

Estimated Cost: None.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-2005-0005]

Z-RIN 1660-ZA01

Disaster Assistance Directorate Policy Numbers 9100.1 and 9523.1 Snow Assistance and Severe Winter Storm Policy

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice of final policy.

SUMMARY: The Federal Emergency Management Agency (FEMA) has revised its Snow Assistance and Severe Winter Storm Policy. The Snow Assistance and Severe Winter Storm Policy provides the procedures and criteria FEMA uses to make its recommendations to the President after a State Governor requests a declaration following a snowstorm. The criteria in the Snow Assistance and Severe Winter Storm Policy are used by FEMA solely for consideration in making its recommendations to the President and do not limit the ability of the President,

in his discretion, to declare emergencies or major disasters.

DATES: This final policy is effective November 2, 2009.

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SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (Stafford Act), FEMA coordinates Federal actions to provide supplemental aid to States and communities to assist in the response and recovery from emergencies and major disasters. *See* 44 CFR 206.62. Federal assistance authorized by a Presidential emergency or major disaster declaration provides immediate and short-term assistance that is essential to save lives, protect property, and safeguard the public health and safety. After a Governor requests that the President declare an emergency or major disaster, FEMA makes a recommendation to the President for use in his decision to grant or deny the Governor's request. To make its recommendation, FEMA follows its regulations in title 44 of the Code of Federal Regulations and, for snowstorms, it additionally follows the Snow Assistance and Severe Winter Storm Policy (the "Snow Assistance Policy"). The parameters set forth in the Snow Assistance Policy are used by FEMA solely for consideration in making recommendations to the President under the Stafford Act and do not limit the ability of the President, in his discretion, to declare emergencies or major disasters.

Under the Stafford Act, FEMA is required to provide public notice and an opportunity to comment before amending any policy that could result in a significant reduction of assistance. 42 U.S.C. 5165c. This revision of the Snow Assistance Policy is expected to result in a reduction in assistance. Therefore, on September 17, 2002, FEMA published a proposed revision to its December 28, 1999 Snow Assistance Policy in the **Federal Register** for comment. 67 FR 58608. On July 24, 2008, in response to the comments received and to address additional changes to the policy, FEMA published a second proposed revision of the Snow Assistance Policy for comment. 73 FR 43243.

In the revised policy, FEMA makes three major changes. First, FEMA's 1999 Snow Assistance Policy evaluated requests for snow assistance under both the criteria for an "emergency" declaration under 44 CFR 206.35, as well as a request for a "major disaster" declaration under 44 CFR 206.36. However, the Stafford Act, 42 U.S.C. 5122, and FEMA regulations, 44 CFR 206.2(a)(17), expressly include "snowstorm" in the definition of a "major disaster." By comparison, FEMA regulations define "emergencies" as those types of events that *do not* qualify under the definition of a major disaster. In this revised policy, snowstorm events will be considered by FEMA for major disaster declarations under 44 CFR 206.36, consistent with the Stafford Act and FEMA regulations. As discussed below, in response to comments received on the July 2008 proposed policy, this final Snow Assistance Policy does not include the limitation proposed in 2008 that FEMA would only make recommendations for major disaster declarations for snow events.

Second, under FEMA regulations, FEMA may find that a State or community is eligible for financial assistance for snow or blizzard conditions only where the storm results in "record or near record" snowfall for that area, as determined by official government records. *See* 44 CFR 206.227. Under the prior policy, for a county to have "record or near record" snowfall, at least one National Oceanic and Atmospheric Administration (NOAA) station within that county was required to receive a snowfall at a historical record or a near record (within 10 percent of record) snowfall level. Because most counties have multiple NOAA stations, the station with the lowest historical snowfall record was compared to the highest event snowfall to determine the county's eligibility for a snow assistance emergency declaration. Under this revised policy, FEMA compares the highest current event snowfall reported by the National Weather Service (NWS) to the highest National Climatic Data Center (NCDC) historical record in a county to determine if the snowfall event exceeds or is near a true record for a county.

