

WSR 24-11-027

PROPOSED RULES

MILITARY DEPARTMENT

[Filed May 7, 2024, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-053.

Title of Rule and Other Identifying Information: State disaster individual assistance.

Hearing Location(s): On July 1, 2024, at 3:30 p.m., at the Columbia Room, Washington State Capitol, 416 Snider Avenue S.E., Olympia, WA 98504; or join the meeting remotely [contact agency for link], Meeting ID 233 713 549 701, Passcode FJmzsa; or dial-in by phone +1 253-372-2181,,875986840# United States, Tacoma, phone conference ID 875 986 840#.

Date of Intended Adoption: July 15, 2024.

Submit Written Comments to: Taylor Dietz, 20 Aviation Drive, email taylor.dietz@mil.wa.gov.

Assistance for Persons with Disabilities: Contact Taylor Dietz, phone 253-302-1338, email taylor.dietz@mil.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to establish eligibility, activation, funding, and programmatic criteria for a Washington state disaster individual assistance program (WAIA). The WAIA program is designed to provide supplemental state assistance for disaster survivors. Funding is issued through reimbursements to eligible county and/or tribal governments for all nonspecial programs. Special programs are issued in the form of grants to eligible county and/or tribal governments.

Reasons Supporting Proposal: The purpose of this chapter is to establish eligibility, activation, funding, and programmatic criteria for WAIA to provide general guidelines for the state and local jurisdiction in administering the program. The proposed WAIA program will address the increasing disasters affecting the Pacific Northwest, with their impacts becoming more severe. These impacts leave significant damages to survivors and their properties with limited support or aid, and often with insufficient or no insurance to cover the extensive recovery process and costs. Federal assistance, when approved, is often limited to Federal Emergency Management Agency (FEMA) public assistance for rebuilding public facilities and infrastructure. Historically, FEMA individual assistance approval is rare for the state of Washington, leaving a gap for individual and household recovery. At the state level, disaster assistance programs are available; however, these programs are restricted to a select few eligible applicants, and the services are limited in scope. To fill this gap, Washington state has authorized state individual disaster assistance through RCW 38.52.030(9), but has not, to date, permanently funded such a program

Statutory Authority for Adoption: RCW 38.52.030(9) and 38.52.050.

Statute Being Implemented: RCW 38.52.030(9).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state military department, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Washington military department, emergency management division, Camp Murray, Washington, 800-562-6108.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state military department is not subject to RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 15, 2024

Taylor Dietz

Human Services Program Supervisor

OTS-5404.1

**Chapter 118-11 WAC
STATE DISASTER INDIVIDUAL ASSISTANCE PROGRAM**

NEW SECTION

WAC 118-11-010 Authority. The authority for this chapter is RCW 38.52.030(9), which authorizes the director of the Washington military department, emergency management division, to prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human-caused disaster.

NEW SECTION

WAC 118-11-020 Purpose and intent. The purpose of this chapter is to establish eligibility, activation, funding, and programmatic criteria for a Washington state disaster individual assistance (IA) program. The state IA program is designed to provide supplemental state assistance for disaster survivors. Assistance to businesses damaged, destroyed, or otherwise closed due to a disaster or for individuals to replace lost wages caused by a disaster are ineligible for the IA program. Funding is issued through reimbursements to eligible county or tribal governments for most aspects of the state IA program. Assistance is provided from the eligible county or tribal government directly to the eligible individuals, with support provided as needed by the Washington military department, emergency management division. The extended sheltering assistance and disaster case management programs are issued in the form of grants to eligible county or tribal governments.

NEW SECTION

WAC 118-11-030 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Applicant" means an individual applying to the state IA program. An applicant may apply for a disaster survivor on the survivor's behalf.

(2) "Department" means Washington military department, emergency management division.

(3) "Destroyed" means a residence that is a total loss per FEMA PDA guidance.

(4) "Disaster" means an event or set of circumstances which:

(a) Demands immediate action to preserve public health, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or

(b) Reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

(5) "FEMA" means the Federal Emergency Management Agency, the lead federal agency in responding to and recovering from disasters across the United States.

(6) "Functional" means a residence that is fit for standard use by its occupants for the purposes of performing activities of daily living.

