

**§ 206.35**

**44 CFR Ch. I (10–1–13 Edition)**

DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) *Request process.* The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

(1) Information describing the types and amount of DOD emergency assistance being requested;

(2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;

(4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and

(5) An agreement:

(i) To provide all lands, easements and rights-of-way necessary to accomplish the approved work without cost to the United States;

(ii) To hold and save the United States free from damages due to the requested work, and to indemnify the Federal government against any claims arising from such work; and

(iii) To assist DOD in all support and local jurisdictional matters.

(c) *Processing the request.* Upon receipt of the request, the Regional Administrator shall gather adequate information to support a recommendation and forward it to the Assistant Administrator for the Disaster Assistance Directorate. If the Assistant Administrator for the Disaster Assistance

Directorate determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) *Implementation of assistance.* The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) *Limits.* Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Assistant Administrator for the Disaster Assistance Directorate.

(f) *Federal share.* The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) *Project management.* DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Administrator and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Administrator upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) *Reimbursement of DOD.* Reimbursement will be made in accordance with § 206.8 of these regulations.

**§ 206.35 Requests for emergency declarations.**

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a

State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 5 days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and

(4) Identification of the type and extent of additional Federal aid required.

(d) *Modified declaration for Federal emergencies.* The requirement for a Governor's request under paragraph (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws

of the United States, the Federal government exercises exclusive or pre-eminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the FEMA Regional Administrator. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Administrator or transmitted through the Regional Administrator by another Federal agency. In determining that such an emergency exists, the Assistant Administrator for the Disaster Assistance Directorate or Regional Administrator shall consult the Governor of the affected State, if practicable.

(e) *Other authorities.* It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

#### **§ 206.36 Requests for major disaster declarations.**

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Assistant Administrator for the Disaster Assistance Directorate, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.