Finally, under this revised policy, States are now required to submit an estimate of eligible Public Assistance costs (estimate of Public Assistance divided by county and State populations, respectively) including snow assistance costs for a 48-hour period that meet or exceed the county and statewide per capita cost threshold. Snow assistance costs are included only

for those areas that meet the record, near record, or contiguous county criteria of this revised policy. For major disaster declarations, per capita costs are used as an indicator of the State or county capability of responding to the event. This information was not required under the previous snow policy. While this requirement is new to FEMA's Snow Assistance Policy, an estimate of damages is a normal requirement for all States requesting a major disaster declaration. See 44 CFR 206.36 and 44 CFR 206.48. The Governor must also direct the execution of the State emergency plan and the State must demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded. *Id.*

II. Discussion of Comments Received on the July 24, 2008 Proposed Snow Assistance Policy

On July 24, 2008, FEMA published a second proposed revision to its Snow Assistance Policy in the **Federal Register** at 73 FR 43243 for a 30-day public comment period. FEMA received 13 comments, including comments from the U.S. Senate Committee on Homeland Security and Governmental Affairs, the U.S. House of Representatives Committee on Transportation and Infrastructure, an individual Senator, an individual, and Emergency Management Offices. The following is a summary of the substantive comments received and FEMA's responses thereto.

A. Impact Criteria

One commenter requested that FEMA adopt reasonable "local impact" criteria to allow a State to contend that it has exceeded its capability and that supplemental assistance is necessary. In 2002, FEMA published its first proposed revisions to the Snow Assistance Policy, and received several comments that were critical of its proposed addition of "local impact" criteria. After considering those comments, FEMA agreed and removed this criterion from the proposed policy. As discussed in the 2008 proposed Snow Assistance Policy, FEMA determined that with the exception of record or near-record snowfall, which is required by 44 CFR 206.227, the criteria for major disaster declarations for snowstorms should be consistent with all other major disaster events. As there are no specific types of local impacts required under the Stafford Act or FEMA's regulations for other types of events, specific local impact criteria is not included in this final policy.

B. Definition of Severe Winter Storm

A commenter stated that blizzards are not acknowledged under the proposed policy unless it is a record or near record snowfall. A lesser snowfall combined with extreme cold, ice, and/or significant wind, could exceed the impact of a record event. The commenter suggested that FEMA expand the eligibility for Federal assistance to include NWS-verified blizzard conditions, or similar exacerbating factors.

FEMA made no change as a result of this comment. In a blizzard situation, a Governor has the option of requesting a major disaster declaration as a result of a severe winter storm. FEMA's definition of "severe winter storm" includes blizzards as one of the potential conditions that cause substantial physical damage or loss to improved property. If a major disaster is declared for a severe winter storm, a limited level of snow removal incidental to disaster response may be eligible for assistance. Generally, snow removal that is necessary to perform otherwise eligible emergency work is eligible. For example, snow removal necessary to access debris or to repair downed power lines is eligible, while normal clearance of snow from roads is not eligible.

C. Use of Record or Near Record Snowfall

There were several comments related to the requirement for record and near-record snowfall to qualify for a snowstorm declaration. Several comments recommended eliminating the requirement in order to remove the administrative burden and confusion involved in determining record and near record snowfall and to consider the full range of costs associated with severe winter storms, including snow removal, when evaluating snow assistance requests. Several comments suggested that defining near record snowfall as within 10 percent of the record amount would not provide adequate flexibility. One commenter recommended using 25 percent. One commenter suggested that the use of record or near record snowfall is not a good measure for a snowstorm declaration since a disaster can have more profound effects today than it did in the past.

As established by 44 CFR 206.227, which went into effect in 1997, record or near record snowfall is the criteria FEMA uses to evaluate the need for Federal assistance for a snow event. In addition to record or near record snowfall, FEMA will now also consider the factors for evaluating a major disaster declaration listed under 44 CFR

206.48, including the estimated cost of assistance, localized impacts, and recent multiple disasters. FEMA will maintain the record or near record snowfall criteria because it is an indicator of the impact of a snowstorm. Unlike other major disaster events, snowstorms typically cause minimal infrastructure damage. Therefore, FEMA must rely on information in addition to the estimate of damages to judge the impact.

Most State and local governments that experience snowstorms anticipate and routinely budget for snow removal every year. As budgets can vary significantly, it is difficult to consistently and fairly judge the impact of a snowstorm across multiple jurisdictions based only on the costs of snow removal operations. Therefore, FEMA asserts that evaluating both snowfall and costs in addition to the other factors described at 44 CFR 206.48 provides the most consistent and fair method for determining if the effects of a snowstorm warrant a major disaster declaration.

With respect to the comments regarding near record snowfall, it has been FEMA's longstanding practice to define near record snowfall as within 10 percent of the record snowfall amount. FEMA has not found this percentage to be inflexible or inadequate.

D. Snowstorm Declaration Criteria

Several comments requested that FEMA retain the option to request an emergency declaration for a snow event. Several commenters asserted that although snowstorms are specifically referenced in the definition of "major disaster" in section 102(2) of the Stafford Act, the Stafford Act's definition of "emergency" provides no list of covered events so it does not specifically exclude snowstorms from consideration for an emergency declaration.

