

FEMA Developing Procedures for Tribal Governments to Request Disaster Declarations

Dan Press and Andrew VanderJack

The Federal Emergency Management Agency (FEMA) is soliciting comments on a new proposed rule that could make Federal disaster recovery funding much more accessible to Indian tribes. The new rulemaking may result in a breakthrough for Indian tribes that wish to work with FEMA, depending on the strength of public comments and FEMA's efforts to implement the new rule.

The Sandy Recovery Improvement Act of 2013, which became Public Law No. 113-2 on January 29, 2013, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) to allow Federally recognized Indian tribal governments to apply directly to the President for a Federal emergency or major disaster declaration and for direct Federal assistance. Before the amendment was enacted, a tribe had to go through the Governor of the State in which it is located in order to apply for Federal disaster relief. The traditional option remains open to tribes that, for whatever reason, do not want to use FEMA's new direct authority to work with tribes. However, the amendment allows tribes to go directly to the President, thereby strengthening the government-to-government relationship between tribes and the Federal government, as well as removing what could be a time-consuming step in obtaining disaster relief.

The Stafford Act establishes the legal authority by which the Federal government, through FEMA, may provide technical, financial, logistical, and other assistance to States during major disasters or emergencies if it is determined by the Governor or now, the CEO of a tribe, that the magnitude of the disaster or emergency exceeds the jurisdiction's ability to respond and that supplemental Federal assistance is necessary.

To implement the amendment, FEMA issued a Federal Register notice on March 8, 2013 soliciting public comments on how it should adapt its existing requirements in order to make them appropriate to tribes. Solicitation for Comments Regarding Current Procedures to Request Emergency and Major Disaster Declarations, 78 Fed. Reg. 15,026 (Mar. 8, 2013). Comments are due April 22, 2013. FEMA also announced that it will ease its way into this new relationship with tribes by initiating a pilot program, but it did not set out the scope of the pilot program or indicate how it will choose participating tribes.

FEMA's immediate objective is to determine whether existing regulatory requirements developed for a Governor's request for a disaster declaration should be applied to requests from Indian tribal governments and, if changes are warranted, how the pilot program should be developed to account for the unique needs of tribal governments. A review of the issues raised by FEMA suggests that FEMA will need to modify some of the requirements it imposes on States in order to make them fit tribal situations. For example, before a State may apply for disaster or emergency relief, it generally must have in place a number of approved Assistance Plans, including an Administrative Plan, a Hazard Mitigation Plan (in order to receive hazard mitigation assistance), and an Other Needs Assistance Administrative Plan. FEMA is asking tribes whether these requirements should



be applied to tribes. Congress did not provide FEMA with any appropriations to provide grants to tribes to enable them to prepare these Plans, such that, if these requirements are applied to tribes, it will make it difficult for many tribes to meet these preconditions to accessing disaster relief directly from the President.

One of the most important questions raised in the FEMA announcement is how FEMA should define “tribal areas” and “tribal lands.” How FEMA resolves this question is particularly important to Alaska Native villages, since the question of what constitutes “tribal lands” has been contentious in Alaska.

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