



# Federal Disaster Response and Recovery Legal Framework (Summary)

## A. Introduction

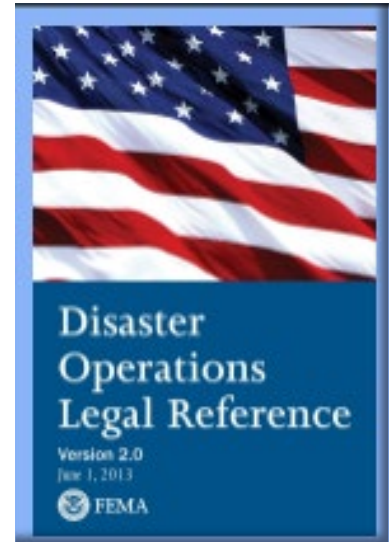
The Federal Emergency Management Agency (FEMA) has published the Disaster Operations Legal Resource (DOLR) in an effort to collect, in a single volume, a coherent narrative that both describes and explains the essential elements of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and related legal authorities underpinning FEMA's disaster operations.

The Louisiana Municipal Association has abstracted and condensed the contents of the nearly 800 page document to introduce the basic tenets of the early disaster phase legal authorities and provisions that are far more extensively portrayed and detailed for the full disaster operations cycle in the full reference.

The DOLR provides a "place"—both paper and virtual—where FEMA attorneys and their client partners can identify, create, represent, distribute, and enable adoption of insights and experiences relevant to the practical application of FEMA's authorities in disaster operations. The DOLR is a basic and relatively complete reference that captures the legal "lessons learned" in an organized system connected to existing statutes, regulations, and policies so that users can easily locate and retrieve useful information.

In utilizing the DOLR, describes the myriad of statutes and authorities under which FEMA operates. The following provides a brief outline and broad overview of the framework of the legal authorities applicable to the delivery of FEMA's mission.

This condensed summary focuses only on the authorities, basic description of the emergency management operational life cycle, disaster request/declaration process, and initial phase of federal response up to the Governor and Federal Coordinating Officer signing a Federal State Agreement.



*Full PDF Document at [FEMA.GOV](http://FEMA.GOV)*

## B. Authorities

### 1. The Constitution of the United States of America

The Supremacy Clause of the Constitution affirms that it is the supreme law of the United States. It is the framework for the organization of the U.S. government and for the relationship of the federal government with the states and citizens. The Constitution creates three branches of the federal government: a legislature, the bicameral Congress; an executive branch led by the President; and a judicial branch headed by the Supreme Court. The Constitution specifies the powers and duties of each branch and reserves all unremunerated powers to the respective states and all the people within the United States. In addition, the Constitution and its amendments establish that no person shall be deprived equal protection of the laws or deprived of life, liberty, or property without due process. When disasters occur, FEMA must be mindful that the federal government does not have a general police power, the states do, and federal assistance, even though discretionary, must be delivered in a manner that is not arbitrary or capricious.

### 2. Federal Statutes

The United States Congress is the sole legislative body within the federal government. The Government Printing Office codifies and publishes most federal statutes in the United States Code (U.S.C.). Federal statutes applicable to FEMA include authorizing statutes, appropriations acts and statutes imposing responsibilities on the federal government in carrying out its authorities. Authorizing statutes can be found in volumes of the U.S.C. For example, the Stafford Act can be found in Volume 42, U.S.C., Sections 5121 through 5207. Congress passes appropriations acts each fiscal year

(October 1<sup>st</sup> to September 30<sup>th</sup>) to provide funds to operate each federal department, among other things. FEMA's actions must conform with the requirements set forth in numerous other statutes; only Congress may waive or make exceptions to requirements in federal statutes.

### 3. Presidential Executive Orders

The President has the power to issue Executive Orders, directives, and other forms of direction to the executive branch. Executive Orders and other directives of the President govern actions by federal officials and agencies. Only the Constitution and federal statutes limit the President's authority over the executive branch. Executive Order 13,286 (February 28, 2003) is an example of an Executive Order; it transfers certain agencies and agency components to the DHS. Examples of other forms of directives include HSPDs and Presidential Policy Directives.