FEMA interprets the Stafford Act's specificity in its definition of "major disaster" to denote that those natural catastrophes specifically listed are to be considered only for major disaster declarations. Further, FEMA's regulations state that "[w]hen an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor * * * may request that the President declare an emergency." See 44 CFR 206.35(a). Since snowstorms are the type of incident that could qualify for a major disaster declaration, FEMA will evaluate requests from States for snow assistance using criteria for a major declaration. However, as indicated by commenters, there is no specific listing in FEMA regulations for incidents that are considered for

emergency declarations. FEMA is therefore removing the proposed provision that indicated FEMA would only make recommendations for major disaster declarations with respect to snowstorms.

Two comments stated that States would have to meet the Public Assistance thresholds, including damage to infrastructure, to request a snow declaration. The commenters found this to be problematic because while snow emergencies typically require emergency protective measures and debris removal, they typically do not require repairs to public infrastructure. As an example, a commenter stated that States may require snow removal assistance and assistance to remove dead animals rather than requiring assistance for damaged infrastructure. Further, one commenter stated that the majority of work associated with snow events relates to emergency work. Another commenter stated that the burden to prove that a snowfall emergency caused sufficient damage to warrant a major disaster declaration would likely encourage States to apply for the full array of assistance available under the Stafford Act, which could cost the Federal Government more over time than if less expensive categories of assistance were more readily accessible.

FEMA agrees that the majority of work associated with snow events relates to emergency work and that snowstorms do not typically cause significant infrastructure damage. However, there are instances where the weight of snow and ice causes roofs to collapse and power lines to fall. Further, storms may have wind gusts strong enough to damage facilities. Dead animals or debris caused by a snowstorm may be a threat to public health and safety. FEMA asserts that a major disaster declaration is the appropriate mechanism to evaluate and provide assistance for the costs of debris removal and infrastructure damage.

A major disaster declaration will expand the categories of assistance to include debris removal and infrastructure restoration, which would not be eligible under an emergency declaration. Emergency work is eligible under both an emergency or major disaster declaration. Under this policy, the costs for emergency work will be considered in making a recommendation for a major disaster declaration.

Several comments stated that the proposed policy's focus on individual snow events does not consider the burden of a record snow season. One commenter recommended allowing a

record or near record snow season as criteria for a major disaster declaration.

Section 102(2) of the Stafford Act uses the singular term "snowstorm" in its definition of "major disaster." Therefore, consistent with the Stafford Act, declarations are based on specific, singular events, and not seasons or multiple events over an extended period of time. Making declaration recommendations based on the burden of an entire snow season would, therefore, be inconsistent with the Stafford Act and FEMA regulations.

A commenter stated that if FEMA decides to use record and near record snowfalls as criterion for discrete storms, FEMA should use NWS long-term averages to evaluate whether a discrete storm is statistically significant (similar to the evaluation of floods), rather than the single highest historic event. Commenters contend that as written, the proposed policy effectively gives each county only one chance in the future to receive snow assistance and makes one highly aberrant storm form the basis for all future planning. A commenter stated that jurisdictions budget for reasonably expected occurrences and not the absolute "worst case scenario." According to the commenter, FEMA's proposed policy appears to reject the idea of using recurrent intervals as the benchmark for a snow event. The commenter suggested using validated recurrence intervals or accepted NWS long-term averages to determine the relative magnitude of the current event. Another commenter noted that the use of record or near record snowfall tends to increase the threshold over time. Each time a new record is set, the threshold changes, making it increasingly difficult for communities to receive assistance. Finally, another commenter suggested that FEMA should not classify severe winter storms based upon record snowfall because of the impacts of drifting snow.

FEMA agrees that the record and near record snowfall requirement increases the declaration indicator criteria over time. As a result, State and local governments will be required to increase their capability. In accordance with 44 CFR 206.48, FEMA similarly adjusts the major disaster per capita cost indicator each year based on the Consumer Price Index.

Under the previous policy, FEMA has only provided financial assistance for snow emergency declarations. FEMA has not provided direct Federal assistance to address emergency conditions beyond the capability of the State and local governments. Therefore, FEMA asserts that it is not unreasonable

for State and local governments to adjust their snow removal budgets accordingly to increase their capability over time.

FEMA asserts that an aberrantly large event will not preclude a State from a future major disaster declaration for an event that does not equal or exceed the new record snowfall. The revised policy contains the near record or contiguous county provisions of the previous policy, which allow counties to qualify for assistance with snowfall totals that do not exceed record amounts. In past snow emergency declarations, a significant number of counties have qualified under these criteria. The contiguous county criteria, in particular, allow counties to qualify with snowfall totals that are sometimes significantly lower than the record amount in their respective county. FEMA also asserts that the contiguous and near record provisions provide enough flexibility in the declaration criteria that the use of NWS recurrence intervals or long-term averages is unnecessary. FEMA has revised language in paragraph (e)(6) of the final policy to clarify the provision on contiguous counties. It does not substantively alter the policy.

