

# EMERGENCY DECLARATION GUIDELINES

for

LOCAL ELECTED

and

APPOINTED OFFICIALS

March 2015

24 hour service provided by:

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## MEMORANDUM

### Oregon Military Department Office of Emergency Management

DATE: March 2015  
TO: Local Elected and Appointed Officials  
RE: Guidance on Emergency Declarations

The Office of Emergency Management (OEM) is providing the guidance in this booklet in order to assist and expedite the emergency and disaster declaration process. We have included descriptions of the types of information necessary for the Governor when considering a request for a state of emergency declaration or a request for federal assistance. You will also find legal references that authorize response to requests for disaster assistance.

County and city governing bodies should clearly identify who is authorized to declare a local emergency. It is recommended that each jurisdiction prepare a local draft declaration of emergency that need only be supplemented with essential information on actual impacts should a disaster occur. Appropriate documentation of the initial and projected impacts of an event is required in order to support a request to the Governor for state or federal assistance.

Local Emergency Program Managers and Coordinators are provided extensive training and are generally familiar with the appropriate processes to be followed. They also have access to OEM policy-level staff for questions you may have about the process.

A basic *County Request for State Assistance* document is included as Appendix A of this booklet to serve as a model for the format and information to include in a declaration request to the Governor.

Additional information is available on the OEM website:

<http://www.oregon.gov/OMD/OEM/>

This booklet may be found on the OEM website:

[http://www.oregon.gov/OMD/OEM/docs/library/decl\\_guide.pdf](http://www.oregon.gov/OMD/OEM/docs/library/decl_guide.pdf)

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## ***INTRODUCTION***

Important questions include:

- What does a declaration do?
- What is the benefit to community leaders in declaring a local emergency?
- What kind of a declaration should be made?
- What should be requested of the Governor?

The answers to these questions depend on a number of factors, such as:

- Scope and magnitude of the event;
- Impact of damage and losses;
- Ability of local jurisdictions to respond;
- Economic health of the area affected;
- Current status of the local government budget;
- Timeframe before the next budget cycle;
- Outlook for known threats to the community until the new budget cycle begins; and
- Number and magnitude of emergencies the jurisdiction has already experienced since the beginning of the last budget period.

## **TYPES OF DECLARATIONS**

### **Local Declarations**

Based on local ordinances and state statutes, a local declaration can allow a city or county governing body flexibility in managing resources under emergency conditions such as:

- Diverting funds and resources appropriated for other purposes in order to meet immediate needs.
- Authorizing activation of local emergency operations plans and implementation of extraordinary protective measures.
- Initiating mutual aid and cooperative assistance agreements, and receiving resources from other organizations or individuals.
- Providing specific legal protection for actions initiated under emergency conditions.
- Setting the stage for requesting state and/or federal assistance to augment local resources and capabilities.
- Raising public awareness and encouraging the community to become involved in protecting their resources.

***The declaration of a local emergency can be the first step in requesting state resources from the Governor. Local requests for state assistance must include:***

- The type of emergency or disaster;
- The location(s) affected;
- Deaths, injuries, population still at risk;
- The current emergency conditions or threat;
- An initial estimate of the damage and impacts;
- Specific information about the assistance being requested; and
- Actions taken and resources committed by local governments (city and county).

OEM will assist local officials in developing and reviewing declarations and requests that would provide appropriate essential assistance in a timely manner.

## State Declarations

### State of Emergency

The Governor can declare a state of emergency under authority granted in Oregon Revised Statutes (ORS) Chapter 401. Under a declaration, the Governor has complete authority over all state agencies and has the right to exercise, within the area designated in the proclamation, all police powers vested in the state by the *Oregon Constitution*.

Under extreme circumstances, a Governor's declaration provides authority for the Governor to suspend provisions of any order or rule of any state agency if the Governor determines and declares that strict compliance with the provisions of the order or rule would in any way prevent, hinder, or delay mitigation of the effects of the emergency.

It also provides for the authority to direct state agencies to utilize and employ state personnel, equipment, and facilities for activities designated to prevent or alleviate actual or threatened damage due to the emergency. This includes the National Guard. It specifies that the Governor may direct the agencies to provide supplemental services and equipment to local governments to restore any services in order to provide for the health and safety of citizens of the affected area.

A state of emergency is usually enacted by a Governor's Executive Order, which establishes directions to, and expectations of state agencies to use available resources to assist local communities and alleviate disaster conditions.

### Conflagration Act

The Office of State Fire Marshal assists and supports Oregon fire services during major emergency operations through the Conflagration Act (ORS 476.510), which can be invoked only by the Governor. The act allows the State Fire Marshal to mobilize firefighters and equipment from around the state and provides for the funding of resources through state funds. It is *used only for fires that involve or threaten life and structures*.

