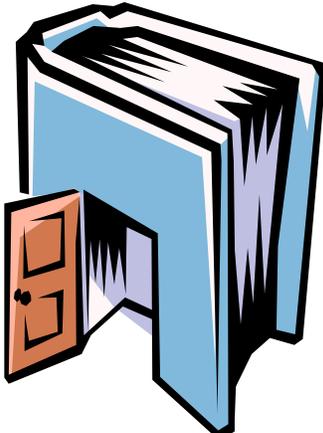


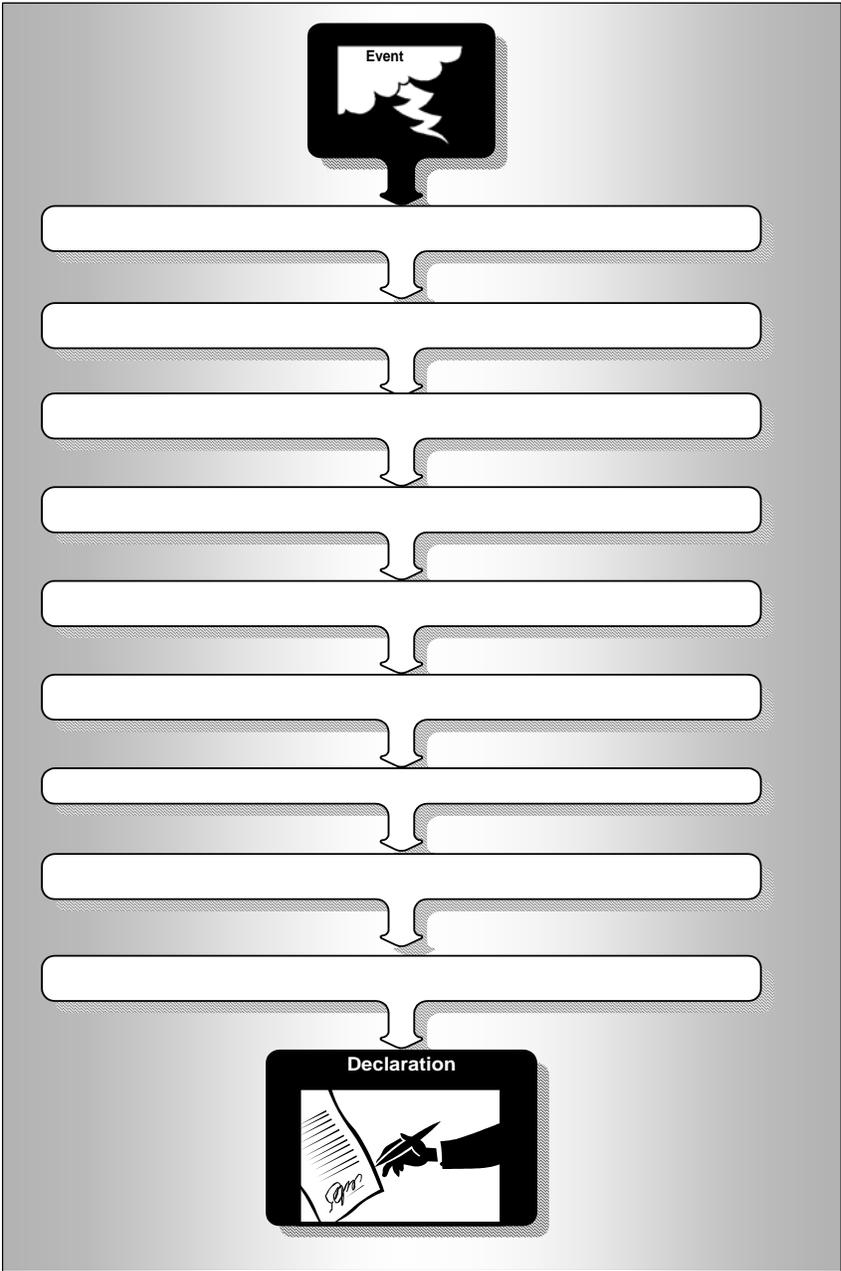
Unit 5

The Declaration Process

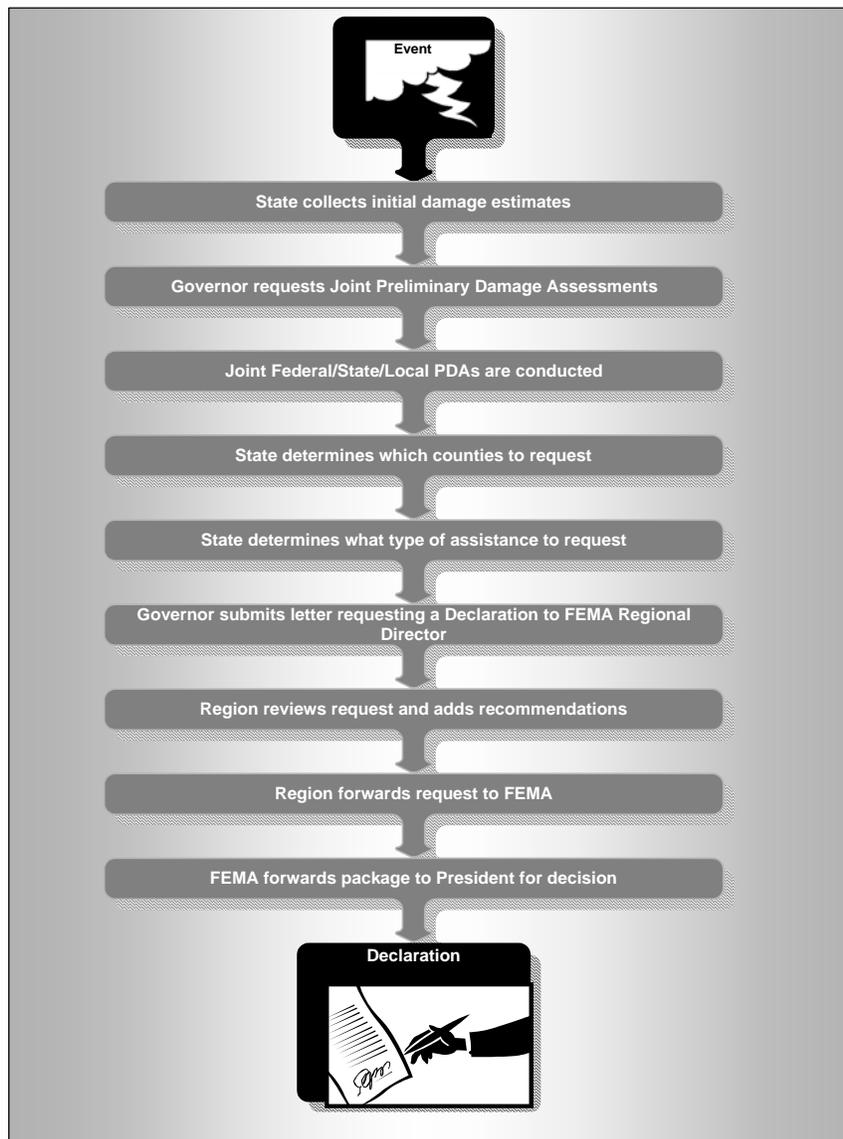


Portal Questions

Complete the diagram of the Declaration Process.



Portal Questions Answer Key



Objectives

At the completion of this unit, you will be able to:

1. Diagram the process of applying for a Federal disaster declaration.
2. Differentiate between a governor's request and an expedited request, listing the conditions for each.
3. Use job aids to complete the application for a Federal disaster declaration.

Topics

The Declaration Process

FEMA Recommendation

Major Disaster and Expedited Request Criteria

Declaration process checklists

FEMA/State Agreement

Add-Ons

Learning Check

Supplemental Materials

The Declaration Process

When a disaster occurs and local and State jurisdictions realize they will need resources to manage it, the Governor of the State asks for a Federal Declaration of an emergency or a disaster. The President then grants or denies the request.

