



TRIBAL DECLARATIONS PILOT GUIDANCE

Background:

The Sandy Recovery Improvement Act (SRIA) in 2013 included a provision amending the Stafford Act to provide federally recognized Indian tribal governments (tribal governments) the option to seek Stafford Act assistance independent of a state if they chose to do so. FEMA developed the Tribal Declarations Pilot Guidance after several rounds of consultation with tribal governments over the course of more than three years. SRIA amended the Stafford Act to allow tribal governments the **choice** to either request an emergency/major disaster declaration independently of a state **or** seek disaster assistance through a state declaration.

- As amended, the Stafford Act now better reflects the sovereignty of tribal governments and acknowledges FEMA's government-to-government relationship with tribal governments.
- The change also promotes tribal self-determination by allowing tribal governments to determine for themselves how they want to seek Stafford Act assistance either independently of a state or through a state declaration.

Types of Stafford Act Declarations:

Emergency Declarations: The Tribal Chief Executive or Governor may request an emergency declaration through the appropriate Regional Administrator. The President can declare an emergency for any occasion or instance when the President determines federal assistance is needed. Emergency declarations may supplement tribal government 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.

Requirements¹: The Chief Executive of the affected tribal government or Governor of a state may submit a request to the President, through the appropriate Regional Administrator, within 30 days of the occurrence of the incident. The request must be based upon a finding that the situation is beyond the capability of the tribal 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 Tribal Chief Executive or Governor has taken appropriate action under state or tribal law and directed the execution of the state or tribal emergency plan;
- A description of the state and local or tribal 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

¹ 44 C.F.R. §206.35

- 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 Category B and will typically be limited to Direct Federal Assistance, 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) is the only form of IA that may be authorized under an emergency declaration. Authorization of IHP under an emergency is rare. Housing Assistance under IHP is 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 Declarations²: A Tribal Chief Executive or Governor may request an emergency declaration in advance or anticipation of the imminent impact of an incident that threatens such destruction as could result in a major disaster. Such requests must meet all of the statutory and regulatory requirements for an emergency declaration request. Requests must demonstrate the existence of critical emergency protective measure needs prior to impact are beyond the capability of the state and affected local governments or tribal government and identify specific unmet emergency needs that can be met through DFA. Such DFA may include, but is not limited to, personnel, equipment, supplies, and evacuation assistance. Pre-positioning of assets generally does not require a declaration. Assistance made available under a pre-disaster emergency declaration will typically be Category B (emergency protective measures), limited to DFA.

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.

- Requirements³: The Chief Executive of the affected tribal government or the Governor of the affected state must submit the request to the President through the appropriate Regional Administrator within 30 days of the occurrence of the incident. The request must be based upon a finding that the situation is beyond the capability of the tribal government or state and

² 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)).

³ 44 C.F.R. §206.35

affected local governments and that supplemental federal assistance is necessary. In addition the request must include:

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

Using FEMA Form 010-0-13 will help ensure that all legally required information is included in the request. The form is typically accompanied by a cover letter. The form and a template cover letter can be found at: <https://www.fema.gov/media-library/assets/documents/28122>

Assistance Available Under Major Disaster Declarations: FEMA disaster assistance programs are as follows:

- Individual Assistance – Assistance to individuals and households, which may include:
 - Individuals and Households Program;
 - Crisis Counseling Program
 - Disaster Case Management
 - Disaster Unemployment Assistance
 - Disaster Legal Services

At the request of the tribal government, FEMA may expand Individual Assistance eligibility for an event beyond enrolled tribal members to non-enrolled individuals who are members of the tribal community, such as adopted children, widows and widowers, and descendants. Tribal governments are encouraged to identify these categories of individuals and plan for the provision of assistance to them prior to the onset of an event. The tribal government will need to assist FEMA with verifying eligibility.

- Public Assistance – Assistance to state, tribal, and local governments and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities, which may include the following Categories:
 - A – Debris removal
 - B – Emergency protective measures
 - C – Roads and bridges
 - D – Water control facilities
 - E – Buildings and equipment
 - F – Utilities
 - G – Parks, recreational, and other facilities

- Hazard Mitigation Assistance – Assistance to tribal governments, states and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards.

Not all programs, however, are activated for every disaster. The determination of which programs are authorized is based on the types of assistance specified in the Tribal Chief Executive or Governor's request and the needs identified during the joint Preliminary Damage Assessment (PDA) and subsequent PDAs.

Requirements for Disaster Assistance:

In order to receive federal disaster assistance under a major disaster or emergency declaration, tribal governments must meet certain requirements. FEMA encourages tribal governments to develop these plans and procedures in advance of a disaster.