To determine if the Conflagration Act should be invoked, the local fire chief and county fire defense chief assess incident status with the following questions in mind:

- Are there structure fires not controlled due to sheer size and/or speed of the fire?
- Is a wildland fire threatening structures?
- Have all local and mutual aid resources been depleted?
- Would mobile support resources be effective?

If the answers are yes, then the county fire defense chief notifies the State Fire Marshal through the Oregon Emergency Response System. The State Fire Marshal discusses the situation with the county fire defense chief, and then decides if the situation warrants implementation of the Conflagration Act. Once decided, the State Fire Marshal notifies the Governor, who authorizes the act to be invoked.

For more information, see:

[http://www.oregon.gov/OSP/SFM/Oregon\\_Mob\\_Plan.shtml#Conflagrations](http://www.oregon.gov/OSP/SFM/Oregon_Mob_Plan.shtml#Conflagrations)

## **Federal Declarations**

### Presidential Declarations

Probably the most familiar, but not the most common disaster assistance programs are those provided under a Presidential declaration of emergency or major disaster via the Robert T. Stafford Emergency Relief and Disaster Assistance Act, P.L. 93-288, as amended. These Presidential declarations can provide funding and/or technical assistance from numerous federal agencies under the coordination of the Federal Emergency Management Agency (FEMA).

The Stafford Act provides resources to assist states in expediting aid, assistance, and emergency services, and reconstructing and rehabilitating devastated areas.

The process for implementing federal emergency response under the Stafford Act is outlined in the *National Response Framework*. Legal details for implementing the provisions of the Stafford Act are contained in the *Code of Federal Regulations, Title 44*.

Some Stafford Act disaster assistance programs have a cost-share, often 75% federal and 25% non-federal.

### U.S. Secretary of Agriculture

The Farm Service Agency (FSA) uses the terms natural disaster determination, designation, or declaration almost interchangeably. A request for the Secretary of Agriculture to declare a disaster for a natural hazard event is a fairly simple process.

At the request of county officials, the Governor asks the Secretary to make a natural disaster determination, usually following these steps:

If it has not already occurred, Oregon Department Agriculture (ODA) asks the FSA to convene the County Emergency Board (CEB), which is a county organization comprised of state and federal agricultural agencies and local producers.

- The CEB convenes and produces a *Flash Situation Report*, which is the first assessment of damage and impacts caused by a natural disaster on the agricultural sector of the economy.
- The FSA State Emergency Board (SEB), which is equivalent to the CEB at the state level, reviews and analyzes one or more county *Flash Situation Reports* and notifies the Governor and ODA of its findings.
- If the findings appear to be favorable to requesting federal assistance, the Governor must *within 90 days of occurrence, in writing*, notify the Secretary of Agriculture that a natural disaster has occurred and request a “determination” for the event in one or more counties.
- The FSA, through the SEB, then has one or more CEBs develop a *Damage Assessment Report* as a means of better demonstrating the total disaster impact on agriculture in one or more counties.
- The U.S. Secretary of Agriculture reviews the *Damage Assessment Report* and makes a determination regarding which FSA disaster programs to activate in the affected counties. The Governor, ODA, SEB, and CEBs are all notified of the decision.
- This process will take several weeks to complete and does not require a Presidential declaration.

Some FSA programs can be made available *without* a determination by the U.S. Secretary of Agriculture. For example, the FSA Administrator may make emergency loans available to farmers with qualifying physical (not production) losses without an action by county or state government.

The following programs can also be activated by the FSA *without* a disaster declaration:

- Noninsured Assistance Program
- Emergency Conservation Program
- Emergency Haying and Grazing Assistance

The FSA has local offices throughout the state, usually co-located with the Oregon State University (OSU) Extension Service, and often with the Natural Resources Conservation Service (NRCS) and/or the local soil and water conservation district office. Encourage your Local Emergency Program Manager to develop a relationship with the local office of the FSA, NRCS, and OSU Extension.

More information on Farm Service Agency programs may be found via:  
<http://www.fsa.usda.gov/FSA/>

### U.S. Small Business Administration

Small Business Administration (SBA) disaster loans can be made available to homeowners, renters, and businesses by means of a declaration by the SBA Administrator or the President. These low-interest loans are made to help disaster-affected persons and businesses recover. The interest rate varies depending on the availability of loans and other economic factors. Types of loans available are:

- Physical Disaster Loans - homeowners, renters, and businesses
- Economic Injury Disaster Loans - small businesses only

These loans are not automatic; they require data gathering by the local jurisdiction to support the request:

- Criteria for a physical disaster declaration are that in any county, a combination of at least 25 homes and businesses have each sustained uninsured losses of 40% or more of their pre-disaster fair market value;
- Criteria for an economic injury declaration are that at least five small businesses in the state have suffered substantial economic injury due to a sudden physical event, and there is not reasonable financial assistance available in the area.