This statement simplifies the process for the layman. As a key State disaster management staff member you need to know more – about the process and the State and Federal roles in the process.

Let's start with some definitions that differentiate Federal disaster declarations and the procedures to earn the declarations.

There are two types of disaster declarations. They are:

1. Emergency
2. Major Disaster

Emergency

Emergency, as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, is:

“Any occasion or instance for which, in the determination of the President, Federal Assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”

Emergency assistance differs from disaster assistance. It is intended to avert a catastrophe through the support of emergency actions. It does not include any restoration or permanent repairs.

An emergency does not have to be a natural disaster. For example, it may be a water system contamination that cannot be handled by local and State resources.

Characteristics

1. Beyond State and local capabilities.
2. Supplementary emergency assistance.
3. Not to exceed \$5 million.

Major Disaster

Major Disaster, as defined by the Stafford Act, is:

“Any natural catastrophe 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, any fire, flood, or explosion in any part of the United States which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”

Characteristics

1. Beyond State and local capabilities.
2. Supplementary to available resources of State and local governments, disaster relief organizations, and insurance.
3. Must request within 30 days.

When an event occurs that is beyond the response and recovery capabilities of the local and State governments, the State initiates a process to seek Federal assistance. The flowchart on the following page illustrates these steps.

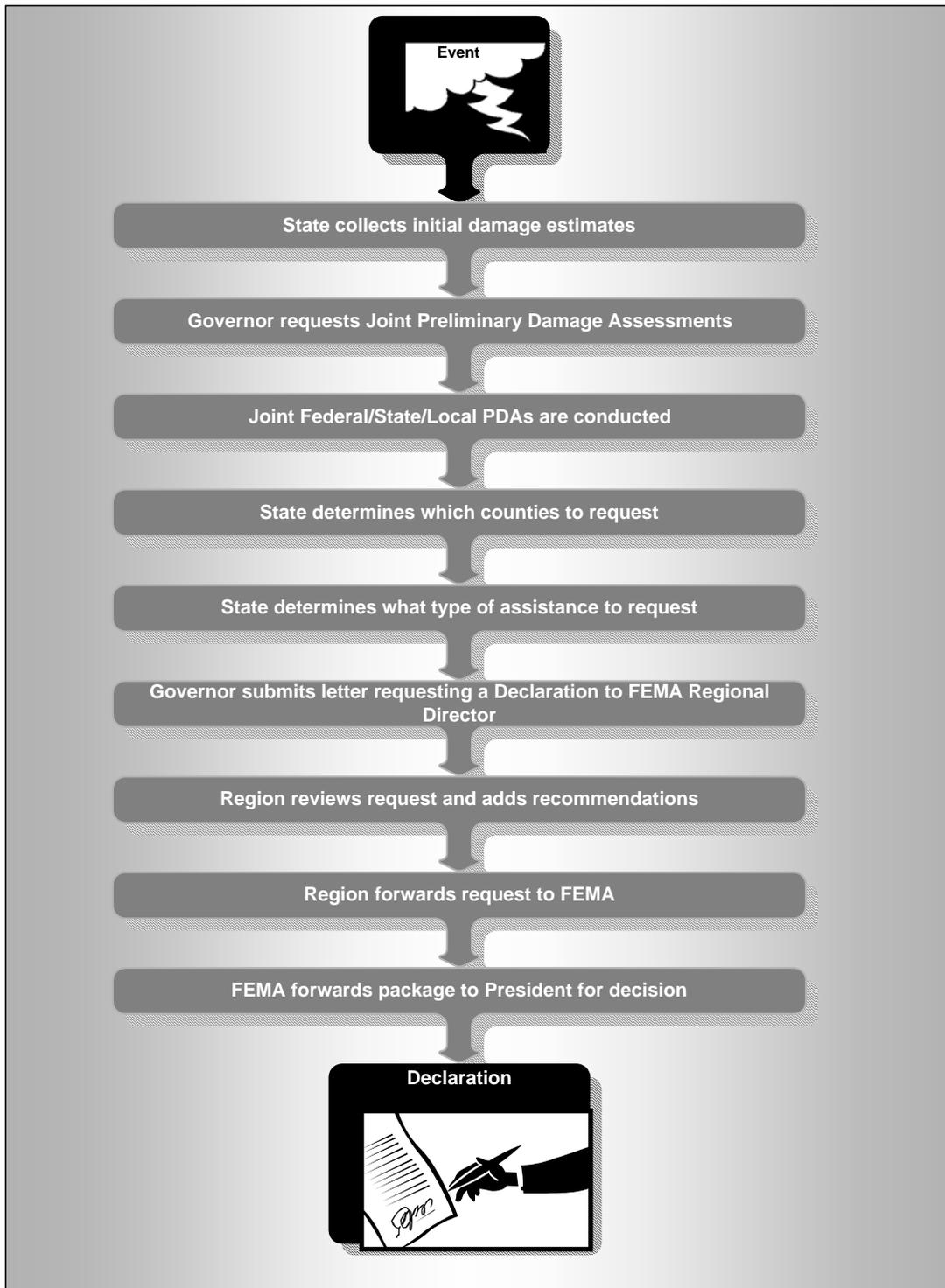
The FEMA review of the declaration request will proceed more smoothly and quickly if the States understand the process and communicate actively.

States should establish lines of communication with their local jurisdictions and with the Federal government.

States should know the high impact/risk localities, and should help all local jurisdictions understand the procedures for acquiring both State and Federal resources when a disaster occurs.

The Governor's Authorized Representative (GAR), SCO, or their designees, should be able to interpret the Preliminary Damage Assessment (PDA) numbers and explain them to the Governor.

All key State staff should understand the Federal programs they can access through FEMA, in order to advise the Governor on what should be included in the Disaster Declaration request.



FEMA Recommendation

FEMA recommends whether the President should make a declaration. FEMA uses many factors to evaluate the disaster's impact before making a recommendation on the State's request. The factors include:

- ◆ Amount and type of damage.
- ◆ Impact on affected areas or critical facilities.
- ◆ Imminent threats to public health and safety.
- ◆ Available resources.
- ◆ Assistance from other Federal agencies.
- ◆ Recent disaster history.
- ◆ Extent and type of insurance.
- ◆ Other pertinent factors (e.g., demographics of the affected area).



FEMA Mitigation expert checks flood plain map in Clear Lake area.

Criteria for Requests

The Code of Federal Regulations and FEMA Policy establish criteria against which a request is measured.

- = 44 CFR Part 206 RIN 3067-AC72 Disaster Assistance; Cost-share Adjustment
- = 44 CFR Part 206 RIN 3067-AC94 Disaster Assistance; Factors Considered When Evaluating A Governor's Request For A Major Disaster Declaration
- = FEMA Response and Recovery Directorate Policy: 9122.1 Designation of Counties for Major Disaster Declarations

These documents are included in the Supplemental Materials section at the end of this unit.

Major Disaster and Expedited Request Criteria

Requests for disaster assistance must provide certain information. The following list differentiates between a governor's request and an expedited request for Federal assistance during a major disaster. This criteria summarizes 44 CFR Part 206.36.



The rubble of a home can be seen through the snapped pilings of yet another Georges-damaged home.
FEMA photo by John Pilger, EIPA

Governor's Request provides:

1. Certification that the severity and magnitude of the disaster exceed State and local capabilities.
2. Certification that Federal assistance is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.
3. Confirmation of State emergency plan execution.
4. An estimate of the amount and severity of damages and losses, stating the impact of the disaster on the public and private sectors.
5. Information describing the nature and amount of State and local resources that have been or will be committed to alleviate the results of the disaster.
6. Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act.
7. Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost-sharing requirements of the Stafford Act.