### 4. Federal Regulations (sometimes called Rules)

Departments and agencies in the Executive Branch, based on either general authority assigned to them under the law or directions Congress mandates in a specific piece of legislation, draft regulations to implement their authorizing legislation. A properly promulgated regulation has the full force and effect of law. Regulations therefore bind agency officials who do not have discretion to violate them. Agencies may implement and change regulations through rulemaking procedures set forth in the Administrative Procedure Act, which includes giving notice to the public through publication in the Federal Register. The Government Printing Office codifies and publishes the rules in the Code of Federal Regulations (CFR). FEMA's rules are published in 44 CFR Parts 1-362.

### 5. Department of Homeland Security Directives

FEMA is a federal agency and a component of the DHS. The DHS Directives System is an official means of communicating to all DHS components and employees the policies, delegations of authority, and procedures necessary for DHS to comply with pertinent Executive Orders, statutes, regulations, and policies. Policy statements address the overarching objectives of major departmental or governmental initiatives or programs. Policy Statements may trigger the issuance of a directive. Directives articulate and build on DHS policy statements, missions, programs, activities, or business practices of a continuing nature. Instructions implement or supplement DHS Directives, Executive Orders, regulations, and Federal Register notices, by providing uniform procedure and/or prescribing the manner or plan of action for carrying out the policy, operating a program or activity, and assigning responsibilities. Certain implementing documents that provide more detailed information include manuals, guides, handbooks, reference books, standard operating procedures, and other similar documents. See, e.g., DHS Directive Number 112-01, issued 04/10/2008.

### 6. FEMA Directives, Publications, Guidance, Policy statements

In addition to rules and regulations, which have the full force and effect of law, FEMA publishes information to assist and inform employees and the public, including Administrator directives, policy statements, policy guides and manuals. The Administrator's directives are internal documents that provide policy and program guidance to FEMA employees. Directives publish policies, delegate authority, establish programs, and assign responsibilities. An example of an Administrator's directive is number 112.5, dated September 21, 2008, entitled "Obtaining Legal Review and Assistance." This directive sets forth issues that require legal review, issues where such review is advisable, and establishes procedures for seeking review or advice. The Administrator also issues policy statements of special interest that expire after 90 days. FEMA publishes procedures, policies, and guidance for employees and the public. These publications are indexed and available on FEMA's website. An example is the 9500 Series of Public Assistance (PA) Policy and Guidance that includes the PA Policy Digest (FEMA 321), the PA Guide (FEMA 322), the Applicant Handbook (FEMA 323), and the Debris Management Guide (FEMA 325). Agency policy and guidance sets out "rules of the game" to ensure: 1) that the agency implements its actions and programs in a consistent, non-arbitrary manner; and 2) that all recipients of FEMA assistance receive fair and equitable treatment by being aware of and subject to the same procedures and requirements.

## 7. Judicial Opinions or “Case Law”

The federal and state court systems consist of two levels of courts: trial courts and appellate courts. The federal courts have jurisdiction over cases involving federal statutes and other “federal questions.” They also have jurisdiction over cases in which the parties reside in different states. State courts have jurisdiction over most other types of cases. Statutes or executive office action are the basis upon which most courts settle disputes and make decisions in cases; however, another body of law exists based on prior decisions of courts. This “common law” system gives precedential weight to past decisions of the courts.<sup>33</sup> If a similar dispute has been resolved, the court is bound to follow the reasoning used in the prior decision if the case is in the same jurisdiction. Judicial decisions for a relevant court represent law that the agency must follow. Interactions between constitutional law, statutory law, common law, and regulatory law give rise to considerable complexity.

## 8. State Constitutions and Statutes

State legislatures can pass laws on matters for which they share jurisdiction with Congress and on matters in which the Constitution does not grant jurisdiction to the federal government. For example, the Constitution by not assuming the authority for police power, leaves the police power to the individual states. State constitutions and statutes are the supreme law within the state, but federal legislation and the Constitution can preempt state and local rules. State agencies may adopt regulations to carry out state laws. The individual states have the primary role in emergency management; state and local officials are the true first responders to emergencies and disasters within their state borders, just as tribal officials are on tribal lands.