E. Snowstorm Declaration Requests

A commenter requested a 60-day post-storm request period. The commenter stated that snow data is generally posted intermittently, and in some cases not within the 30-day request period, which may prevent a State from requesting a declaration within the established 30-day request period. FEMA has made no change with respect to this request. The proposed policy is consistent with FEMA regulations governing requests for major disaster declarations, which require submitting a request for a major disaster declaration within 30 days of the occurrence of the incident. 44 CFR 206.36. Furthermore, 44 CFR 206.36(a) includes a provision for the Governor to request a time extension to submit a disaster declaration request. FEMA's experience with NOAA, through multiple snow emergencies, is that NOAA provides timely snowfall data very soon after snowstorms. In addition, FEMA will accept snowfall data obtained from NWS Cooperative Network monitoring stations, which is typically available during and immediately after a snowfall event. FEMA has not experienced any delays in processing snow emergency requests due to a lack of, or untimely, snowfall data from NOAA or NWS.

One commenter stated that the proposed changes would delay the declaration process because States would be required to assess damages in

the context of local and State Public Assistance thresholds and to conduct a more stringent review and comparison of record snowfall data. Another comment stated that requiring the per capita estimate of statewide costs to meet the threshold in 44 CFR 206.48(a)(1) conflicts with section 320 of the Stafford Act which advises: “[n]o geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.”

For major disaster declarations, per capita costs are used as an indicator of the State or county’s capability to respond to the event. While this would be new to FEMA’s Snow Assistance Policy, an estimate of damages is a normal requirement for all States requesting a major disaster declaration. See 44 CFR 206.36 and 44 CFR 206.48. Under 44 CFR 206.48, the estimated cost of assistance is not the sole factor used to determine need for assistance. It is one of several factors evaluated under the Public Assistance Program and is consistent with section 320 of the Stafford Act.

FEMA receives approximately six requests from States for snow assistance each season. In terms of snowfall and other supporting information, FEMA has received no indication from those applications that its documentation requirements are significantly burdensome. In fact, the quantity and quality of information provided in the declaration requests from most States already well exceed the information required by this revised Snow Assistance Policy.

F. Use of Official Government Snowfall Data

One commenter remarked that for those States with large counties that have extreme differences in geography, such as Colorado, it is unacceptable to use the highest current event snowfall reported compared to the highest historical snowfall record for that county. Specifically, the commenter suggested comparing the current event snowfall recording station to the historic record for that same recording station. The commenter also stated that it is unacceptable to use an adjacent county’s reporting information when there is no NWS or NCDC historical snowfall data. The commenter recommended using geography and distance to determine which nearby county would be used for historical record snowfall data.

FEMA believes that the best method to evaluate event snowfall is to compare it with the NWS station with the highest

historical record in a county to determine a true record or near record snowfall event. FEMA acknowledges that variations in geographic areas and features may make it difficult in some instances to compare current and historic values from different locations within a county or political jurisdiction. However, monitoring stations are frequently located in or near populated areas therefore, the use of historical data from such stations should aid in determining the severity and magnitude of the snowstorm event on the given population in the impacted jurisdiction. FEMA asserts that its methodology and criteria are fair and equitable and can be applied consistently throughout the country.

FEMA will use data provided by the NCDC and NWS Cooperative Network Stations for making comparisons to historic snowfall values because doing so ensures a consistent approach to the collection of snowfall data and the application of the Snow Assistance Policy. The policy also states that for counties with no NCDC or NWS historical record snowfall data, the historical record from the nearest NWS Cooperative Network Station in an adjacent county or State may be used for determining historical snowfall records. Geography and distance may be used to determine the nearest NWS Cooperative Network Station.

Several comments were made that there is an inadequate distribution of NOAA COOP stations. One commenter asked what sources of snowfall measurements FEMA will use when no NCDC or NWS Cooperative Network Stations verified data exists.

The NCDC, which is a part of NOAA, provides historical 1-, 2-, and 3-day snowfall data from measurements made by observers who are part of the NWS airport stations and the NWS Cooperative Network. These observers are trained by NOAA experts on proper snowfall measurement techniques and are provided with the proper equipment and guidelines for ensuring accurate observations. According to the NCDC, NOAA collects and distributes snowfall data from these trained, equipped, and supervised observers. To maintain consistency of evaluation data, when determining if a snowstorm reaches record or near record proportions, FEMA accepts event and historical snowfall data from the NCDC.