Expedited Request provides:

1. Certification that the severity and magnitude of the disaster exceed State and local capabilities.
2. Certification that Federal assistance is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.
3. Confirmation of State emergency plan execution.
4. Information describing the nature and amount of State and local resources that have been or will be committed to alleviate the results of the disaster.
5. Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost-sharing requirements of the Stafford Act.

It is essential to follow all steps in the process and show how the event meets the criteria listed.

The checklist on the following page will help you with the declaration process.

Sample letters, which are necessary for the declaration process, are included in the Supplemental Materials Section at the end of this unit.

Checklist: Applying for a Presidential Declaration

- Step 1: Get the best possible damage summary estimates from . . .
 - = County agencies.
 - = Local agencies.
 - = Other State agencies.
- Step 2: Ensure that the joint PDA process is underway and will meet the completion deadline.
- Step 3: Begin preparing to write the Declaration Request Letter by reviewing . . .
 - = The Governor's Declaration of a State of Emergency. (This declaration designates the start of the event period.)
 - = The State and local governments that responded to the Governor's Declaration. (This information will be needed in addressing funding questions.)
 - = The quantity and cost of resources expended to date.
 - = A map and written description of the geographic areas affected and the extent of damage.
 - = Statistics on the affected areas including:
 - Existing property insurance coverage.
 - Existing flood insurance coverage.
 - Sanctioned communities.
 - Demographics, particularly:
 - Total population.
 - Unemployment rates.
 - Percentage of low-income families.
 - Owner/renter ratio.
 - Special needs populations.
- Step 4: Assemble a draft letter from the Governor to the President that includes the results of the PDAs and the information gathered in step 3.
- Step 5: Ask the FEMA ERT-A staff to review the package prior to preparing the final draft for the Governor's signature.
- Step 6: Have the Governor sign the request and forward the package to the Regional FEMA Director.

FEMA/State Agreement

After a Presidential Declaration is made, the State and FEMA sign a formal contract for assistance. The FEMA/State Agreement delineates the counties included in the declaration and names the GAR and the SCO.

A copy of this agreement can be found in the supplemental materials at the end of this unit.

Add-Ons

After a declaration is made, the State may receive additional damage information. If the damage is severe, the State may request that additional counties be added to the declaration. A sample letter requesting additions is included in the Supplemental Materials.

Occasionally, requests are denied, and the State may request a review of the denial through an appeals process. Sample letters and documents illustrating this information can be found in the Supplemental Materials section at the end of this unit.

The flowchart on the following page describes the Add-On process.



Owensboro, KY - The tornado hit hard in Tamarack Park. Some homes received relatively minor damage, while adjacent homes were completely blown off their foundations.

Owensboro Municipal Utilities Photo/Dale Harris

Supplemental Materials

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 206

RIN 3067-AC72

**Disaster Assistance; Cost-share
Adjustment**

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule accomplishes three objectives. First, it establishes the financial criteria under which we, FEMA, recommend to the President a cost-share adjustment for permanent restorative work and for emergency work under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Second, the rule states that we recommend capping the Federal share of assistance at ninety percent (90%). Third, we raise the \$64 statewide per capita threshold that we have used since 1985 for recommending cost-share adjustments to current dollars, and will adjust that threshold annually in future years. The new threshold is phased in over a gradual period. The rule in no way affects the current process under which the President sometimes grants one hundred percent (100%) Federal funding for emergency work, including direct Federal assistance, for limited periods following disaster declarations when the emergency needs warrant it.

EFFECTIVE DATE: This rule is effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-4066, (facsimile) 202-646-4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1998, we published a proposed rule on cost-share adjustment under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the *Federal Register* at 63 FR 10816. We invited comments for 60 days ending on May 4, 1998. We received nine sets of comments: two from State and local government organizations; six from States; and one from a local government. Three commenters generally supported placing the criteria in regulation and annually adjusting the threshold for inflation, and one commenter agreed with the ninety percent (90%) cap on the Federal share of assistance. Most commenters objected to various aspects

of the rule. Following is a summary of the comments and our responses.

Evaluation of Cost-share Adjustments

One of the most frequent comments was that there was no evaluation or analysis of the original threshold for recommending cost-share adjustments, and therefore there is no basis for raising this threshold to current dollars. Further comments along this line argued that the proposed threshold fails to consider State capability and does not provide an incentive for mitigation. We acknowledge that there was no analysis of the original \$64 per capita threshold for recommending cost-share adjustments. However, that threshold is widely recognized and we have used it consistently since 1985 when we recommended the first cost-share adjustment. We do not intend, and never intended, to measure State capability or to provide an incentive for mitigation through this rule. Rather, the \$64 threshold is simply a yardstick to determine when the economic impact of a disaster is of such severity that it warrants recommendation for a cost-share adjustment. We are quite willing to work with our State partners to identify capability or mitigation measures that might justify consideration of a cost-share adjustment. However, we view that as a longer-term effort separate from this rule. With respect to measuring economic impact, no commenters offered alternatives to the use of a per capita impact although two did suggest that we lower the threshold to \$50 per capita. We believe instead that the 1985 threshold should be brought up to current dollars and adjusted annually using the Consumer Price Index for All Urban Consumers, since that is the legislative basis for annually adjusting the small project grants under the Public Assistance Program and grants under the Individual and Family Grant Program.

Presidential Discretion for Cost-share Adjustments

Several commenters noted that the threshold for granting cost-share adjustments unwisely limits Presidential discretion, and fails to account for the unique circumstances of a disaster. We believe that the rule adequately allows for Presidential discretion. First, the wording of the rule has been revised to state that we would *recommend* to the President when a cost-share adjustment is warranted in recognition of the fact that the President retains the authority for actually granting cost-share adjustments. Secondly, the rule clearly recognizes

that, irrespective of the economic threshold established here, the President may continue the practice of granting up to one hundred percent (100%) Federal funding for emergency work when he believes such action is warranted in the early days of the disaster.

Multiple Disasters

Several commenters noted that the rule contains no provision for multiple disasters within a State. We agree, and have revised the rule to state that we will consider the effect of major disaster declarations in a State within the preceding twelve months. The final rule does not specifically indicate how we will consider multiple disasters because that would depend on the circumstances. We need to consider the timing of the disasters, the size, and the location when we review the impact of multiple disasters. For example, two very large disasters that strike the same area of a State might have a much greater economic impact than widely disbursed small disasters in the State even though the cumulative per capita impact might be similar.

Statewide Population Factors

A number of other commenters noted that the per capita threshold should consider the relative densities within a State, or should be based on the county and not on statewide population. We will continue to base the threshold on the statewide population to reflect the supplemental nature of Federal disaster assistance and the State's preeminent role in this partnership. The declaration process itself analyzes the localized impacts of the disaster when we recommend which counties should be granted Federal disaster assistance. If a State wishes to adjust the nonfederal cost-share burden in certain areas of the State it can do so through the State/applicant split of the nonfederal cost-share.

Actual Stafford Act Obligations To Measure per Capita Impact

Several commenters noted that the nonfederal share and State administrative costs should be included in the calculation of statewide per capita impact, and that the threshold should be based on estimates. We currently consider only actual obligations when determining the per capita impact of a disaster and will continue that practice. Actual obligations provide a better and more consistent measure of the impact of a disaster than do estimates, which can vary widely from disaster to disaster and can change dramatically over the

course of the disaster. In order to be consistent in our method of measuring the per capita impact we will also continue our practice of measuring Stafford Act obligations only. State administrative costs have been and will continue to be considered when we measure per capita costs though we do not include our administrative costs in the calculation.