## 9. Municipal Charters, Ordinances, Rules and Regulations

These mechanisms of local governance apply only to local issues. State and federal rules typically preempt these local rules if there is conflict.

## C. Emergency/Disaster Event - All-Hazards Operational Life Cycle

The following graphic displays all of the phases and processes of a disaster response and recovery that the State commits to when requesting a Presidential Disaster Declaration.



# I. Requesting a Declaration

## A. Requirements for Governor's Request

The governor (or acting governor) of a state or the chief executive of an Indian Tribal Government must request a Presidential declaration of a major disaster or emergency, except in the case of an emergency declaration involving primary federal responsibility, which is discussed in section D. The request must be based on a finding that the major disaster or emergency is of such severity and magnitude that an effective response federal assistance is necessary.

The governor submits a request and supporting documentation to the appropriate FEMA Regional Administrator (RA), who analyzes the state's request and makes a recommendation to the Deputy Associate Administrator, Response and Recovery, who forwards it to the FEMA Administrator for submittal to the President. federal assistance is necessary.

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### 1. *Request Deadline*

A request for a major disaster declaration must be submitted within days of the incident unless the governor submits, and FEMA approves, a request for an extension within the 30-day period, providing the reason for the delay.

### 2. *Severity of Situation Finding*

The governor's request for an emergency declaration must include a finding that the situation is of such severity and magnitude that effective response is beyond the capability of state and affected local governments, and that the state requires supplementary federal emergency assistance to save lives and to protect property, public health, and safety, or to lessen or avert the threat of a disaster.

### 3. *Required Governor's Actions.*

The request must include information describing state and local resources committed to disaster relief. This may include actions pending or taken by the state legislature and governing bodies.

### 4. *Specification of Incident Type.*

The request must indicate the type of incident (e.g., severe storms, flooding, hurricane) and specific dates and time period establishing the basis for a declaration of an emergency or a major disaster.

### 5. *Nature of Assistance Required.*

In general, a statement that a joint federal, state, and local survey of the damaged areas was requested, a description of the types of facilities and damage, and the adverse effect the damage has on the public and private sectors is required for a major disaster declaration. This will include preliminary estimates of types and amount of supplementary federal assistance needed under the Stafford Act, including the results of the joint preliminary damage assessments.

The request should include the specific FEMA programs requested and the counties for which each program is requested, for example, Individual Assistance (including the Individual and Households Program, Disaster Unemployment Assistance, Crisis Counseling); Public Assistance; Small Business Administration (SBA) disaster loans; and Hazard Mitigation (HM). Note that the Hazard Mitigation Grants Program (HMGP) targets risks to the state unrelated to the damage caused by the event and may be requested for specific counties or statewide.

#### a.) Debris Removal

If debris removal is requested or anticipated, the state must agree to indemnify the United States from any claims arising from the removal of debris or wreckage, and the state must agree that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

#### b.) Direct Federal Assistance (DFA)

If DFA is requested, the following information and certifications must be provided before DFA can be provided:

- i). The specific type of work requested;
- ii). The reasons the state and local government cannot perform or contract for performance of the work;
- iii). That the state will provide, without cost to the United States, all lands, easements and rights of way necessary to accomplish the approved work;
- iv). That the state agrees to indemnify the United States from damages and claims arising from the requested work;
- v). That the state will provide reimbursement for the non-federal share of the cost of work pursuant to the terms of the FEMA-State Agreement (FSA); and
- vi). That the state will assist the performing federal agency in all support and local jurisdictional matters.

#### **6. *Compliance with Non-Federal Cost Share Requirements***

A governor's certification that the state will comply with Stafford Act cost sharing requirements is specifically required for major disaster declaration requests. FEMA requires a certification for emergency declaration requests also to ensure timely provision of assistance. Cost share commitments are included in the FSA for both emergencies and major disasters and are required for the provision of DFA.

#### **7. *Designation of Primary State Officials***

Generally, there will be a designation of a State Coordinating Officer (SCO) in the governor's request. The SCO provides continuous interface with the Federal team to administer and make operational decisions for response, recovery and closeout.