SBA loans may also involve restructuring debt load at a lower interest rate. To be approved for an SBA loan, applicants must show the ability to repay the loan. More information on Small Business Administration disaster programs may be found via:

[http://www.sba.gov/disaster\\_recov/index.html](http://www.sba.gov/disaster_recov/index.html)

## U.S. Army Corps of Engineers (USACE)

USACE can assist state and local governments without a Presidential declaration to accomplish mitigation, response, and recovery, especially for the flood hazard. ***With the exception of the rehabilitation program, any other request from local officials for USACE assistance should be made through the OEM Director to the Governor.*** OEM will work with appropriate USACE officials and advise the Governor on how to proceed with the request.

Most assistance requires a written request from the Governor. USACE resources noted here are supplemental to local and state resources. For Indian tribal lands, the Bureau of Indian Affairs will normally submit the request for assistance.

Assistance to individual homeowners and businesses, including agricultural businesses, is not authorized. Also, USACE has no authority to reimburse local governments for the costs of local emergency response and recovery actions.

The authority for the USACE emergency operations resources described as follows is granted via Public Law 84-99, as amended. These resources are directed at flood and coastal storm response such as:

- Temporarily raising the elevation of existing levees with sandbags or by other means;
- Strengthening and providing emergency repairs to levees and other flood control projects;
- Evacuating people and assisting in search and rescue operations;
- Providing materials and equipment, such as sandbags<sup>1</sup>, plastic sheeting, lumber, rock, and pumps, if USACE is actively participating in a flood fight<sup>2</sup>;
- Providing twenty-four hour technical assistance during the event; and
- Loaning equipment or emergency contracting of equipment.
- Under post-flood response, also known as "Ten Day Authority, USACE can assist in:
  - Removing logs, debris, and ice jams from drainage channels, bridge openings, water supply intakes, and sewer outfalls;
  - Removing debris as necessary to reopen vital transportation routes;

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1 Sandbags are only available to communities which have made a good faith effort to stock a supply prior to a flood, and only after mutual aid and/or state resources have been engaged.

2 If USACE is not actively participating in a flood fight, federal supplies may be furnished only if local resources are exhausted or will be exhausted; under such circumstances, supplies must be replaced in-kind or paid by local interests. All unused stock should be returned or reimbursed to the federal government at replacement cost.

- Assisting in the temporary restoration of critical public services or facilities;
- Providing emergency water this is limited to 30 days or up to the date of the Presidential declaration, whichever comes first;
- Providing technical assistance; and
- Assisting in identifying hazard mitigation opportunities.

"Ten Day Authority" requires a Governor's request to both USACE and to FEMA. The ten days begin with the Governor's request to FEMA for a joint Preliminary Damage Assessment (PDA) and ends after ten days or with receipt of a Presidential major disaster or emergency declaration, whichever comes first. Once the declaration has been made, USACE resources can continue to assist, but a non-federal cost-share begins, usually at a rate of 25%.

#### Rehabilitation Program

This program is an exception in that local governments, such as diking and drainage districts, have a direct relationship with USACE. This program assists local governments to repair flood control structures damaged or destroyed by wind, wave, or water action to their pre-disaster condition if:

- The structure has a public sponsor;
- Has been properly maintained by the sponsor; and
- The proposed rehabilitation is cost-effective.

USACE can provide 100% federal funding if the water control structure, usually a levee, was built by USACE, and has since been properly maintained. It is an 80% federal and 20% non-federal cost-share if the levee or other structure meets USACE standards, but was locally built. The sponsor has 30 days to request rehabilitation assistance following a flood or coastal storm.

#### Advanced Measures

Under this program USACE can conduct preventative work prior to predict unusual flooding. This may have applications for ice jam removal, snowmelt flooding, unusual flooding on the lower reaches of larger watersheds, etc. There must be an imminent threat to life or improved property. There must also be a reasonable assurance that the work can be completed in time to prevent or reduce damages, and the proposed work must be both technically feasible and cost-effective.

Types of assistance can include:

- Strengthening of federal and non-federal flood control structures;
- Construction of temporary levees to protect life and improved property;
- Channel clearance and/or dredging of federal projects to restore original design capacity; and
- Relieving the threat of flooding from possible dam failures by de-watering the impoundment, controlled breaching, or strengthening the structure.