Limitation on Use of Sliding Scales

Three commenters noted that § 320 of the Stafford Act precludes any geographic area from receiving assistance under the Act solely by virtue of an arithmetic formula or sliding scale based on income or population. We are well aware of this provision of the Act but do not violate it because the rule does not prohibit any geographic area from receiving assistance under the Act. The rule merely determines when a more favorable cost-share adjustment may be recommended.

Gross Domestic Product as a Measure of Impact

One commenter noted that in the 1993 floods that affected nine Midwestern States the President used 0.1 percent of the gross domestic product (GDP) as the measure to determine that a cost-share adjustment would be recommended for all nine States. That GDP measurement was not mentioned in the proposed rule because it has come to be a one-time-only measurement. In more recent multi-state flood disasters in the Upper Midwest and Ohio River basins we considered only the per capita threshold as the basis for recommending a cost-share adjustment.

Timeframe for Implementation

One commenter noted that the proposed timeframe for implementation is no longer relevant. We recognize that it is no longer relevant. Due to the length of time for publication, comment and review of comments, the timeframe for implementation of the new threshold will now begin in calendar year 1999 on May 21, 1999 and not in fiscal year 1998. The phase-in period to bring the threshold up to current dollars has also been extended to address concerns about the increase in the threshold.

National Environmental Policy Act

44 CFR part 10 categorically excludes this rule from its requirements. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It establishes the financial criteria under which we would recommend a cost-share adjustment for permanent restorative work and for emergency work, and recommends capping the Federal cost-share for permanent restorative work at ninety percent (90%). The rule does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and

any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 206 is amended as follows:

PART 206 SUBPART B—THE DECLARATION PROCESS

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.47 to read as follows.

§ 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, \$75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, \$85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, \$100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, \$100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster

declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

Dated: April 14, 1999.

James L. Witt,

Director.

[FR Doc. 99-9934 Filed 4-20-99; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 206

RIN 3067-AC94

**Disaster Assistance; Factors
Considered When Evaluating a
Governor's Request for a Major
Disaster Declaration**

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) grants the President the authority for declarations of major disasters and emergencies. We, FEMA, provide a recommendation to the President whether Federal disaster assistance is warranted. This rule establishes the factors that we take into consideration when evaluating a Governor's request for a major disaster declaration under the Stafford Act. This rule does not affect presidential discretion, nor does it change published regulations and policies established under the Stafford Act.

EFFECTIVE DATE: This rule is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-4066, (facsimile) 202-646-4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION: On January 26, 1999, we published a proposed rule on factors considered when evaluating a Governor's request for a major disaster declaration under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the *Federal Register* at 64 FR 3910. We invited comments for 90 days ending on April 26, 1999. We received nineteen sets of comments: seven from States; eight from various organizations; and, four from individuals. Comments varied widely. Some commentors objected to putting any factors in regulation; some thought that certain evaluation factors were too rigorous and restrictive; some thought them too vague and weak or subject to political influence; and, some supported the rule as written. All comments were appreciated and reviewed carefully. Following is a summary of the comments and our responses.

One State and one nongovernmental organization supported the proposed rule. All other States and most nongovernmental organizations opposed the

establishment of any "declaration criteria" in regulation on the grounds that it limits presidential discretion. Several commented that they prefer the current declaration process because it provides the appropriate level of executive discretion and flexibility for the President and for Governors. We do not agree with the perception that the rule limits presidential discretion. First, the rule clearly states that it would not affect presidential discretion. In fact, the rule specifically states that these evaluation factors are used to make a recommendation to the President in recognition of the fact that it is the President, not FEMA, who determines whether a major disaster declaration is warranted. Secondly, the rule generally mirrors the process that we currently use in evaluating a Governor's request. It does not change regulations and policies established under the Stafford Act.

Several commentors approved the concept of publishing the evaluation factors but criticized them for being too vague and subjective. Conversely, some criticized the evaluation factors for being too stringent and inflexible. A number of commentors criticized specific evaluation factors. Saying, for example, that they do not adequately measure State capability or commitment to hazard mitigation. However, commentors as a whole offered no specific or consistently agreed-upon alternatives to the evaluation factors that we proposed. With respect to the lack of specificity in some of the evaluation factors, we are purposely general because we look at the collective impact of all of the factors when making a recommendation to the President. Our goal is to provide consistency in the evaluation process and in the types of factors that we consider, while at the same time allowing us to consider the total impact and unique circumstances of a disaster within a particular State. If further specificity or elaboration is needed on individual factors, such as how we might measure the impact of hazard mitigation on the disaster, or how we would measure the impact of recent disasters, we believe that such detail would be more appropriate in policy than in regulation.

The factor that received the greatest number of comments is the use of \$1.00 per capita as an indicator for Public Assistance; the use of a minimum \$1 million dollar threshold for this indicator; and, the intent to begin adjusting this indicator annually for inflation using the Consumer Price Index. Some felt that this indicator does not really provide the best measurement of the size disaster that a State should

be expected to manage without Federal assistance. Several commentors objected to this factor because they did not feel that it adequately addressed localized impacts or unique circumstances of a disaster. We recognize that a straight per capita figure may not be the best measurement of a State's capability, but it does provide a simple, clear, consistent and long-standing means of evaluating the size of a disaster relative to the size of the State. We also believe that it is time to begin to peg this indicator to inflation since it has been in use without change for the past fifteen years. One commentor felt that we should adjust the \$1 per capita figure now from 1985 to 1999 dollars, but we chose to begin adjusting from this rule forward. Several commentors noted that the addition of a \$1 million minimum indicator for States that are under one million in population is a change to current practice. No States or territories affected by this provision commented on it. We continue to maintain that even the lowest population States can reasonably be expected to cover this level of public assistance damage and have made no change in the rule.

Several commentors objected to using \$1 per capita as a statewide indicator rather than a localized indicator. This statewide indicator is not the sole factor that we use in recommending a major disaster. In fact, one of the evaluation factors specifically addresses impacts at the local level as well as specific types of impacts, such as damage to critical facilities. The proposed rule labels this factor "Impacts at the County Level." We have renamed this to be "Localized Impacts" to make it clear that we look at the impacts for other units of government, not just the county. The history of major disaster declarations clearly demonstrates that the statewide \$1 per capita indicator is not the sole determinant in recommending or granting declarations. Rather, we look at all of them in concert to determine whether a declaration should be recommended. For this reason we do not believe that use of this factor is in conflict with § 320 of the Stafford Act regarding arithmetic formulas or sliding scales.

One Tribal organization commented that the rule does not address how Tribal governments fit within the declaration process. By law, only the Governor can request a major disaster declaration under the Stafford Act. We then evaluate the impacts at the State and local level. While the proposed rule did not mention Tribal governments specifically, we do, and will continue to, evaluate impacts at the Tribal level

just as we would evaluate localized impacts at the county or other government level. We revised the rule to add a reference to Tribal governments under both the Public Assistance and Individual Assistance evaluation factors so that this is clear.

A number of commentors felt that the evaluation factors should be more rigorous so that we can ensure that Federal disaster assistance is truly supplemental in nature to State and local assistance. Along those lines, several noted that the evaluation factors should consider and/or encourage State "Trust Funds" for disaster assistance. While we do not specifically mention trust funds we do encourage States to develop their own programs of disaster assistance. If a State were inclined to develop its own programs, the statewide \$1 per capita indicator under the Public Assistance Program and the average amounts of assistance shown under the Individual Assistance Program could serve as targets for sizing State programs of assistance.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General

Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR part 206 as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.48 to read as follows.

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) *Public Assistance Program.* We evaluate the following factors to

evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of \$1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of \$1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Localized impacts.* We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) *Factors for the Individual Assistance Program.* We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than

widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

- (i) Large numbers of injuries and deaths;
- (ii) Large scale disruption of normal community functions and services; and
- (iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance. We also consider the effect on American Indian and Alaskan Native

Tribal populations in the event that there are any unique needs for people in these governmental entities.