#### **B. *Pre-Disaster Emergency Declarations***

The Stafford Act requires FEMA to establish guidelines to assist governors in requesting an emergency declaration in advance of a natural or manmade event that may be declared a disaster. In policy, FEMA has set forth the circumstances under which a state may request a pre-disaster emergency declaration. The policy limits recommendations for assistance under a pre-disaster emergency declaration to Emergency Protective Measures, including DFA. Assistance may be limited to DFA.

#### **C. *Expedited Request for Major Disaster***

The state's governor may send an abbreviated written request for a major disaster declaration for catastrophes of such unusual severity and magnitude that field damage assessments are not necessary to determine the need for supplementary federal assistance. All declaration requests, including expedited requests, must comply with minimum information and certification requirements set forth in regulations. FEMA has set out its procedures for processing an expedited major disaster declaration request in a separate policy.

The purpose of such an expedited request is generally to obtain emergency work as quickly as possible. Depending upon the specific request of the governor, under this policy, FEMA may recommend emergency work, Category A (Debris Removal), and/or Category B (Emergency Protective Measures), which will generally be limited to DFA. This policy also includes the possibility that FEMA may appropriate for the particular event than an expedited major disaster declaration.

Generally, FEMA will withhold a recommendation regarding any concurrent request for Individual Assistance (IA), other categories of Public Assistance (PA), and Hazard Mitigation Grant Program (HMGP) assistance until the results of Preliminary Damage Assessments (PDAs) are available. (This reference book discusses PA, IA, and Hazard Mitigation in chapters 5, 6, and 7, respectively.) Exceptions to this policy may occur:

- In the event of a catastrophic or high impact event when damage is empirically overwhelming, FEMA may, without PDAs, recommend limited IA and HMGP assistance, in addition to PA (Categories A and/or B only); or

- In accordance with FEMA’s policy on pre-disaster declarations, FEMA may recommend Category B financial assistance, if the state submits an emergency declaration with such a request. These limited exceptions notwithstanding, in the absence of PDAs, when a state makes an expedited request for a major disaster declaration, FEMA will only initially recommend limited assistance.

## II. Preliminary Damage Assessment (PDA)

The PDA is a tool to quantify the magnitude of damage that an incident caused and the resulting unmet needs of individuals, businesses, the public sector, and the community. The state requests PDAs and teams consisting of federal, state, local, and tribal officials to conduct them. PDAs form the basis of a governor’s request for declaration and are usually submitted with the governor’s request for declaration.

The state uses the information collected as its basis for its declaration request, and FEMA uses the data to document its recommendation to the President. FEMA has found that a combined state and federal or “joint” PDA, before the governor’s request, is usually the most efficient use of resources.

When an incident occurs or is imminent, the state should determine whether its initial information is sufficient to request a joint PDA. Not every incident requires federal assistance. When the state official responsible for disaster operations determines the incident is beyond the state and local government capabilities to respond, however, the state typically requests the appropriate FEMA RA to perform a joint FEMA-State PDA.

Damage assessment teams, composed of at least one representative of the federal government and one representative of the particular state involved, carry out PDAs. The state should also include, if possible, a local government representative on its team who is familiar with the specific extent and location of damage. The state and FEMA may also ask other governmental representatives and voluntary relief organizations to participate in the PDA process, if needed.

The state is responsible for coordinating state and local participation in the PDA and ensuring that the participants receive timely notification concerning the schedule. A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements. When the PDA is completed, FEMA and the state discuss findings and reconcile any discrepancies. FEMA funds 75% of the cost of the PDAs, and the state pays 25% unless there is a determination that no declaration is appropriate, in which case FEMA and the state each pay its own costs. When there is a declaration, the state share is a part of its administrative costs.

FEMA may waive the requirement for a joint PDA when the incident is of such unusual severity and magnitude that field damage assessments are not necessary to determine whether supplemental federal assistance is appropriate or when the FEMA RA, in consultation with the state, so determines. Even where the need for supplemental federal assistance is obvious, however, FEMA may request a damage assessment to evaluate unmet needs to be able to better manage the nature of its supplemental assistance. For example, if many disaster survivors are economically living below the federally determined poverty line FEMA may seek assistance early from other federal agencies (OFAs), such as the Department of Housing and Urban Development (HUD) and the local public housing authority.