Costs associated with removing a measure, or upgrading it to a permanent facility, are generally borne by the local or state government sponsor.

#### Conditions of USACE Assistance

In many circumstances USACE assistance requires that the public sponsor agree to conditions similar to the following:

- Provide without cost to the United States all lands, easements, and rights-of-way necessary;
- Hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; and

If feasible, operate and maintain the emergency work or remove temporary work constructed by USACE or its contractor.

More information on USACE disaster programs may be found via:

<http://www.usace.army.mil/Emergency/Pages/home.aspx>

#### Federal Highway Administration (FHWA)

The FHWA Program called Emergency Relief (ER) helps pay for the repair of roads and bridges on federal aid highways and on non-federal aid roads on federal lands, which have been damaged by a natural disaster or catastrophic failure. Assistance through the ER Program can be rendered with or without a Presidential major disaster declaration. Authority for providing ER to states can be found at Title 23, USC, Section 125.

Highways are eligible for ER funds if:

- The highway is classed a major collector or above;
- The Governor declares a state of emergency in the affected county or counties. Occasionally the Governor will make a state of emergency declaration strictly in order to request FHWA Emergency Relief;
- Estimated cost of repairs to FHWA eligible highways statewide due the disaster total at least \$750,000; and
- There is a favorable finding of eligibility by FHWA.

Local government application for Emergency Relief is made through the Highway Division of the Oregon Department of Transportation (ODOT); it assists local road departments and public works agencies with application, preparation of necessary documentation, and in establishing funding and reimbursement mechanisms.

***One important early step in a local government request for ER is the damage survey conducted by local public works, ODOT, and FHWA staff. This usually involves on-the-ground visits to damaged areas.***

More information on Federal Highway Administration ER may be found via:

<http://www.fhwa.dot.gov/programadmin/erelief.cfm>

## **PROCESS FOR REQUESTING ASSISTANCE**

These guidelines are provided in accordance with provisions in ORS Chapter 401. They are intended as guidance related to situations that occur in local jurisdictions which require state or federal assistance.

Governor's state of emergency declarations are made at the request of a *county* governing body after determining that an emergency has occurred or is imminent. Cities must submit requests for assistance through the governing body of the county in which the majority of the city's property is located with the expectation that the county will first try to assist the city before asking the state for assistance.

Each event that is likely to result in a request for state or federal assistance must be evaluated to determine the nature and magnitude of the losses that have occurred or are imminent and to identify what local and state resources have been expended or applied to alleviate disaster conditions.

***If it appears that state or federal assistance may be needed to augment local resources, it is essential that the jurisdiction conduct a quick but accurate Initial Damage Assessment.***

The Local Emergency Program Manager or their designee coordinates this effort with OEM. It is recognized that circumstances may preclude the inclusion of all of the information listed below. However, an effort should be made to include as much as possible prior to requesting a Governor's declaration.

- Specify the area(s) of impact and describe the emergency situation as it exists within the impacted area(s).
- Describe the severity of the situation and the effect on lives, public health and safety, and property. Particular attention should be paid to special populations such as elderly or handicapped, who may be less able to manage on their own.
- Identify and evaluate the severity and magnitude of impacts that have or are expected to occur in the following areas:
  - Public safety and emergency services, such as firefighting, law enforcement, hazardous materials response, emergency medical services and hospitals
  - Communication resources
  - Health and mental health services

- Public infrastructure, including debris clearance, emergency response costs, transportation systems, dams and levees, public buildings and equipment, and public utilities such as water, sewer, electricity, etc.
- Vital community businesses and private nonprofit organizations which provide essential services to the general public
- Housing
- Agriculture
- To the extent possible, provide supporting documentation of damage, losses, costs, and impacts.
- Identify the efforts local jurisdictions have taken to resolve the situation:
  - Has the local jurisdiction=s governing body declared an emergency and implemented their emergency operations plan?
  - Has the local jurisdiction=s emergency operations center been activated?
  - Has the local jurisdiction committed all available local resources to alleviate the emergency, such as mutual aid/cooperative assistance agreements?
- Describe in as much specificity as possible disaster related unmet needs:
  - What local government resources or assets have been expended, resulting in shortfalls?
  - What situations exist that require assistance from state or federal resources?

Once the local jurisdiction has conducted an Initial Damage Assessment (IDA) and a request for federal assistance is anticipated, the Director of the Office of Emergency Management may request the FEMA regional office to conduct a joint Preliminary Damage Assessment (PDA). This involves a team of local, state, and federal personnel jointly validating the local IDA. Such an assessment will assist the Governor in determining whether federal assistance is necessary, and it could serve to support a request for a Presidential emergency or major disaster declaration.