FEMA’s experience with NOAA, through multiple snow emergencies, is that NOAA provides timely snowfall data very soon after snowstorms. In addition, FEMA will accept snowfall data obtained from NWS Cooperative Network Stations, which is typically

available during and immediately after a snowfall event. FEMA has not experienced any delays in processing snow emergency requests due to a lack of, or untimely, snowfall data from NCDC or NWS. In the unlikely event that NCDC cannot provide either preliminary or final published NOAA station snowfall data, a State may contact the local NWS Weather Forecast Office (WFO) for information. FEMA will only use data from published NOAA stations in NCDC’s monthly Local Climatological Data publication to assess a State’s request for snow assistance. Some of NWS’s products, like Public Information Statements, can contain reports from non-published sources, which are not used to evaluate requests for assistance.

Several comments recommended using NWS WFO-verified start and end times for storm events. At NOAA Cooperative Network Stations, snowfall totals are measured from 7 a.m. to the following 7 a.m., so that snowstorms occurring from 12 noon to 12 noon are considered 48-hour storms because they cross two reporting periods. The commenter stated that as a result, the snowfall amounts for such storms must meet an unreasonably higher standard.

To ensure consistency, daily and cumulative snowfall totals for the current event must be compared to the historic record snowfall over the same time period. The length of the current event period should be calculated using the same method that the historic record event period is determined. If the available historic data is measured from 7 a.m. to the following 7 a.m., the duration of the current storm will also be measured from 7 a.m. to the following 7 a.m. For example, snowfall from 8 p.m. to 8 a.m. is considered a 2-day storm if the observing period is 12 a.m. to 11:59 p.m. FEMA has determined that this is a reasonable standard.

G. Eligible Period of Assistance

One commenter suggested that the preliminary damage assessment costs should be based on the applicant’s total damage costs for the event, not just a 48-hour period. Another commenter asserted that requiring the current event snowfall to exceed the historic record snowfall by at least 50 percent in order to qualify for an extension effectively eliminates the time period extension, thereby limiting snow assistance to 48 hours and circumventing reimbursement of the eligible costs incurred for a major disaster declaration.

As published in the proposed revisions to the policy, each county

included in a Governor's request for a declaration must provide estimated Public Assistance costs including snow assistance costs within a 48-hour period that equal or exceed the county per capita cost threshold required for a major disaster declaration. An applicant may select a 48-hour period for estimating purposes, but use a different 48-hour period when submitting actual costs. Additionally, the FEMA Assistant Administrator of the Disaster Assistance Directorate may extend the eligible time period of assistance by 24 hours in counties where snowfall quantities greatly exceed record amounts. FEMA believes that the 48-hour assistance period, with an extension to 72 hours, is an appropriate assistance period for both short and long duration snowfalls. The assistance is intended to open emergency access and to help restore critical services. It is not intended to cover the entire cost or even a significant portion of the cost of long-term snow removal operations. FEMA determined that event snowfall exceeding 50 percent of the historic record was an appropriate measure of impact that would require extending the time period for assistance. FEMA has provided extensions in past snow emergency declarations.

Another commenter requested that if a near record event is required to exceed the historic record by 10 percent, then it is logical for the time extension for snowfalls greatly exceeding record amounts to also exceed 10 percent.

FEMA does not require near record snowfall to exceed the historic record by 10 percent. FEMA defines near record snowfall as snowfall that approaches, but does not meet or exceed, the historical record snowfall within a county as published by the NCDC. FEMA generally considers snowfall within 10 percent of the record amount to be a near record snowfall. The extension of the eligible time period is intended only for those extremely large storms that prevent emergency access and stop critical services for an unusually long period of time. Therefore, only those limited cases where event snowfall exceeds the historic record by 50 percent will be considered for an extension.

H. Severe Winter Storm Declarations

One comment stated that for a severe winter storm jurisdictions will not be eligible for snow removal unless they meet record snowfall criteria. The commenter recommended that FEMA consider snow removal costs in the context of the appropriate response to the event, not snowfall amounts, for severe winter storms.

FEMA will not include snow removal costs when calculating the per capita cost impacts for a severe winter storm declaration, unless the county meets the record or near record snowfall criteria outlined in the policy. However, a limited level of snow removal incidental to disaster response may be eligible for assistance. Generally, snow removal that is necessary to perform otherwise eligible emergency work is eligible. For example, snow removal necessary to access debris or to repair downed power lines is eligible; while the normal clearance of snow from roads is not eligible.