## III. Processing Requests for Declarations

The FEMA RA reviews the governor’s request for a declaration and the joint PDAs, and submits a report with a formal recommendation to the FEMA Administrator. FEMA Headquarters (HQ) staff, that is, personnel from IA, PA, Hazard Mitigation (HM), and Office of Chief Counsel (OCC), review the governor’s request and the Region’s report. The Region and FEMA HQ independently review the governor’s request and supporting documentation for compliance with the requirements in the Stafford Act and FEMA’s regulations. The Administrator reviews the recommendations of the Region and FEMA HQ and formulates FEMA’s final recommendation to the President.

### A. Evaluation Factors for a Major Disaster or an Emergency Declaration

Under the Stafford Act, in order for the federal government to assist, an incident must be of such severity and magnitude that effective response is beyond the capabilities of the state and affected local governments. Disaster assistance, however, is also part of the mission of many OFAs, including the Department of Health and Human Services,

the Environmental Protection Agency, the U.S. Coast Guard (USCG), the SBA, and the U.S. Army Corps of Engineers (USACE).

Generally, FEMA will not recommend an emergency declaration when the authority to respond to an incident is within the existing statutory authority of another federal agency unless there are significant unmet needs that other federal assistance does not address and that the Stafford Act could address. Whether emergency assistance under the Stafford Act is necessary “to supplement the State and local efforts to save lives, protect public health and safety, or lessen or avert the threat of a catastrophe.”

Under the statute and regulations, FEMA considers the following factors in reviewing a request for a major disaster declaration:

- Whether the situation is of such severity and magnitude that it is beyond the capabilities of the state and local governments and supplemental assistance under the Stafford Act is necessary;
- Whether the request states that federal assistance is necessary to supplement efforts and resources of state and local governments, disaster relief organizations, and insurance;
- Whether the state has made a request within 30 days of the occurrence of the incident unless the requestor has made a request for an extension within the 30-day time period;
- Whether the type of event is appropriate for a major disaster declaration (e.g., a natural event, fire, flood or explosion); if not, FEMA is likely to review the governor’s request as an emergency declaration request;
- Whether the governor or acting governor, who should provide written evidence of authority to act for the governor, is requesting the declaration and not a lower level official;
- Whether there is confirmation that the governor has taken appropriate action under state law and directed execution of the state emergency plan;
- Whether the incident meets the per capita indicator for PA;
- Whether there is information about how many residences have sustained major damage or have been destroyed;
- Whether the request contains preliminary estimates of the amount and severity of disaster damage and/or losses, including the impact of disaster damage on affected individuals and the public and private sectors;
- Whether there is a description of the nature and amount of available resources of the state and local governments and disaster relief organizations, such as, but not limited to, cots, food, clothing, and shelter facilities, that have or will be committed to the incident;
- Whether the request contains preliminary estimates of the types and amounts of supplemental federal disaster assistance needed;
- Whether there is an assessment of the extent and type of insurance in effect to cover losses (i.e., how many public facilities and homeowners have flood insurance, homeowner’s insurance, and/or personal property insurance in effect);
- Whether there is assistance available from other federal programs and other sources (e.g., if federal-aid highway roads are among the damaged facilities, then the Federal Highway Administration is responsible for repairs);
- Whether there are imminent threats to public health and safety; Whether there is information regarding the recent disaster history in the state (i.e., the number and severity of disasters that the President has recently declared in the particular state);
- Whether the state and affected local government have undertaken appropriate measures related to hazard mitigation (e.g., the state or tribe must have an approved hazard mitigation plan as a condition of receiving funds for PA Categories C through G and HMGP, but FEMA does not normally consider other relevant mitigation measures to make this determination);
- Whether the governor has certified that the state and local government obligations and expenditures for the current incident will comply with all cost share requirements;

- If debris removal is requested, whether the request contains indemnification and hold harmless clauses; and if the governor is requesting debris removal on private property, whether there is an assurance of needed access authorizations beforehand; and
- If there is a specific request for DFA, whether the necessary certifications are present, including hold harmless, rights of way, payment of non-federal cost share, and coordination.

