

**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.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 96-261; FCC 99-124]

International Settlement Rates, Report and Order on Reconsideration and Order Lifting Stay

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: This document affirms a previous finding that the Commission has authority under the Communications Act to establish settlement rate benchmarks and to require U.S. carriers to negotiate settlement rates that comply with those benchmarks. In addition, the Commission amended the Section 214 condition for facilities-based service to affiliated markets, so that it applies only

to U.S. affiliates of carriers that have market power in the destination country. The Commission took this action in response to petitions for reconsideration filed in this proceeding.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Telecommunications Division, International Bureau, (202) 418-1480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration and Order Lifting Stay, FCC 99-124, adopted on May 28, 1999, and released on June 11, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Room (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. The document is also available for download over the internet at <http://www.fcc.gov/bureaus/international/orders/1999/fcc99124.wp>. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.