I. Economic Impact

One commenter asserted that the potential economic impact of the policy may be greater than 10 percent in some areas of the country and suggested breaking out the potential impacts by region.

When the changes to this policy were proposed, FEMA conducted a cost impact analysis. In that analysis, FEMA assessed the potential annual economic impact of the policy and concluded that Public Assistance funding would be reduced by approximately 10 percent per year, which also equals an estimated savings of \$5.3 million to the Federal taxpayers. Since most of the snow disasters are already geographically limited to FEMA's Regions I, II, III, V, VII, and VIII it is unnecessary to perform a regional cost analysis.

III. Executive Order 12866 "Regulatory Planning and Review"

This final policy does not constitute a significant regulatory action under Executive Order 12,866.

IV. Final Policy

For the reasons set forth in the preamble, the Response and Recovery Policy RR9523.1, "Snow Assistance Policy," dated December 28, 1999; the "Response and Recovery Policy 9523.1, *Snow Assistance Policy* Procedures for Determining Record or Near-Record Snowfall" Memorandum issued by Carlos J. Castillo on June 30, 2008; the Snow Removal section on page 76 of the "Public Assistance Guide FEMA 322/ June 2007"; and page 122 of the "Public Assistance Policy Digest FEMA 321/ January 2008," are hereby superseded by the Disaster Assistance Directorate Policy Numbers 9100.1 and 9523.1 "Snow Assistance and Severe Winter Storm Policy" by the final policy text below.

Text of Final Policy

Snow Assistance and Severe Winter Storm Policy

(a) Definitions.

Contiguous County means a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

Core County means a county that has a record or near record snowfall with public assistance costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration.

Incident Period means the time span during which the disaster-causing incident occurs, e.g., approximately 6 p.m., January 5, 2007, through 8 a.m., January 7, 2007.

Near Record Snowfall means a snowfall that approaches, but does not meet or exceed, the historical record snowfall within a county as published by the National Climatic Data Center (NCDC). FEMA generally considers snowfall within 10 percent of the record amount to be a near record snowfall.

Record Snowfall means a snowfall that meets or exceeds the highest record snowfall within a county over a 1-, 2-, 3-day or longer period of time, as published by the NCDC.

Snow Assistance means assistance for all eligible activities under Category B, emergency protective measures (See Categories of Work in the Public Assistance Guide, FEMA 322, <http://www.fema.gov/pdf/government/grant/pa/paguide07.pdf>) related to a snowstorm, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, as well as search and rescue, sheltering, and other emergency protective measures.

Snowstorm means an event in which a State has record or near record snowfall in one or more counties, as determined by paragraph (e), and that overwhelms the capability of the affected State and local governments to respond to the event. While snowstorms will normally only receive Snow Assistance, other categories of supplemental Federal assistance may be designated for a snowstorm declaration as warranted.

Severe Winter Storm means an event that occurs during the winter season that includes one or more of the following conditions: snow, ice, high winds, blizzard conditions, and other wintry conditions; and that causes

substantial physical damage or loss to improved property.

(b) **Snowstorm Declaration Criteria.**

FEMA may recommend the declaration of a major disaster for a snowstorm that meets the following criteria. However, the criteria listed in this policy are solely for use by FEMA in making recommendations to the President and in no manner restricts the ability of the President, in his discretion, to declare emergencies or major disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

(1) *County criteria.* Each county included in a Governor's request for a declaration must have a record or near record snowfall, or meet the contiguous county criteria described in this policy, and have estimated public assistance costs including snow assistance costs within a 48-hour period that equal or exceed the county per capita cost threshold required for a major disaster declaration, which is published annually in the **Federal Register**. See, e.g., 74 FR 51296 (October 6, 2009). The State must also demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded. An applicant may select a 48-hour period for estimating purposes, but use a different 48-hour period when submitting actual costs.

(2) *State criteria.* In addition to the county criteria, a State must also meet the statewide per capita cost threshold required by 44 CFR 206.48(a)(1), based on eligible public assistance costs including the snow assistance costs it incurs within the prescribed 48-hour period.