FEMA will recommend the issuance of a major disaster declaration if it finds the nature and level of impacts warrant supplemental assistance under the Stafford Act from either the PA program or the IA program, or both. Given that the factors do not set forth clear “black and white” tests or bases, the FEMA Administrator’s final agency recommendation for a declaration may not always reflect the original Regional Administrator’s recommendation. This disparity can be the result of additional realities at play, including an interest in national consistency in the application of these factors as well as other policy considerations. Sometimes FEMA recommendation to HQ that also may alter the outcome.

## **B. Evaluation Factors - Public Assistance (PA) Program**

FEMA must consider six primary factors in evaluating the need for PA. Cost, as outlined in this section, is a primary factor, since federal disaster assistance is contingent on a finding that state and local resources are inadequate and require supplemental assistance under the Stafford Act. FEMA estimates the per capita impact of the disaster by dividing the total estimated cost of eligible federal and non-federal assistance under the Stafford Act by the statewide population. That figure is then compared to a regulatory figure as an indicator that a disaster is of such size that it might warrant federal assistance. FEMA annually adjusts the regulatory state per capita indicator based on the Consumer Price Index.

FEMA also has established a minimum threshold of \$1 million in total estimated public assistance disaster damage because FEMA expects that all states, regardless of size, can cover this level of damage using state resources. The Stafford Act prohibits preventing a geographical area from receiving assistance based solely on “an arithmetic formula or sliding scale based on income or population.”

Thus, in total, FEMA considers the following factors:

1. The estimated costs of assistance;
2. Localized impacts at county, city, and tribal government levels;
3. Insurance coverage in force;
4. Hazard mitigation measures that contributed to the reduction of damages;
5. Recent multiple disasters within the prior 12 months at the state and local level; and
6. Available assistance programs of OFAs.

In addition to these primary factors, FEMA may consider other relevant factors.

## **C. Evaluation Factors – Individual Assistance (IA) Program**

FEMA considers the following factors in evaluating the need for the IA program:

1. Concentration of damage, such as a tornado that destroys an entire town;
2. Trauma;
3. Presence of particular populations, such as persons with low income;
4. Voluntary agency assistance availability;
5. Insurance coverage; and
6. Average amount of individual assistance provided by small, medium, and large states in prior disasters. Similar to the process of evaluating the level of need for public assistance, and in order to assess whether the event is beyond state and local capabilities to warrant supplemental individual assistance, a primary consideration is the level and anticipated cost of significant damage to homes.



#### IV. Presidential Action on the State Request for Declaration

When a state requests a major disaster declaration, the President may issue either a major disaster or an emergency declaration, or deny the governor's request. When a state requests an emergency declaration, however, the President may only grant the emergency declaration or deny it. The rationale for this result is that although all assistance available under an emergency declaration is available under a major declaration, the reverse is not true. Thus, it is not appropriate for the federal government to determine unilaterally the state's broader potential involvement and commitment than the governor did in the request. If the state requests both an emergency and a major disaster declaration, FEMA will make a recommendation to the President for either a major disaster or an emergency. FEMA promptly notifies the governor in writing as soon as the President grants or denies the declaration request. The agency publishes presidential declarations in the Federal Register.

#### V. The Declaration

A presidential declaration of an emergency or major disaster generally contains the following elements.

##### A. Description of the Incident Type

The incident type is such things as tornado, hurricane, flooding, or earthquake. An event that is likely to result in a declaration under the Stafford Act generally consists of a single event or storm system. FEMA, generally, does not consider storms that result from a pattern, pressure, or troughs, to be a single event for Stafford Act purposes.

##### B. The Incident Period

The incident period is the time interval during which the incident occurs. In addition, work undertaken in anticipation of the incident is eligible for Stafford Act assistance. As provided for in Paragraph 1 of the standard FSA terms, this means: "reasonable expenses that were incurred in anticipation of and immediately preceding such event may be eligible" (emphasis added). FEMA generally interprets this to be a narrow time frame. Whether 24, 48, or 72 hours or more, the further out in time, the less likely that FEMA can directly tie activities to the declared disaster in question rather than for seasonal or general preparedness for events that may occur at some time in the future. There is a distinction between general preparedness and activities specifically undertaken in anticipation of and immediately before an event.

