistance Eligibility for Tribal Declarations
- Individual Assistance Criteria – Concentration of Damages
- Individual Assistance Criteria – Trauma
- Individual Assistance Criteria – Special Populations
- Public and Individual Assistance Criteria - Tribal Government Resources
- Definitions
- Entities and Individuals Who Can Request Stafford Act Declarations
- Public Assistance Eligibility for Tribal Declarations
- Tribal Population Data Source
- Cost Share Adjustment Criteria

Public Assistance Criteria – Impact of the Disaster

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Replaced the ‘Localized impacts’ factor with ‘Impacts of the Disaster’ factor and described examples of the impacts FEMA may consider for the factor 	<ul style="list-style-type: none"> ○ Expands the ‘Impact of the Disaster’ section to include more specific factors (Page 30)
Explanation of Changes	
<p>The ‘Impact of the Disaster’ factor in the 1st draft intended to provide context to the ‘Estimated Cost of Assistance’ factor. Since the 2nd draft proposes to eliminate the ‘Estimated Cost of Assistance’ factor, FEMA needs more information on the specific damage impacts and the effect those have on the tribe in order to determine whether the capabilities of the tribal government have been overwhelmed and whether there is a need for supplemental Federal assistance under the Stafford Act.</p>	

Public Assistance Criteria – Estimated Cost of Assistance

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Modified the ‘Estimated Cost of Assistance’ factor by <ul style="list-style-type: none"> ○ Eliminating the per capita indicator ○ Maintaining the \$1 million minimum damage estimate for tribes with service populations 10,000 and higher; proposed a \$500,000 minimum damage amount for tribes with service populations less than 10,000 	<ul style="list-style-type: none"> ○ Eliminates the \$1 million minimum part of the ‘Estimated Cost of Assistance’ factor. <p>(Page N/A)</p>
Explanation of Changes	
<p>FEMA determined that, given the range of tribal populations, land size, and capability, there is not sufficient data to support establishing a population-based dollar figure which would accurately reflect a level of tribal capability across the entire spectrum of federally recognized tribes.</p> <p>FEMA proposes to evaluate the totality impacts of the disaster and resources of the tribal government to assess the need for Stafford Act assistance.</p>	

Public Assistance Criteria – Minimum Damage Amount

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Not applicable. 	<ul style="list-style-type: none"> ○ The draft pilot guidance adopts a \$300,000 damage amount to establish a level of damage that that must occur before FEMA will even consider a PA declaration. Unlike the current state and county per capita and \$1 million minimum, the floor damage amount is not an indicator of the need for disaster assistance or a measure of tribal capability. Instead, the floor damage amount indicates a level of damage below which a Stafford Act declaration would not be cost effective. When damage assessments indicate that damage is at or above the minimum damage amount, FEMA will evaluate the impacts of the disaster to determine the actual need for supplemental disaster assistance. <p>(Page 30)</p>
Explanation of Changes	
<p>Recent GAO and Inspector General audits have criticized FEMA’s high administrative costs relative to the amount of grants provided, so the Agency is undertaking efforts to control and/or reduce administrative costs. FEMA estimated the administrative cost of providing Public Assistance in an average tribal declaration to be approximately \$300,000, so FEMA proposes to establish a minimum damage amount of \$300,000 to ensure administrative costs do not exceed the level of assistance provided in a tribal declaration.</p>	