(c) **Snowstorm Declaration Requests.**

(1) Within 30-days following a record snowstorm, the Governor shall submit a request for a snowstorm major disaster declaration that addresses the requirements of 44 CFR 206.36, 44 CFR 206.48, and this policy. A Governor's request for a snowstorm major disaster declaration and the Regional Administrator's Regional Summary, Analysis, and Recommendation shall cite "Snowstorm" as the incident type in the Governor's request. Furthermore, the Governor's request shall provide the following information:

- (i) Overview of the event;
- (ii) Core and contiguous counties for which a snowstorm declaration is requested;
- (iii) Date(s) of snowfall;
- (iv) For each requested county, copies of event daily snowfall totals from the National Weather Service (NWS) stations and historical record snowfall data from the National Climatic Data Center (NCDC), to maintain consistency

of evaluation data to determine when a snowstorm reaches record or near record proportions;

(v) A description of State and local resources activated in response to the event;

(vi) The extent of search and rescue operations performed and impacts to State and local government operations;

(vii) Any other localized impacts as described in 44 CFR 206.48(a)(2);

(viii) Total estimated eligible costs for each core and contiguous county, including the estimated snow assistance costs for a 48-hour period. The county per capita estimate of costs, which includes the estimated eligible costs incurred by State agencies working within each county, must meet or exceed the county per capita cost threshold; and

(ix) Total estimated statewide costs, which include the total of estimated eligible costs for all counties requested. The per capita estimate of statewide costs must meet the statewide per capita cost threshold in 44 CFR 206.48(a)(1).

(2) The Regional Administrator of FEMA will evaluate the Governor's request and make appropriate recommendations to the FEMA Assistant Administrator of the Disaster Assistance Directorate. The Regional Summary, Analysis, and Recommendation (See Template at <http://declarations.fema.net/>) should include:

- (i) An overview of the snowstorm;
- (ii) A summary of statewide and localized impacts;
- (iii) A summary of State and local resources dedicated to alleviating the emergency, to include shelter information;
- (iv) A comparison of actual event snowfall to the highest historical record snowfall for each county for which snow assistance is requested;
- (v) An identification of any extenuating circumstances;
- (vi) The recommended Incident Period of the event and the Categories of Work recommended (See Public Assistance Guide, FEMA 322, page 66 at <http://www.fema.gov/pdf/government/grant/pa/paguide07.pdf>);
- (vii) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan, and that the Governor's request meets all statutory requirements;
- (viii) An evaluation of statewide and localized impacts;
- (ix) The type of assistance needed;
- (x) A recommendation on the Governor's declaration request based on the criteria in this policy; and
- (xi) A list of the recommended counties that met the requirements for a

declaration for snow assistance under this policy.

(3) The FEMA Administrator may add counties to a snowstorm declaration after the President has issued the declaration. Requests for additional counties should meet the criteria for designation under paragraph (b) of this policy and include the documentation required under paragraph (c) of this policy. Such requests may be made within 30-days of the declaration, or the end of the incident period, whichever is later.

(d) **Use of Official Government Snowfall Data.**

(1) *Current Snowfall Data.* A Governor's request for a snowstorm major disaster declaration shall include snowfall amounts measured and published by the National Oceanic and Atmospheric Administration (NOAA) for the current snowstorm for each county for which snow assistance is requested. The NCDC, which is a part of NOAA, publishes snowfall data from measurements made by observers who are part of the NWS, airport stations, and the NWS Cooperative Network. FEMA will rely primarily on snowfall measurements taken at NWS Cooperative Network Stations, but in cases where Cooperative Network Stations do not exist or do not report, FEMA will accept snowfall measurements from other sources that have been verified by the NCDC or NWS. A Governor's request for a snowstorm major disaster declaration must include copies of all NCDC or NWS Cooperative Network Station reports published for the counties for which snow assistance is requested.

(2) *Historical Snowfall Records.* FEMA accepts historical snowfall records maintained by NCDC. NCDC's Web site (See <http://www.ncdc.noaa.gov/oa/ncdc.html>) provides snowfall amounts recorded at NWS Cooperative Network Stations for single and multiple day events. If NCDC data are not available or do not reflect snowfall records through the previous year's snow season, such data should be obtained from regional NWS offices and provided as part of the Regional Summary, Analysis, and Recommendation.

(e) **Determining Record and Near Record Snowfalls.**

The following criteria will be used by FEMA to determine record or near record snowfalls:

- (1) Current snowfall amounts under paragraph (d)(1) of this policy will be compared with the historical record snowfall amounts under paragraph (d)(2) of this policy for a like number of days without regard for the month in

which the record snowfall or current event occurred.

(2) For multiple day snowstorms, a county that meets the 1-day record or near record requirement on any one day, or the 2-day record or near record over two consecutive days, or the 3-day record or near record over three consecutive days, etc., will have met the record or near record criteria for that county.

(3) When data from multiple NWS Cooperative Network Stations exist within a county, the highest current event snowfall reported by the NWS within that county will be compared to the highest historical snowfall record for that county.

(4) For counties that do not have NCDC or NWS historical record snowfall data, the historical record from the nearest NWS Cooperative Network Station in an adjacent county, even if located in an adjacent State, may be used for determining historical snowfall records.