An open or "continuing" incident period is not necessary to capture damage that may occur in the future so long as the damage results from the declared incident. For example, a flood event need not have an open incident period in order to capture rising flood waters that will not crest for some days or weeks. The damage that might occur when the floodwaters crest would still result from the declared flooding incident and therefore need not be accounted for and need not occur during the incident period. Although not legally necessary, FEMA's practice in flooding events is initially to indicate the incident period as "continuing" where, for example, flooding is moving downstream to an area and flood waters continue to rise there after the storm ends. Once flood levels peak, FEMA closes the incident period by amending the original declaration and the FSA. Most events, however, identify the close of the incident period in the original declaration and the FSA.

##### C. Designation of the Affected Geographical Areas

The affected geographical areas are those eligible for Stafford Act assistance, such as counties, parishes, or tribal lands. The declaration may designate any area, typically a county, tribal land, independent city, or parish that sustained sufficient damage from an eligible event. The declaration designates each area by type of assistance; these areas are generally those based on eligible damage amounts. In addition to considering localized impacts when reviewing whether to recommend a declaration, for the PA program, FEMA also uses a county per capita indicator to determine whether the impact of a disaster on a county is of sufficient magnitude that it might warrant inclusion of the county in the PA program for that disaster. There is no similar indicator at the county level for the IA program, but FEMA will consider the concentration of damage in a given area. For the HMGP, the governor may request it for particular counties or statewide, regardless of where damage may have occurred. After the issuance of the

presidential declaration, new information about damage in additional areas may become available, and FEMA may designate additional areas to the original declaration. FEMA will not, however, designate areas of the state or types of assistance beyond those that the governor requests.

There is no statutory or regulatory requirement that a designated geographic area encompass an entire local government jurisdiction. Areas eligible for assistance may be more narrowly or specifically designated. Declarations are typically, however, designated on a county basis.

#### D. Designation of Stafford Act Programs Available for Assistance and Federal-State Cost Share

FEMA's regulations provide that the Assistant Administrator for the Disaster Assistance Directorate has the authority to determine and designate:

- The types of assistance to be made available initially;
- The areas initially eligible for assistance; and
- Both area and program add-ons after the initial declaration.

In practice, the President initially determines and includes in his declaration the types of Stafford Act assistance to be made available, applicable cost shares, and the geographical areas to be designated. A declaration may be for limited assistance within the major assistance programs. PA may, for example, be designated in its entirety, limited to PA Emergency Work, or designated in stages: first Emergency Work and then Permanent Repair Work. Following the President's declaration, the governor or governor's authorized representative (GAR) may request additional areas or types of assistance for which the relevant RA may provide a recommendation. Pursuant to FEMA regulation, the Office of Response and Recovery may approve additional areas and types of assistance. As with PA, there may also be limited designations of IA programs.

Requests for additional areas or types of assistance after a declaration has been issued must be submitted within 30 days from the termination date of the incident, or 30 days after the declaration, whichever is later. The 30-day period may be extended provided that a written request is made during this 30-day period.

### VII. FEMA-State Agreement (FSA)

The FSA or FEMA-Tribe Agreement (FTA) states the understandings, commitments, and conditions under which FEMA will provide and coordinate federal disaster assistance. The governor or tribal leader and the RA, or designee, sign the agreement that imposes legally enforceable obligations on FEMA, the state, local governments, tribes, and/or private non-profit organizations.