Individual Assistance Eligibility for Tribal Declarations

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Tribal governments may request the Individuals and Households program for enrolled tribal members whose primary residences were impacted by the incident. Tribal governments may request assistance for enrolled tribal members who do not live on tribal lands and have been impacted by the incident. ○ Tribal governments cannot request assistance for individuals who are not enrolled members of the requesting tribe. 	<ul style="list-style-type: none"> ○ Clarifies that the provision of emergency protective measures, such as feeding, sheltering, and evacuations, for non-enrolled individuals is an eligible cost under the Public Assistance program. <p>(Page 32)</p>
Explanation of Changes	
<ul style="list-style-type: none"> ○ FEMA understands that tribes have a legal relationship with enrolled tribal members and provide social services to those enrolled members. ○ Based on the input from the consultation, FEMA recognizes that some tribal governments provide services to non-enrolled individuals who have a connection with the tribe, such as adopted children, widows/widowers, descendants who are not enrolled, and may want to request Individual Assistance for these people. Tribal governments may also want to request assistance for individuals who live on tribal lands who are not tribal members, descendants or widows/widowers. ○ <i>If FEMA were to expand eligibility for the Individuals and Households Program to those individuals, FEMA would like to discuss how FEMA can verify the identities of non-enrolled members who apply for Individual Assistance. FEMA wants to ensure those that apply for and receive Individual Assistance are authorized recipients, particularly since the tribe must pay 25% of all Other Needs Assistance grants.</i> 	

Individual Assistance Criteria – Concentration of Damages

1st Draft	2nd Draft Changes
<ul style="list-style-type: none"> ○ Modified the factor to include use of the phrase “enrolled members” where “individuals” are listed as eligible recipients. ○ Included the percentage of tribal households impacted by an incident in order to provide additional context to a request for a declaration. 	<ul style="list-style-type: none"> ○ Changes the name of the factor to ‘Uninsured Home and Personal Property Losses’ ○ Clarifies that FEMA evaluates the amount of damage - destroyed, major, minor, affected, and inaccessible. ○ Clarifies that FEMA evaluates the magnitude of the damage - total number of households impacted, the percentage of households impacted, and whether there are high concentrations of damages. <p>(Page 32)</p>
Explanation of Changes	
Clarifies what the types of damage FEMA evaluates and how FEMA assesses the damage.	

Individual Assistance Criteria - Trauma

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ No changes from existing regulations. 	<ul style="list-style-type: none"> ○ Changes the name of the factor to ‘Casualties’ ○ Includes cultural or spiritual facilities and deaths of government or spiritual leaders ○ Creates a separate factor for ‘Impact to Community Infrastructure’ <p>(Page 32)</p>
Explanation of Changes	
<ul style="list-style-type: none"> ○ Includes impacts to cultural or spiritual facilities and deaths of government or spiritual leaders as those will contribute to the trauma of an incident that impacts tribal communities. ○ Separated the factor into two separate factors since they evaluate different impacts 	

Individual Assistance Criteria – Special Populations

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Deleted the reference to American Indian and Alaskan Native Tribal populations, since the context of the guidance is generally with respect to tribal populations 	<ul style="list-style-type: none"> ○ Changes the name of the factor to ‘Disaster Impacted Population Profile’ ○ Modifies this factor to reflect current terminology for at-risk populations. <p>(Page 32)</p>
Explanation of Changes	
Clarifies the populations FEMA evaluates when assessing the need for Individual Assistance	

Public Assistance and Individual Assistance Criteria – Tribal Government Resources

1st Draft	2nd Draft Changes
<ul style="list-style-type: none"> ○ Not applicable. 	<p>FEMA will consider the tribal government’s efforts and resources (funding, staff, etc.) that have been or will be used to respond to or recover from the event.</p> <p>(Pages 31-32)</p>
Explanation of Changes	
<p>The Stafford Act requires a showing that the event is beyond the capabilities of the affected Indian tribal government. In order to ensure that this requirement is met, FEMA needs information regarding the tribal government resources have been or may be made available to address the disaster.</p>	

Definitions

1 st Draft	2 nd Draft Changes
<p>The draft pilot guidance contained two new definitions that are not currently in the Stafford Act or regulations:</p> <ul style="list-style-type: none"> ○ <i>Enrolled tribal member</i> – FEMA included a definition of “enrolled member”, because the draft pilot guidance allows tribal governments to request assistance for enrolled members. ○ <i>Tribal lands</i> – FEMA included a definition of “tribal lands,” because FEMA currently has no definition of tribal lands. 	<ul style="list-style-type: none"> ○ Modified definition of tribal lands by removing sentence about what “tribal lands” do not include. <p>(Pages 8-9)</p>
Explanation of Changes	
<ul style="list-style-type: none"> ○ The second sentence of “tribal lands” caused confusion during the consultation and applies to the implementation of tribal declarations rather than defining tribal lands, so we removed that sentence. We did not include additional language as the recommended changes were either already included in the proposed definition or can be clarified in the implementation of tribal declarations. ○ FEMA did not change the definition of “enrolled tribal members”. See further discussion on this issue under the “Eligibility for Individual Assistance” section. 	