(4) *Voluntary agency assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average amount of individual assistance by State.* There is *no set threshold* for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER

[July 1994 to July 1999]

	Small states (under 2 million pop.)	Medium states (2-10 million pop.)	Large states (over 10 million pop.)
Average Population (1990 census data)	1,000,057	4,713,548	15,522,791
Number of Disaster Housing Applications Approved	1,507	2,747	4,679
Number of Homes Estimated Major Damage/Destroyed	173	582	801
Dollar Amount of Housing Assistance	\$2.8 million	\$4.6 million	\$9.5 million
Number of Individual and Family Grant Applications Approved	495	1,377	2,071
Dollar Amount of Individual and Family Grant Assistance	1.1 million	2.9 million	4.6 million
Disaster Housing/IFG Combined Assistance	3.9 million	7.5 million	14.1 million

Note: The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing Service Centers. Data are only available from July 1994 to the present.

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota, Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia, U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2-10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan, Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

Dated: August 24, 1999.
James L. Witt,
Director.
[FR Doc. 99-22510 Filed 8-31-99; 8:45 am]
BILLING CODE 6718-02-P

1. **Date Signed:** October 12, 1999
2. **Response and Recovery Directorate Policy:** 9122.1
3. **Subject:** Designation of Counties for Major Disaster Declarations.
4. **Purpose:** This document describes the policy for designating counties for major disaster declarations.
5. **Scope and Audience:** This policy applies to all major disaster requests received after the date of this policy. This document will address the policy for designating counties after a presidential major disaster declaration. The policy includes the designation process for contiguous counties, both within a declared State and counties located in an adjacent *undeclared* State that are both contiguous to designated counties in a declared State. Further, this policy provides guidance on designating counties under the responsible for requesting and recommending county designations.
6. **Background:** At the February 6, 1999, National Emergency Management Association (NEMA) – Response and Recovery (RR) Directorate Committee meeting, several members of the committee discussed the issue of eligibility of adjacent counties for disaster assistance in declared major disasters. In a May 11, 1999 letter, the NEMA Response and Recovery Chair proposed that FEMA adopt the “*automatic SBA*” type *approach to Individual Assistance for contiguous counties as an appropriate mechanism for adding on counties in a (presidentially) declared state*. NEMA further proposed that for contiguous counties located in an adjacent undeclared State, the Governor of that State would be required to request a major disaster declaration. NEMA’s position for naming counties under the Public Assistance Program was that FEMA continue its current process for reviewing and designating counties under the Public Assistance Program.

For purposes of this policy, FEMA will use the following definition of contiguous as defined by the Small Business Administration (13 CFR 123.4): *Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.*

A *core* county (or other political subdivision i.e, independent city) is one which the Governor certifies, preliminary damage assessment verifies, has sustained uninsured or under-insured damage, losses, or needs of such severity and magnitude that effective response exceeds the capability of the State and local government, or private relief organizations, to alleviate suffering and hardship.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, requires that a request for a Presidential declaration be made by the Governor of the affected State. The Governor must certify in his/her request that the State will comply with all applicable cost-sharing requirements. Therefore, FEMA cannot designate a county without a Governor's request and his/her certification that they State will meet the applicable non-Federal share of costs.

7. Policy for Designating Counties:

A. Individual Assistance:

Within the declared State:

- 1) Following the declaration of a major disaster FEMA will designate only those core counties, which were requested by the Governor and were determined eligible for Individual Assistance following a joint Preliminary Damage Assessment (PDA). If a Governor has requested that contiguous counties be designated, FEMA may designate contiguous counties. Requests for add-ons of core counties, and requests that contiguous counties be included, may be made by the Governor's Authorized Representative (GAR). In those incidents of unusual severity and magnitude, the President may authorize Individual Assistance in certain counties to meet immediate needs before the PDA is completed.

Adjacent *undeclared* State:

- 2) In order for counties contiguous to those in a declared State to be eligible to receive Individual Assistance, the Governor must submit a request for a major disaster declaration as established under 44 CFR §206.36. The Governor must specify the core counties being requested (which may include all of the counties adjacent to the other State's designated core counties), and may request that contiguous counties be included. Normal declaration process will be followed. As a part of the review process, FEMA will take into consideration the impacts to individuals who sustained damage from the same event that resulted in a Presidential declaration for core counties in the adjacent State.

B. Public Assistance

Within the declared State:

- 1) The Governor, in his/her initial request for declaration, or the GAR, in the case of add-on counties, must request specific counties for designation under the Public Assistance Program. In response to such a request, Public Assistance will be made available only after a joint PDA has been conducted and the PDA reveals that the damage is of such severity and magnitude that Federal assistance is necessary to supplement State and local efforts.

In evaluating the impact of the disaster at the county level FEMA uses a figure of \$2.50 per capita countywide as an indicator that supplemental Federal assistance may be warranted. This figure will be adjusted annually based on the Consumer Price Index for all Urban Consumers. In addition, FEMA considers the impacts to essential government services and functions, and if critical facilities are affected, and whether there are imminent threats to public health and safety.

For those incidents of unusual severity and magnitude, the President may authorize emergency types of assistance, such as, debris removal, emergency protective measures, and/or direct Federal assistance, prior to performance of a joint PDA.

Adjacent *undeclared* State:

- 2) If there are counties in an adjacent State that were impacted by the same event that occurred in a declared State, the Governor of that State must submit a separate request for a major disaster declaration as established under 44 CFR §206.36. The normal declaration process will be followed and counties will be designated based on the criteria stated above.

C. Hazard Mitigation:

In a Presidentially declared major disaster, FEMA automatically designates all counties in the State eligible to apply for assistance under the Hazard Mitigation Grant Program. Consequently, within the State there are no contiguous counties that are ineligible to apply for Hazard Mitigation assistance.

- D. Process for Designating Counties:**
- 1) The Governor or GAR, in the case of add-ons, must request a county be included under the major disaster declaration.
 - 2) In order to implement the *automatic* designation of contiguous counties for the Individual Assistance Program the Governor or GAR must request contiguous counties.
 - 3) The Federal Register Notice published after a major disaster declaration will name all counties designated, including contiguous counties.
8. **Supersession:** None
9. **Authorities and References:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-228, as amended, and 44 CFR §206.40.
10. **Originating Office:** RR-RC-DP
11. **Review Date:** Two years from the date of publication.
12. **Signature:**
- Signed

Executive Associate Director
Response and Recovery Directorate
13. **Distribution:** Regional Directors, Regional and Headquarters Response and Recovery Division Directors, FCO Cadre.

Sample Letter

Governor's Request for a Major Disaster Declaration

(Date)

The President
The White House
Washington, DC 20500

Through: *(Name)*
Regional Director
Federal Emergency Management Agency
Region _____
(Address)

Dear Mr. President:

Under the provisions of Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, and implemented by 44 CFR Part 206.36, I request that you declare a major disaster for *(State)* as a result of *(type of incident: e.g., severe storms, flooding, and tornadoes)*. *(Describe the specific incident and the time period involved, and name the counties or independent cities in the affected areas. Indicate whether the incident is continuing and, if so, forecast termination.)*

In response to the situation I have taken appropriate action under State law and directed the execution of the State Emergency Plan on *(date)*. *(If a State of Emergency has been declared, indicate when and to which areas it is applicable.)*

On *(date)*, I requested a joint Federal, State, and local survey of the damaged areas. Preliminary assessments indicated the most severe impacts were to *(describe the type of facilities and the adverse effects the damage has on the public and private sectors)*.

I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that supplementary Federal emergency assistance is necessary. I am specifically requesting *(name programs; e.g., Individual Assistance, Public Assistance, Hazard Mitigation, Disaster Unemployment Assistance, Small Business Administration disaster loans)*. Preliminary estimates of the types and amount of assistance needed under Public Law 93-288, as amended, are tabulated in enclosures A and B. Estimated requirements for assistance from certain Federal agencies under other statutory authorities are tabulated in enclosure C.