- Tribal Mitigation Plan: Required under Fire Management Assistance Grant, Public Assistance Categories C-G (listed above), Hazard Mitigation Grant Program, Flood Mitigation Assistance, and Pre-Disaster Mitigation Project Grants.
- Public Assistance Administrative Plan: Tribal governments must develop a disaster-specific PA Administrative Plan after the President declares an emergency or major disaster authorizing PA for the tribal government. In order for PA funding to be obligated to the tribal government, a disaster-specific PA Administrative Plan must be developed.
- Hazard Mitigation Grant Program (HMGP) Administrative Plan: A procedural guide that details how the Recipient will administer its HMGP. Recipients must have a current HMGP Administrative Plan approved by FEMA before receiving HMGP funds.
- Other Needs Assistance Administrative Option Selection: In order to provide Other Needs Assistance (ONA) to eligible disaster survivors, the tribal government first needs to determine who (i.e., FEMA, tribal government, or joint) is going to administer the program and be responsible for each functional element listed in the ONA Administrative Option Selection form.
- Federal Grants Management Compliance: Compliance with *2 C.F.R. part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. These regulations describe financial administration requirements for FEMA grants, as well as auditing and reporting requirements, among others. Failure to comply with grants management requirements may result in loss of funding.

Process to Request Major Disaster Declarations:

FEMA has established the following process to request a major disaster declaration. It is important for tribal governments to adhere to these procedures in order to avoid possible delays in processing the declaration request event.

Emergency Plan Activation: Typically, a tribal government will direct its disaster response through the activation of its emergency plan. In most instances, a tribal government will be able to address disaster-related needs itself or through coordination with other governments or organizations.

Initial Damage Assessment: After an incident occurs, a tribal government should first assess the impacts of the disaster and determine if there are needs that cannot be addressed with its own resources or through insurance.

Joint Preliminary Damage Assessments (PDAs): Joint PDAs validate Stafford Act-eligible damage and evaluate the magnitude and impact of a disaster to determine whether Stafford Act assistance may be needed.

Expedited Major Disaster Declaration Requests: The Joint PDA requirement may be waived for those incidents of unusual severity and magnitude that do not require damage assessments to determine the need for supplemental federal assistance. In these rare circumstances, the Tribal Chief Executive may submit an abbreviated written request for a major disaster declaration through the appropriate FEMA Regional Administrator.

Declaration Request: Once Joint PDAs have concluded, a tribal government may find that the damage is of such severity and magnitude that effective response is beyond its capabilities and other available resources. If this is the case, then the Tribal Chief Executive may elect to request a major disaster declaration to authorize Stafford Act assistance to support the response and recovery from the incident. To avoid delay in processing, the Tribal Chief Executive must submit declaration requests to the President through the appropriate FEMA Regional Administrator. Requests for major disaster declarations must be submitted within 30 days of the incident. If the incident occurs over multiple days, the 30-day limit starts on the last day of the incident. A Tribal Chief Executive can request additional time to submit a declaration request. If an extension is needed, then the Tribal Chief Executive must submit a written request for a time extension to the FEMA Regional Administrator and addressed to the Associate Administrator, Office of Response and Recovery, within 30 days of the date of the incident. An extension request must include the additional time needed and a justification for why additional time is needed.

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 are exhausted. Chief Executive requests Joint PDA 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.



Chief Executive submits a declaration request, within 30 days of the date of the incident, 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 appeal should be submitted within 30 days of the date of the denial and should include additional information to support the appeal.

Criteria FEMA Uses to Make Declaration Recommendations to the President:

FEMA considers the factors below to measure the severity and magnitude and impact of the incident. FEMA recommends that the Tribal Chief Executive include in the declaration request information specifically addressing these factors, as well as a narrative addressing the disaster's impact on the tribal government and disaster survivors.

Public Assistance:

Minimum Damage: Absent extraordinary circumstances, FEMA will consider a declaration request from a tribal government only if it is determined that the tribal government sustained at least \$250,000 in PA-eligible estimated damage or costs. When that amount is met or exceeded, FEMA will then evaluate the request based on the impacts of the disaster and the tribal government's capabilities, to determine the actual need for federal assistance.

- The tribal government should provide information on, and FEMA will evaluate, the types and amounts damaged, economic impact of the incident, tribal government resources, demographics, 24-month disaster history, evaluation of previous mitigation efforts, programs of other federal assistance, insurance, unique conditions that affect tribal governments, and any other relevant information.

Individual Assistance:

- The tribal government should provide information on, and FEMA will evaluate, the uninsured home and personal property losses, availability of housing resources, casualties, impact to community infrastructure, disaster impacted population profile, voluntary agency and other assistance, tribal government resources, unique conditions that affect tribal governments, and any other relevant information.

Hazard Mitigation Grant Program (HMGP):

- FEMA evaluates a tribal government's request for the HMGP to ensure areas identified in the request for HMGP are included in the Tribal Mitigation Plan.

Cost Share:

Cost shares under the Stafford Act vary by program. The Stafford Act authorizes the President to adjust or waive the non-federal cost share for Public Assistance only.

- Public Assistance: 75% federal cost share
- Housing Assistance: 100% federally funded
- Other Needs Assistance: 75% federal cost share
- Housing Mitigation Grant Program: Up to 75% federal cost share

Requests for Emergency Declarations

The emergency declaration request process largely mirrors the major disaster declaration request process. A joint Preliminary Damage Assessment is not required for emergency declaration requests. However, a tribal government will generally need to establish some specific unmet need for direct federal assistance to demonstrate that an emergency declaration is needed.

Declarations Decision Support

Before, during, and following a disaster, Regional Tribal Liaisons and FEMA regional staff are available to support tribal governments in decision-making and to provide technical assistance. For contact information, go to: <https://www.fema.gov/tribal-contacts>.