Entities and Individuals Who Can Request Stafford Act Declarations

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Clarified that the Chief Executive of a tribal government cannot request assistance for another tribe and cannot combine damage with other tribes to request one declaration. ○ Clarified that organizations, such as Alaska Native Regional Corporations or Alaska Native Village Corporations, are not able to request declarations or request declarations on behalf of the tribal government. 	<ul style="list-style-type: none"> ○ Further clarified that the Stafford Act does not allow tribal governments to request assistance for another tribe or pooling damages. <p>(Page 25)</p>
Explanation of Changes	
<p>Section 401 of the Stafford Act states, “All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State or Chief Executive of the affected Indian tribal government.” Only the Chief Executive of the affected tribal government can submit the declaration request for the tribe. Therefore, the Stafford Act does not allow tribes to request assistance on behalf of other tribes.</p> <p>Section 401 of the Stafford Act further states, “Such a request shall be based on the finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments or the Indian tribal government and that Federal assistance is necessary.” The Chief Executive makes the request based on the capabilities of that tribal government – not the capabilities of several tribal governments. Therefore, the Stafford Act does not allow tribes to pool damages into a single request.</p>	

Public Assistance Eligibility for Tribal Declarations

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Damages to PNPs not included in the PA eligibility proposal. 	<ul style="list-style-type: none"> ○ Modifies proposal to allow private non-profit organizations organized or doing business under tribal law to be eligible for Public Assistance. ○ Clarifies that the tribal government can be reimbursed for providing emergency protective measure activities (e.g., sheltering, feeding, search and rescue, evacuations) to non-enrolled individuals. <p>(Page 16)</p>
Explanation of Changes	
<ul style="list-style-type: none"> ○ PNPs that are organized or doing business under tribal law have a relationship to the tribal government and, therefore, would impact the tribe’s ability to recover from a disaster. FEMA proposes to make those PNPs eligible for Public Assistance. ○ FEMA’s proposed eligibility for Individual Assistance caused some confusion about the reimbursement for emergency services provided to non-members, so we clarified that the provision of emergency assistance to non-members is eligible for Public Assistance. 	

Tribal Population Data Source

1 st Draft	2 nd Draft Changes
<ul style="list-style-type: none"> ○ Proposed using the tribe’s service population listed in the American Indian Population and Labor Force Report published by the Department of the Interior- Bureau of Indian Affairs Office of Indian Services to determine tribal populations 	<ul style="list-style-type: none"> ○ Proposes using the enrolled population on or near tribal lands, as reported by the tribe. ○ In the case of concurrent state and tribal declaration requests in the same area, FEMA will remove the tribal population in that state from the statewide and countywide population to accurately calculate the state and county PA per capita. <p>(Page 34)</p>
<h2>Explanation of Changes</h2>	
<p>The last Population and Labor Force Report was published in 2013 using 2010 data. During the consultation, tribes overwhelmingly said they do not participate in the data collection, so the data is not accurate for the FEMA’s purposes.</p>	

Cost Share Adjustment Criteria

1st Draft	2nd Draft Changes
○ Proposed maintaining the per capita indicator (\$135 for calendar year 2014, adjusted annually by the Consumer Price Index)	○ None proposed. (Page N/A)
Explanation of Changes	
<p>FEMA recognizes the differences between states in tribes in their ability to generate revenue and also acknowledges the Agency’s trust responsibility with regard to tribal governments. FEMA’s statutory role is to supplement – not supplant – communities in recovering from major incidents, and FEMA’s portion of the cost share reflects FEMA’s support of the tribal government’s recovery after the President authorizes Public Assistance. FEMA chose to retain the per capita indicator to provide a bright line to indicate when FEMA will send tribal declaration cost share adjustment recommendations to the President.</p>	