The following information is furnished on the nature and amount of the State and local resources that have been or will be used to alleviate the conditions of this disaster:

(List actions. Include actions pending or taken by State legislative and governing bodies with regard to the disaster.)

(If IFG is requested, state the following): I intend to implement the Individual and Family Grant (IFG) program as shown in enclosure A.

I certify that for this major disaster, the State and local governments will assume the applicable non-Federal share of costs required by Public Law 93-288, as amended. Total expenditures are expected to exceed \$ _____, in accordance with the table in enclosure D.

I have designated _____ as the State Coordinating Officer for this request. *(He/she)* will work with the Federal Emergency Management Agency in damage assessments and may provide further information or justification on my behalf.

Sincerely,

Governor

Enclosures

Sample Format
Enclosure A to Major Disaster Request

Estimated Requirements for Individual Assistance
Public Law 93-288, as amended

County	Temporary Housing <i>(Indicate number)</i>	Individual and Family Grants <i>(Indicate number and \$ amount)</i>	Disaster Unemployment Assistance <i>(Indicate number and \$ amount)</i>	Other
Totals				

Footnote: Add footnotes, as appropriate, to clarify these requirements.

Sample Format
Enclosure B to Major Disaster Request

Estimated Requirements for Public Assistance
Public Law 93-288, as amended

County	<u>Category</u>							Total
	A	B	C	D	E	F	G	
Totals								

Footnotes: Add footnotes, as appropriate, to clarify these requirements. Estimates should reflect total eligible costs before any cost-sharing.

Sample Format Enclosure D to Major Disaster Request

Governor's Certification

I certify that for this current disaster, State and local government expenditures and obligations will include the non-Federal share of costs required by PL 93-288, as amended. As stated in my basic letter, and based on information available at this time, tabulation of these estimated expenditures and obligations is as follows:

Category of Assistance	Amount	
	State	Local
 Individual Assistance:		
Housing		
Individual and Family Grants		
Other (specify)		
Total		
 Public Assistance:		
Category A - Debris Clearance		
Category B - Protective Measures		
Category C - Road Systems		
Category D - Water Control Facilities		
Category E - Public Buildings and Related Equipment		
Category F - Public Utilities		
Category G - Other (not in above categories)		
Total		
Grand Total		

Sample Letter Governor's Request for an Emergency Declaration

(Date)

The President
The White House
Washington, DC 20500

Through: (Name)
Regional Director
Federal Emergency Management Agency
Region _____
(Address)

Dear Mr. President:

Under the provisions of Section 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, and implemented by 44 CFR Part 206.35, I request that you declare an emergency for (State) as a result of (type of incident: e.g., severe storms and flooding, tornadoes, or imminent threat of such occurrence). (Describe the specific incident and the time period involved, and name the counties or independent cities in the affected areas. Indicate whether the incident is continuing, and if so, forecast termination.)

In response to the situation I have taken appropriate action under State law and directed the execution of the State Emergency Plan on (date). (If a State of Emergency has been declared, indicate when and to what areas it is applicable.)

I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that supplementary Federal emergency assistance is necessary to save lives, to protect property, public health, and safety, or to lessen or avert the threat of disaster. I am specifically requesting (indicate type and nature of emergency assistance required). Preliminary estimates of the types and amount of emergency assistance needed under Public Law 93-288, as amended, and emergency assistance from certain Federal agencies under other statutory authorities are tabulated in enclosure A.

The following information is furnished on the nature and amount of the State and local resources that have been or will be used to alleviate the conditions of this emergency:

(List actions. Include actions pending or taken by State legislative and governing bodies with regard to the emergency.)

I certify that for this emergency, the State and local governments will assume the applicable non-Federal share of costs required by Public Law 93-288, as amended.

The following information is furnished on efforts and resources of other Federal agencies that have been or will be used in responding to this incident:

(List actions by agency.)

I have designated _____ as the State Coordinating Officer for this request. *(He/she)* will work with the Federal Emergency Management Agency in damage assessments and may provide further information or justification on my behalf.

Sincerely,

Governor

Enclosure

**Sample Format
Enclosure A to Emergency Request**

Estimated Requirements

Estimated requirements for other Federal agency programs: Amount

(Specify agency and assistance required.)

Total

Estimated Requirements for assistance under Public Law 93-288, as amended:

Coordination

Technical and Advisory Assistance

Debris Removal

Emergency Protective Measures

Temporary Housing

Distribution of Emergency Supplies

Other (specify)

Total

Grand Total

Footnote: Add footnotes, as appropriate, to clarify these requirements. Estimates are to reflect total eligible costs before any cost sharing.

Sample Letter Expedited Request for a Major Disaster Declaration

(Date)

The President
The White House
Washington, DC 20500

Through: (Name)
Regional Director
Federal Emergency Management Agency
Region _____
(Address)

Dear Mr. President:

Under the provisions of Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, and implemented by 44 CFR Part 206.36(d), I request that you declare an expedited major disaster for (State) as a result of (type of incident: e.g., severe storms, flooding, hurricane, tornadoes). (Describe the specific incident and the time period involved, and name the counties or independent cities in the affected areas. Indicate whether the incident is continuing, and if so, forecast termination.)

In response to the situation I have taken appropriate action under State law and directed the execution of the State Emergency Plan on (date). (If a State of Emergency has been declared, indicate when and to what areas it is applicable.)

(If Preliminary Damage Assessment has been requested and/or is underway, please state.)

I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that supplementary Federal emergency assistance is necessary. I am specifically requesting (name programs: e.g., Individual Assistance -- Temporary Housing, Individual and Family Grant Program, Disaster Unemployment Assistance -- Public Assistance, Hazard Mitigation, Small Business Administration disaster loans).

The following information is furnished on the nature and amount of the State and local resources that have been or will be used to alleviate the conditions of this disaster:

(List actions. Include actions pending or taken by State legislative and governing bodies with regard to the disaster.)

(If IFG is requested, state the following): I intend to implement the Individual and Family Grant (IFG) program.

I certify that for this major disaster, the State and local governments will assume the applicable non-Federal share of costs required by Public Law 93-288, as amended.

I have determined that the severity and magnitude exceed the capabilities of State and local government resources. *(List any reasons State and local governments cannot perform or contract for performance, if applicable.)* In accordance with 44 CFR 206.208, I request direct Federal assistance for work and services to save lives and protect property, including emergency debris removal, search and rescue, emergency medical care, emergency shelter, and provision of food, water, medicine, and other essential needs, and including movement of supplies or persons, as you deem warranted and in consultation with authorized representatives of the State of _____ to the extent practicable.

In accordance with 44 CFR 206.208, the State of _____ agrees that it will, with respect to direct Federal assistance:

1. Provide without cost to the United States all lands, easements, and rights-of-way necessary to accomplish the approved work;
2. Hold and save the United States free from damages due to the requested work, and indemnify the Federal Government against any claims arising from such work;
3. Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA/State Agreement; and
4. Assist the performing Federal agency in all support and local jurisdictional matters.

I have designated _____ as the State Coordinating Officer for this request. *(He/she)* will work with the Federal Emergency Management Agency in damage assessments and may provide further information or justification on my behalf.

Sincerely,

Governor

Sample Presidential Declaration Letter

THE WHITE HOUSE
WASHINGTON

(Date)

The Honorable _____
Director
Federal Emergency Management Agency
Washington, DC 20472

Dear _____:

I have determined that the damage in certain areas of the State of Columbia, [resulting from severe storms and flooding (**Event Declared**)] on (**date**), and continuing (**Incident Period**), is of [sufficient severity and magnitude to warrant a major Disaster Declaration (**Assistance Authorized by the President**)] under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“the Stafford Act”). I, therefore, declare that [such a major disaster exists in the State of Columbia (**State Name**)].

