FEMA Proposes Revision to Disaster Declaration Factor

FEMA is proposing to revise the “estimated cost of the assistance” disaster declaration factor that it uses to evaluate a Governor’s request for a major disaster under the Public Assistance Program.

The proposed revisions would more accurately assess states’ disaster response capabilities and would comply with the direction of Congress in the Disaster Recovery Reform Act of 2018, which requires FEMA to review and update its disaster declaration factors.

Since 1986, FEMA has evaluated the estimated cost of federal and non-federal public assistance against the statewide population and used a per capita dollar amount (set at $1 in 1986) as an indicator that a disaster may warrant federal assistance. The per capita indicator remained at $1 until 1999, when the Agency began adjusting the indicator for inflation. Also in 1999, FEMA established a $1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least $1 million in damage resulting from the disaster. FEMA has never increased the $1 million threshold.

The lack of increases to the per capita indicator from 1986 to 1999 has undercut the value of this factor as an indicator of state capacity. With respect to the minimum threshold, while FEMA determined in 1999 that every state could handle at least $1 million in damages with their own resources, that figure has also not increased with inflation or rising state budgets and expenditures. Accordingly, the current per capita indicator and minimum threshold do not provide an accurate measure of states’ capabilities to respond to disasters.

As a result, FEMA may recommend that the President declare major disaster declarations for incidents that, with more accurate assessment, would be found to be well within a state’s financial capabilities to respond to on its own. FEMA proposes to adjust these factors so that it may more closely adhere to the law which authorizes federal disaster assistance only when an event “is beyond the capabilities” of the state and affected local governments.

This current proposal builds on previous attempts to correct these same problems. For the last several years, in response to concern from Congress, the Government Accountability Office, and elsewhere, FEMA has been assessing how to incentivize more proactive fiscal planning and risk management at the state level and improve effective stewardship of taxpayers’ dollars. In 2016, FEMA published an advance notice of proposed rulemaking (ANPRM) seeking comment on a disaster deductible, which sought to address these same underlying issues. A second ANPRM was published in 2017, seeking additional feedback to develop the proposal. Based on more than 3,000 public comments received, FEMA decided in 2018 that the deductible was not the best approach to pursue at that time. The revisions to the cost of assistance factor proposed here are FEMA’s latest attempt to update its regulations on assessment of state capabilities.

FEMA proposes to increase the per capita indicator to account for increases in inflation from 1986 to 1999, and to adjust the individual states’ indicators by their total taxable resources (TTR). TTR data is published annually by the

Department of the Treasury and is used to estimate the relative fiscal capacity of the states. FEMA also proposes to increase the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter. Further, the proposal would adopt the U.S. Census Bureau's annual population estimates instead of the decennial census population data produced every 10 years, which FEMA currently uses.

By adjusting the per capita indicator and the minimum threshold, and using more current population data, FEMA's recommendations to the President would be better informed and more accurate assessments of whether an incident exceeds state capabilities, and reduce disproportionate burdens on states with lower fiscal capacity. The resulting reduction in disaster declarations for smaller incidents would allow FEMA to better focus its efforts and resources on larger disasters without the complications of reallocating resources from multiple smaller-scale commitments. Collectively, these changes would provide a better distribution of responsibilities between the states and the federal government and would incentivize states to invest more in response, recovery, and mitigation capabilities, and lead to a more resilient and prepared Nation.

FEMA is seeking public comment on the rule until February 12, 2021. Comments may be submitted through www.Regulations.gov under docket ID FEMA-2020-0038.

Contact Us

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