The FSA contains the following terms and conditions:

- The incident period;
- Areas designated;
- The type and extent of federal assistance the declaration is making available;
- The cost sharing provisions;
- FEMA and state responsibilities, including the grant management regulations in 44 C.F.R. Part 13;
- The grant conditions, including:
  - 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, OMB Circular A-110;
  - 2 C.F.R. Part 220, Cost Principles for Educational Institutions, OMB Circular A- 21;
  - 2 C.F.R. Part 225, Cost Principles for State and Local Governments, OMB Circular A-87;
  - 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations, OMB Circular A-122;
  - 45 C.F.R. Part 74, Appendix E, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals;
  - 48 C.F.R. section 31.2, Federal Acquisition Regulation, Contracts with Commercial Organizations;

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations;
- 31 C.F.R. section 205.6, Funding Techniques; and
- Certifications agreeing to maintaining a Drug-Free Workplace, 44 C.F.R. Part 17, and New Restrictions on Lobbying, 44 C.F.R. Part 18.
- The governor's (or tribe's) authorized representative (GAR), who is the corresponding state official to the federal DRM and who the governor authorizes to sign all needed documents in order to receive federal assistance, including subgrants; and
- Any special terms and conditions consistent with the declaration, such as the fact that assistance is contingent upon having an approved mitigation plan.

#### A. State Coordinating Officer (SCO)

After a declaration, the President will request the specific governor to designate an SCO to coordinate state and local disaster assistance efforts with those of the FCO who is acting for the federal government. Sometimes, the governor indicates the SCO in his or her request for a declaration. Typically, the SCO and the FCO sit near one another at the Joint Field Office and consult frequently on virtually all disaster-related issues affecting state and local governments.

#### B. Governor's Authorized Representative (GAR)

In the FSA, the governor will designate a GAR, who will be empowered to execute all necessary documents for disaster assistance on behalf of the state. The FSA will also include designations of one or more alternate GARs. While the GAR is generally empowered to act on behalf of the governor, there are a number of actions that, under the Stafford Act or FEMA regulations, must be carried out by the governor.

### VIII. Federal and State Cost Share and Adjustments

Federal and state cost shares under the Stafford Act vary by program:

- PA programs under emergency work, debris removal, and permanent work are at least 75% federal cost share.
- Housing assistance under the Stafford Act is 100% federally funded.
- Other Needs Assistance is set at a 75% federal cost share and may not be increased; the state is required to provide the funds for the nonfederal share.
- For HMGP, FEMA can provide up to 75% of the total eligible costs.

The Stafford Act is silent on how the non-federal cost share for PA and the HMGP should be addressed. States may provide all, some, or none of these non-federal cost shares for its subgrantees. However, states must certify that state and local government obligations and expenditures will comply with all applicable cost sharing requirements of the Stafford Act.

The governor or the GAR may request an increase in the federal share to 90% for PA programs when disaster damage in the state is so severe that federal obligations under the Stafford Act meet or exceed the statewide per capita threshold.

If the severity of the disaster so warrants, FEMA may recommend up to 100% in federal funding for emergency work and debris removal for a limited period in the initial days of a major disaster. Generally, a limited period in the initial days of the disaster means FEMA will limit the declaration, or an applicant's selected 72-hour period. The President may determine to extend this period based on the gravity and scope of the disaster. FEMA considers the impact of major disaster declarations in the requesting state in the prior 12-month period to determine whether to recommend a cost share adjustment.

The governor or GAR should address the state's request to the President and submit it through the RA. Only the President may adjust the cost share. FEMA will review the governor's request and supporting documentation and make a recommendation based on the particular circumstances. A cost share adjustment may also be required by an act of Congress.

## IX. Appeals

### A. Denial of Declaration Request

The governor may appeal the denial of a request for a declaration within 30 days after the date of the denial letter. The governor should submit this one-time appeal to the President through the RA. The appeal must include additional information supporting the request for declaration.

### B. Partial Denial of Requested Areas or Types of Assistance Requested

When the President denies the type of assistance or geographical areas requested for declaration, the governor or the GAR may appeal. On some occasions, the President does not designate or authorize areas while additional PDAs are pending. This one-time appeal, including any justification or additional supporting information, must be submitted within 30 days of the date of the denial letter. The governor or GAR submits the appeal through the RA to FEMA's Deputy Associate Administrator for Response and Recovery.

### C. Denial of Advance of Non-Federal Share

The governor may appeal the denial of a request to advance the nonfederal share within 30 days of the date of the denial letter. The governor must submit this one-time appeal in writing through the RA to the Deputy Associate Administrator for Response and Recovery. FEMA may extend any of the 30-day appeal deadlines, provided the governor submits a written request within the original 30-day time period and there exists legitimate reasons for the delay.