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

[You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation (**Programs Authorized**)] in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any [Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs (**Cost-Sharing Considerations**)].

Sincerely,

President

Sample FEMA/State Agreement

FEMA/STATE AGREEMENT

On August 22, 1999, the President declared that a major disaster exists in the State of Texas. This declaration was based on damage resulting from severe storms and flooding caused by Hurricane Bret on August 21, 1999, and continuing. This is the FEMA/State Agreement for this major disaster, designated FEMA-1287-DR, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”), in accordance with 44 CFR 206.44.

1. No Federal assistance under the Stafford Act shall be approved unless the damage or hardship to be alleviated resulted from the major disaster that took place on August 21, 1999 and continuing, except that reasonable expenses that were incurred in anticipation of and immediately preceding such event may be eligible.
2. Federal assistance under the Stafford Act and this Agreement shall be limited to the following areas of the State and such additional areas as may be subsequently designated by the Regional Director, FEMA Region VI, (“the Regional Director”):

The counties of Aransas, Cameron, Kenedy, Kleberg, Nueces, San Patricio, and Willacy for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

3. Any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.
4. Funds are available on a 75 percent Federal cost-share basis for hazard mitigation measures which could substantially reduce the risk of future damage, hardship, loss, or suffering in any area within the State. Total Federal contributions shall not exceed 15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act for this disaster.
5. Pursuant to 44 CFR 206.208 if direct Federal Assistance is requested by the State, the Governor certifies that the State will: 1) provide without cost to the United States all lands, easements, and rights-of-way necessary to accomplish the approved work; 2) hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work; 3) provide reimbursement to FEMA for the nonfederal share of the cost of such work;

and 4) assist the performing Federal Agency in all support and local jurisdictional matters.

6. Pursuant to Sections 403 and 407 of the Stafford Act, 42 U.S.C. § 5170(b) and 5173, the State agrees to indemnify and hold harmless the United States of America, as well as its agents and employees, for any claims arising from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

7. Attached and also made a part of this Agreement are:

Exhibit A: A list of State officials authorized to execute certifications and otherwise to act on behalf of the State

Exhibit B: General Conditions

Exhibit C: Disaster Grant Agreement Articles

This Agreement may be amended at any time by written approval of both parties.

Agreed:

Governor

Regional Director

Date: _____

Date: _____

Exhibit A State Certification Officers

1. The Governor hereby certifies that Tom Millwee is the Governor's Authorized Representative empowered to execute on behalf of the State all necessary documents for disaster assistance, including approval of Subgrants and certification of claims for Public Assistance. Ed Laundry and E.C. Smith are the Alternate Governor's Authorized Representatives and are similarly empowered. Their specimen signatures follow:

GAR

Alternate GAR

-
2. The Governor's Authorized Representative, named above, is responsible for State performance of hazard mitigation activities under this Agreement and, further, Robert Gibson is designated the State Hazard Mitigation Coordinator for the purposes of such hazard mitigation activities.
 3. The Governor hereby certifies that Ed Laundry, E.C. Smith, Tom Millwee, and Russ Stephens are the State Coordinating Officer (SCO) and Alternate State Coordinating Officer, respectively, who will act in cooperation with the Federal Coordinating Officer under this declared major disaster.
 4. The Governor hereby certifies that Dave Tomkins is the representative of the State authorized to receive donations or loans of surplus property on behalf of the State and to execute certification, agreements, and other necessary documents with regard thereto.
 5. The Governor hereby certifies that E.C. Smith is the official of the State authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of Federal disaster assistance are in full compliance with FEMA nondiscrimination regulations (located at 44 CFR Part 7).
 6. The Governor hereby certifies that E.C. Smith is the official of the State who will execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of Federal disaster assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Exhibit B

General Conditions

FEMA and the State agree to take measures to deliver assistance to individuals, families, and governments as expeditiously as possible, consistent with Federal laws and regulations. To that end, the following terms and conditions apply:

1. Federal assistance will be made available, within the limits of funds available from Congressional appropriations for such purposes, in accordance with the Stafford Act, Executive Orders 12148 and 12673, and applicable regulations found in Title 44 of the Code of Federal Regulations (CFR), as amended, and currently applicable handbooks.
2. If necessary because of limited funds, FEMA will give first priority to assistance for individuals and families, emergency work for protection of public health and safety, and administrative costs for managing the disaster program. Public Assistance recovery claims, hazard mitigation, and fire suppression assistance will be paid when, and if, funds become available and will be provided on a first-come, first-served basis.
3. Pursuant to the regulations, the State agrees to be the grantee for all grant assistance provided under the Stafford Act. The State agrees to comply with the requirements of applicable regulations found in 44 CFR. The State hereby waives any consultation process under Executive Order 12372 and 44 CFR 4, for grants, loans, or other financial assistance under the Stafford Act for this major disaster.
4. Within his authorities, the Governor shall ensure, through the State agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster victims. The State also shall take all reasonable steps to ensure that disaster victims are aware of procedures for filing insurance claims, are informed of any State procedures instituted for assisting insured disaster victims. Further, the State shall take all actions necessary and reasonable to ensure that all recipients of Federal disaster assistance are aware of their responsibility to repay government assistance, which is duplicated by insurance proceeds.
5. The State agrees, on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal Government in seeking recovery of funds that are expended in alleviating the damages and suffering caused by this major disaster against any party or parties whose intentional acts or omissions caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to the Presidential Declaration of this major disaster.

Exhibit C

Disaster Grant Agreement Articles

ARTICLE I. The United States of America through the Director, Federal Emergency Management Agency (FEMA) (hereinafter referred to as “the Grantor”) or his/her delegate, agrees to grant to the State Government, through its designated agency named above (hereinafter referred to as “the Grantee”) funds in the amount specified on the obligating document, to support the Grant Program authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. And activated in the FEMA-State Agreement for FEMA-1287-DR. The Grantee agrees to abide by the grant terms and conditions as set forth in this document, to comply with all provisions of the State Administrative Plan for each disaster grant, and all conditions contained in the FEMA-State Agreement.

ARTICLE II. This agreement takes effect at the time the FEMA-State Agreement is executed and remains in effect until the grant program has been closed by FEMA. Refer to obligating documents for funding information.

ARTICLE III. As stated in Exhibit B, paragraph 3, the Grantee agrees to comply with all applicable laws and regulations. In particular, the following laws, regulations, and OMB circulars govern standard grant management practices and are incorporated into this Agreement by reference. Due to the nature of grant administration following a Presidential declaration of a disaster or emergency, some variance from standard practice may be warranted upon determination by FEMA.

Public Law 93-288, as amended. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et.seq.

