



DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA-2020-0038]

RIN 1660-AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public

Assistance Program; Public Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meeting; extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the public comment period for its proposed rule published December 14, 2020, and will hold a public meeting remotely via web conference to solicit feedback on the proposed rule. The rule proposed to substantively revise the “estimated cost of the assistance” disaster declaration factor that FEMA uses to review a Governor’s request for a major disaster under the Public Assistance Program.

DATES: Written comments on the proposed rule published at 85 FR 80719 (December 14, 2020) may be submitted until 11:59 pm ET on Friday, March 12, 2021.

The meeting will take place on Wednesday, February 24, 2021, from 1 to 3 p.m. Eastern Time (ET).

To register in order to make remarks during the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below by 12 p.m. ET on Tuesday, February 23, 2021.

ADDRESSES: The meeting will be held via web conference. Members of the public may view the public portion of the meeting online at <https://fema.zoomgov.com/s/1617851830>.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

Written comments must be submitted via the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All written comments must include the docket ID FEMA-2020-0038. All comments received, including any personal information provided, may be posted without alteration at <https://www.regulations.gov>.

Docket: For access to the docket and to read comments received by FEMA, go to <https://www.regulations.gov> and search for Docket ID FEMA-2020-0038.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Division Director, Recovery Directorate, Public Assistance, via email at FEMA-PA-Policy-Questions@fema.dhs.gov or via phone at (202) 646-2500.

SUPPLEMENTARY INFORMATION: On December 14, 2020, FEMA published a proposed rule titled Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program.¹ Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance program. In the Disaster Recovery Reform Act of 2018 (DRRA),² Congress directed FEMA to generally review those factors, specifically the estimated cost of the assistance factor, and to update them through

¹ 85 FR 80719.

² Pub. L. 115-254, 132 Stat. 3438 (Oct. 5, 2018).

rulemaking, as appropriate.³ Congress also directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors⁴ when evaluating a request for a major disaster.⁵

On January 20, 2021, Assistant to the President and Chief of Staff Ronald A. Klain issued a memorandum titled “Regulatory Freeze Pending Review” to ensure that President Biden’s appointees or designees have the opportunity to review pending rules.⁶ This regulatory freeze does not require FEMA to withdraw pending notices of proposed rulemaking out for public comment, but the agency wants to ensure the memorandum’s intent is met and all parties are given ample opportunity to provide input. FEMA is therefore extending the comment period for this rule from February 12 to March 12, 2021, and will also hold a public meeting on February 24, 2021, to solicit feedback on the proposed rule. These measures will help ensure all interested parties have sufficient opportunity to review and provide comments on the proposed changes.

As published on December 14, 2020, FEMA proposes to amend the estimated cost of the assistance factor in 44 CFR 206.48(a)(1) to raise the per capita indicator and the minimum threshold. As is detailed in the proposed rule, the current per capita indicator and minimum threshold do not provide an accurate measure of States’ capabilities to respond to disasters.⁷ FEMA does not propose to substantively revise the localized impacts factor because it is already sufficiently flexible to address the requirements of section 1232 of the DRRA. FEMA also does not propose any revisions to the recent multiple disasters factor, but requests comment on whether the 12-month time limit currently in place is sufficient to address this factor as required by the DRRA.

³ DRRA sec. 1239.

⁴ 44 CFR 206.48(a)(2), (5).

⁵ DRRA sec. 1232.

⁶ See Memorandum on Regulatory Freeze Pending Review for the Heads of Executive Departments and Agencies (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/> (last visited Jan. 22, 2021).

⁷ See 85 FR 80719.

DRRA further provided that FEMA shall engage in meaningful consultation with relevant representatives of State regional, local, and Indian tribal government stakeholders.⁸ FEMA's public meeting will solicit feedback on the proposed rule from these stakeholders in fulfillment of this requirement. FEMA welcomes input, both at the meeting and in written comments submitted separately, on considerations of local economic factors such as the local assessable tax base; the local sales tax; the median income and poverty rate of the local affected area as it compares to that of the State and the economic health of the State, including such factors as the State unemployment rate compared to the national rate; and how such factors can be used to evaluate whether the affected State and local governments have been overwhelmed.⁹

FEMA will carefully consider all relevant comments received during the meeting, and during the rest of the comment period for the proposed rule, which now runs through March 12, 2021, before issuing a final rule. All verbal comments or remarks provided on the proposed rule during the meeting will be recorded and posted to the rulemaking docket on <https://www.regulations.gov>.

MaryAnn Tierney,
Acting Deputy Administrator,
Federal Emergency Management Agency.
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⁸ *Id.*

⁹ *See* Explanatory Statement for H.R.133, Consolidated Appropriations Act, 2021, 166 Cong. Rec. H8479 (daily ed. Dec. 21, 2020).