(5) If current event snowfall data under paragraph (d)(1) of this policy are not available from the NWS for a county, the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State, may be used.

(6) A county that does not receive a record or near record snowfall, but is contiguous to a county that does receive a record or near record snowfall, may be designated for snow assistance if the county has current event snowfall that meets or exceeds the current event snowfall of a county, to which it is contiguous, that has a record or near record snowfall. This comparison is based on the highest current event snowfall received by each county as reported by the NWS under paragraph (d)(1) of this policy.

(7) Counties that experience snowfalls occurring over a period exceeding three consecutive days that do not reach record or near record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCDC or NWS, will be considered for a major disaster declaration on a case-by-case basis.

(f) *Eligible Period of Assistance.*

(1) Snow assistance is available for all eligible costs incurred over a continuous 48-hour period. Applicants may select a 48-hour period during which the highest eligible costs were incurred. Once costs are submitted for the chosen 48-hour period, that selected 48-hour period cannot be changed.

(2) The FEMA Assistant Administrator of the Disaster Assistance Directorate may extend the eligible time

period of assistance by 24 hours in counties where snowfall quantities greatly exceed record amounts. To be eligible for a time extension, the current event snowfall must exceed the historical record snowfall by at least 50 percent. The time period will be extended 24 hours for each designated county that meets this 50 percent criterion.

(3) Different applicants in the same designated county may use different 48-hour periods. However, all agencies or instrumentalities of a local government must use the same 48-hour time period.

(4) A State agency, such as a Department of Transportation, that provides snow assistance in multiple locations throughout the State, may use different 48-hour periods.

(g) *Eligible Applicants.* Entities that meet the applicant eligibility, 44 CFR 206.222, and are performing work that meets the requirements of general work eligibility, 44 CFR 206.223, are eligible for snow assistance.

(h) *Eligible Work.* Eligible work, under Category B, emergency protective measures, as described in the Public Assistance Guide, FEMA 322, (<http://www.fema.gov/pdf/government/grant/pa/paguide07.pdf>) includes snow removal, snow dumps, de-icing, salting, and sanding of roads and other facilities essential to eliminate or lessen immediate threats to life, public health, and safety. In addition, activities related to the snowstorm such as search and rescue, sheltering, and other emergency protective measures are eligible work. Other categories of work may be eligible under a snowstorm declaration where appropriate.

(i) *Eligible Costs.* FEMA will provide snow assistance during the 48-hour period for the overtime but not the straight time cost of the applicant's regularly-employed personnel. The cost of contract labor (including temporary hires who perform eligible emergency work) is an eligible cost, as are the costs for equipment and materials used in the performance of eligible work. If applicants award contracts for periods greater than the eligible period of assistance, eligible funding will be limited to the costs incurred during the eligible period of assistance. The same pro-rata method for calculating eligible funding applies to all other eligible snow assistance costs.

(j) *Insurance.* It is the responsibility of an applicant to notify the Regional Administrator of FEMA, through the State, of any actual or anticipated proceeds from insurance covering snow removal or other snow assistance costs. FEMA will deduct the actual or anticipated amount of snow removal or

other snow assistance cost insurance proceeds from policies in force at the time of the snowfall.

(k) *Severe Winter Storm Declarations.*

(1) Severe Winter Storm declaration requests must satisfy the requirements of 44 CFR 206.36 and 44 CFR 206.48, but are not required to meet the record or near record snowfall requirements described under paragraph (e) of this policy. However, FEMA will not include snow removal costs when calculating the per capita cost impacts for a severe winter storm declaration unless the county qualifies for snow assistance under paragraph (e) of this policy.

(2) In a major disaster declaration for a Severe Winter Storm, snow removal costs are not eligible for FEMA assistance if the county does not meet the requirements for snow assistance under paragraph (b) of this policy. A limited level of snow removal incidental to disaster response may be eligible for assistance. Generally, snow removal that is necessary to perform otherwise eligible emergency work is eligible. For example, snow removal necessary to access debris or to repair downed power lines is eligible, while normal clearance of snow from roads is not eligible.

(3) A Governor's request for a major disaster declaration as a result of a Severe Winter Storm, and the Regional Administrator's Regional Summary, Analysis, and Recommendation, shall cite "Severe Winter Storm" as the incident type.

(4) The procedures for requesting and evaluating a Severe Winter Storm declaration will follow the same process as any request for a major disaster declaration as outlined in 44 CFR part 206 subpart B.

(5) The evaluation of current and historical snowfall data for the designation of snow assistance, if warranted, will follow the same procedures as described for snow assistance in this policy.

Dated: November 2, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

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