Title 44 of the Code of Federal Regulations (CFR)

44 CFR	Part 13	Uniform administrative requirements for grants and cooperative agreements to State and local governments
44 CFR	Part 14	Administration of grants: Audits of State and local governments
44 CFR	Part 17	Government-wide debarment and suspension (nonprocurement) and government-wide requirements for drug-free workplace (grants)
44 CFR	Part 18	New restrictions on lobbying
44 CFR	Subchapter B	Insurance and Hazard Mitigation
44 CFR	Subchapter C	Fire Prevention and Control
44 CFR	Subchapter D	Disaster Assistance
44 CFR	Part 7	Nondiscrimination in Federally Assisted Programs

OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

OMB Circular A-102 Uniform Administrative requirements for Grants and Cooperative Agreements with State and Local Governments

OMB Circular A-87 Cost Principles for State and Local Governments

OMB Circular A-21 Cost Principles for Educational Institutions

OMB Circular A-122 Cost Principles for Nonprofit Organizations

OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations

Assurances submitted with the SF 424, Application for Federal Assistance

31 CFR 205.6 Funding Techniques

ARTICLE IV. The specific terms and conditions of this agreement are as follows:

1. No transfer of funds to agencies other than those identified in the approved grant agreement shall be made without prior approval of FEMA. Grantee shall be paid using the HHS Smartlink System, provided Grantee maintains and complies with procedures for minimizing the time between transfer of funds from the U.S. Treasury and the disbursement by the Grantee and Subgrantees. The Grantee commits itself to: 1) initiating cash drawdowns only when actually needed for its disbursement; 2) timely financial reporting per FEMA requirements, using the SF 269 or equivalent report; and 3) imposing the same standards of timing and amount upon any secondary recipient.
2. Grantee shall follow cost-sharing requirements per 44 CFR Part 13.24.
3. The Grantee shall transfer to FEMA the appropriate share, based on the Federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement, along with accrued interest, if any. The Grantee shall take necessary action to effect prompt collection of all monies due or which may become due and to cooperate with FEMA in any claim or suit in connection with amounts due.
4. Prior to the start of any construction activity, the Grantee shall ensure that all applicable Federal, State, and local permits and clearances are obtained including FEMA compliance with the National Environmental Protection Act.

5. The Grantee is free to copyright any original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use the work for Government purposes. Any publication resulting from work performed under this agreement shall include an acknowledgment of FEMA financial support and a statement that the publication does not necessarily reflect FEMA's views.
6. The Grantee shall submit financial status reports (SF 269 or equivalent) to the FEMA regional office 30 days after the end of the first federal quarter following the initial grant award. (This initial report may be waived by the Disaster Recovery Manager.) The Grantee shall submit quarterly financial status reports thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and October 30. The Disaster Recovery Manager or the Regional Director may suspend drawdowns if quarterly reports are not submitted on a timely basis.
7. Per 44 CFR Part 13.50, when FEMA and the State have completed the agreed upon grant activities, the State shall submit a final financial status report (SF 269 or equivalent), any required performance reports, a request to close the program, and any other required forms and certifications within 90 days of completion of grant activities. FEMA will evaluate Grantee reports, perform the necessary financial reconciliation, make any necessary adjustments, and closeout the grant.
8. The grant shall be complete within the time period prescribed in FEMA regulations and on the obligating documents. Written request for an extension will include information and documentation to support the amendment and a schedule for completion. No subsequent grant agreements, monetary increase amendments, or time extension amendments will be approved unless all overdue final financial or performance reports have been submitted by the Grantee to the appropriate Regional Office. Exceptions to this policy can be approved only by the FEMA Regional Director or Disaster Recovery Manager.
9. The certifications signed by the State on the FEMA-State Agreement relating to maintenance of a Drug-Free Workplace (per 44 CFR Part 17, Subpart F) and New Restrictions on Lobbying (44 CFR Part 18) apply to this grant agreement and are incorporated by reference.

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 44 CFR Part 17, Subpart F. The regulations, published in the May 25, 1990, Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment. (See 44 CFR Part 17, Subpart C, 17.300, and Subpart D, 17.400.)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such conviction;
- (e) Notifying the agency in writing within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency

has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with this grant:

Place(s) of Performance: (Street address, city, county, state, ZIP code)

Organization Name

FEMA-1287-DR
Disaster Number

Name and Title of Authorized Representative

Signature

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name and Title of Authorized Representative

Signature

Date

Sample Amendment to the FEMA/State Agreement

Federal Emergency Management Agency

Region VI Denton, TX 76201

AMENDMENT NUMBER 1
TO THE FEMA/STATE AGREEMENT
FEMA-1287-DR-TX

This is Amendment Number 1 to the basic FEMA/State Agreement for major disaster FEMA-1287-DR-TX declared August 22, 1999. The purpose of this amendment is to add four counties for Public Assistance (Categories A and B).

Paragraph two of the FEMA-State Agreement is hereby amended to read as follows:

Federal assistance under the Stafford Act and this Agreement shall be limited to the following areas of the State and such additional areas as may be subsequently designated by the Regional Director, FEMA Region VI, (“the Regional Director”):

The counties of Aransas, Cameron, Kenedy, Kleberg, Nueces, San Patricio, and Willacy for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

Effective August 25, 1999, Brooks, Duval, Jim Wells, and Webb Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All other paragraphs of the Agreement remain unchanged.

AGREED:

Governor’s Authorized
Representative

Federal Coordinating Officer

Date

Date

Sample Federal Register Notice – Major Disaster and Related Determinations

Billing Code 6718-02P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-4567-DR]

State of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential Declaration of a major disaster for the State of Columbia (FEMA-4567-DR), dated September 18, 1998, and related determinations.

EFFECTIVE DATE: September 18, 1998

FOR FURTHER INFORMATION CONTACT: Linda Sacks, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 555-4509.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Columbia, resulting from flooding on September 14, 1998, and continuing, is of sufficient severity and magnitude to warrant a major Disaster Declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“the Stafford Act”). I, therefore, declare that such a major disaster exists in the State of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance and Hazard Mitigation may be added at a later date, if

warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Luisa Ramirez of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Columbia to have been affected adversely by this declared major disaster:

Green, Mineral, Kane, and Stramford Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

FEMA Director

Sample Federal Register Notice – Amendment to Notice of a Major Disaster Declaration

Billing Code 6718-02P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-4567-DR]

State of Columbia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential Declaration of a major disaster for the State of Columbia (FEMA-4567-DR), dated September 18, 1998, and related determinations.

EFFECTIVE DATE: September 19, 1998

FOR FURTHER INFORMATION CONTACT: Linda Sacks, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 555-4509.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Columbia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1998:

Pine, Grand, and Granite Counties for Individual Assistance.
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Deputy Associate Director
Response and Recovery Directorate

Sample Add-On Amendment to a Disaster Declaration

Federal Emergency Management Agency
Region IV
Harvest Junction, CL 98765

RR-IF

September 18, 1998

Paul Swanson
Governor's Authorized Representative
Columbia Emergency Management Agency
State Capital Building
Capital City, Columbia 77777

Dear Mr. Swanson:

This letter provides notification of actions taken on your request to add Kane County to declaration FEMA-4567-DR-CL for Individual Assistance, Public Assistance, and Hazard Mitigation in Columbia.

Preliminary damage assessments were completed in Kane County on September 17, 1998.

Following a review of all available data/information, it was determined that the severity and magnitude of damage in Kane County creates a situation that requires supplemental assistance that can only be provided under the provisions of PL 93-288, as amended.

In response to your letter, dated September 17, 1998, Kane County will be included in FEMA-4567-DR-CL for Individual Assistance, Public Assistance, and Hazard Mitigation.

Sincerely,



Luisa Ramirez
Federal Coordinating Officer

Denial of GAR's Request for Add-Ons

Before appealing any decision, you should receive a letter of denial. The following chart indicates the sources for letters of denial.

Denial	Letter Received From . . .
First	Federal Coordinating Officer/Disaster Recovery Manager
Second	Associate Director of Response and Recovery

How To Appeal Denials

How To Appeal Initial Declaration Denial

If a State's initial declaration request has been denied or partially denied, the State may write an appeal letter with the following criteria:

- o Submit the letter of appeal . . .
 - = After receiving a letter of denial.
 - = Within 30 days of the original request letter's date.
 - = From the Governor to the President through the Regional Director.
 - = Based upon additional information, not included in the initial request, supporting the appeal.

How To Appeal Add-On Denial

The denial for the add-on comes from the SCO/GAR to the Associate Director of Response and Recovery. At this point, if the State chooses to appeal, it must follow the request criteria including:

- o Submit the letter of appeal for an add-on . . .
 - = After receiving the denial letter.
 - = One time only.
 - = From the Governor's Authorized Representative to the Director of Response and Recovery.
 - = Based upon additional information, not included in the initial request, supporting the appeal.