The request and supporting information from local officials must be submitted to the Governor through the Director of the Office of Emergency Management as prescribed under ORS 401.165. If it is determined that local and state resources are insufficient to meet the needs of the area impacted, the Governor may submit a request to the President through the FEMA Regional Director or directly to a federal agency for assistance.

## **PRESIDENTIAL DECLARATION EVALUATION FACTORS**

For all requests under the Stafford Act, FEMA will evaluate the severity, magnitude, and impact of the event, and will evaluate whether the impact appears to exceed state and local capabilities, and whether there are federal resources which may be appropriate to address severe, disaster related needs.

Some agencies may provide specific resources without the need for a Presidential declaration through existing emergency authorities. Considering all factors, FEMA will make a recommendation to the President.

### **Federal evaluation will focus on the following factors:**

#### **Threat to Life, Health, or Safety**

If there are significant threats to the lives, health, or safety of individuals that cannot be met with state, local, and /or voluntary organization resources, federal assistance may be warranted. For example, if critical facilities are affected such as water treatment or distribution, federal assistance might be necessary if state and local government cannot meet the emergency needs.

#### **Special Populations and Considerations**

Attention will be paid to special populations, such as the elderly or disabled, who might be more likely to face threats to life, health, and safety.

#### **Critical Facilities**

If critical facilities, such as hospitals, fire and police stations, water or sewage treatment facilities, etc. are seriously affected, and state and local government cannot adequately correct the problem or address the impacts, federal assistance may be warranted.

#### **Large Scale Disruptions of Normal Community Functions and Services**

If disruptions of normal community functions and services occur that threaten the well being of an economic base of the community, and cannot be corrected with state or local assistance, federal assistance may be warranted.

#### **Technical Assistance**

There may be situations where there are not significant impacts, but states may need technical assistance, such as that provided by the U.S. Army Corps of Engineers.

**APPENDIX A: Sample County Request for State Assistance**

APR-07-2011 17:16

From:

Tot 915033737833356

Page: 1

**DECLARATION OF EMERGENCY**

BEFORE THE COUNTY COURT  
FOR HARNEY COUNTY, OREGON

In the Matter of Declaring )  
A State of Emergency within )  
Harney County )

**RESOLUTION # 2011-04**

This matter comes before the Harney County Court at an emergency meeting on April 7, 2011 involving a disaster situation created by flooding of the Silvies River throughout the county; and

WHEREAS, the County of Harney, having exhausted all their resources; and

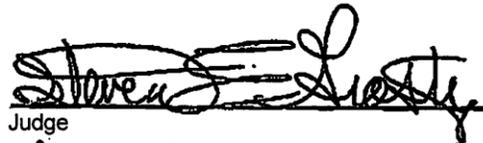
WHEREAS, the emergency situation appears to be of such a magnitude and severity, with the likelihood of continuing flooding for the next several days, that it is beyond the County's response capability; now, therefore

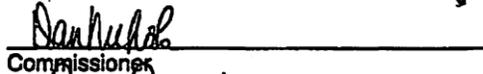
BE IT RESOLVED that the County Court, under the emergency powers granted by ORS 401.305, 401.309, and 401.065 declare that a "State of Emergency" exists within Harney County due to the fact that local resources are depleted and request the Governor declare Harney County a disaster area. Further, the Harney County Office of Emergency Management and Sheriffs Department are hereby directed to take all necessary steps authorized by law to secure the persons and property of the citizens of Harney County. State assistance is requested immediately and includes the following:

- Manpower
- Sand bagging machine
- High capacity water pumps

DATED this 7th day of April, 2011.

HARNEY COUNTY COURT

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

Forward to Oregon Emergency Management Office at 6:00 p.m. on April 2011.

APR-07-2011 18:47

SS:

P.01

For more information on the assistance outlined in this guidebook, the following web links may prove helpful:

Office of Emergency Management

<http://www.oregon.gov/OMD/OEM/>

Office of State Fire Marshal

<http://www.oregon.gov/OSP/SFM/>

Federal Emergency Management Agency

<http://www.fema.gov/>

Farm Service Agency

<http://www.fsa.usda.gov/FSA/>

U.S. Small Business Administration

[http://www.sba.gov/disaster\\_recov/index.html](http://www.sba.gov/disaster_recov/index.html)

U.S. Army Corps of Engineers

<http://www.usace.army.mil/Emergency/Pages/home.aspx>

Federal Highway Administration

<http://www.fhwa.dot.gov/programadmin/erelief.cfm>

Applied Technology Council

<http://www.atcouncil.org>