(7) "Habitable" means a residence that is safe, sanitary, functional, and presents no disaster-caused hazards to the occupants.

(8) "Home" or "residence" means the physical location of the damaged primary residence caused by a disaster.

(9) "Home repair assistance" means financial assistance for repairs to make a residence habitable and may include repairs to the structure, utilities, or privately owned access routes.

(10) "Home replacement assistance" means financial assistance to help replace a primary residence when the residence has been destroyed by a disaster. Home replacement assistance is only provided to restore an applicant's living conditions to a safe, functional, and accessible state.

(11) "Household" means all persons who lived in a residence before a disaster.

(12) "Inaccessible" means a residence in which damage to the structure cannot be visually inspected or verified because of disaster-related loss of access.

(13) "Incident period" means the duration of time during which sustained and concentrated disaster impacts occurred.

(14) "Major damage" means a residence with structural damage or other significant damage that requires extensive repairs per FEMA PDA guidance.

(15) "Primary residence" means the residence where the survivor normally lives during the major portion of the calendar year, or the residence that is required because of proximity to employment, including agricultural activities that provide 50 percent or more of the household's income.

(16) "Proof of residency" means any document establishing that a survivor is a resident of a county or tribal nation that has declared a state of emergency. Proof of residency, which must be dated within one year prior to the disaster or within the period of assistance, may include, but is not limited to, the following documents:

(a) Bills (utility, financial documents, other);
(b) Employer documents (pay stubs or similar);
(c) Lease/housing agreement/mortgage statement or rent receipts;
(d) Identification card;
(e) Client record from a social service organization;
(f) School registration;
(g) Federal or state benefit record;
(h) Motor vehicle registration; and
(i) Official legal documents, including subpoenas and other court orders.

(17) "Recipient" means a survivor found eligible to receive state IA program grants.

(18) "Rental assistance" means financial assistance to rent temporary housing accommodations while a survivor is displaced from a primary residence.

(19) "State IA program" means the Washington state individual assistance program, authorized under RCW 38.52.030(9) and administered by the Washington military department, emergency management division (WA EMD).

(20) "Survivor" means a person who has been displaced from their residence or otherwise affected by a declared disaster event. The survivor is the recipient of the state IA program funds when determined eligible through the application process.

(21) "Tribal/tribe/tribal government/nation" means a federally recognized Indian tribe in Washington state.

NEW SECTION

WAC 118-11-040 Funding. Amounts awarded under the state IA program are limited to allocations made available to the Washington military department, emergency management division, for the Washington state disaster individual assistance program each state fiscal year.

NEW SECTION

WAC 118-11-050 Program activation criteria. (1) The state of Washington will activate the state IA program in the event all the following criteria are met:

(a) A county or tribal government declaration or state of emergency has been issued;

(b) The governor has issued an emergency proclamation with language directing, ordering, and authorizing the director of the Washington military department, emergency management division, to initiate the state IA program in the impacted jurisdiction(s);

(c) A joint damage assessment confirms a minimum of 25 primary homes in the area of greatest impact sustained damages categorized as "major" or "destroyed" according to the FEMA damage assessment criteria. This threshold can be met by considering the cumulative impact of multiple counties and tribal governments, if necessary;

(d) A county or tribal government has requested joint damage assessments directly to the state within 14 calendar days after the end of the incident period, as determined by the department; and

(e) A county commissioner, tribal government executive, or authorized designee has requested state IA program activation. The department will start accepting applications after the director of the Washington military department signs the activation request.

(2) Three scenarios are possible to initiate the state IA program in a jurisdiction.

(a) Scenario 1: Washington state has received no federal assistance.

(i) Cumulatively, more than 25 homes have "major" or "destroyed" damage categories across multiple counties or tribal lands;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state's request for a U.S. Small Business Administration (SBA) disaster declaration has been denied or the state has not met the threshold to apply for SBA assistance; and

(iv) The state IA program is activated to support eligible disaster survivors.

(b) Scenario 2: Washington state has received only SBA assistance and the disaster does not warrant a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program or the state's request for FEMA IA was denied.

(i) At least 25 homes have "major" or "destroyed" damage categories in one county or tribal land;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state IA program is activated to support eligible disaster survivors through the Household Needs Grant;

(iv) The state's request for an SBA disaster declaration has been approved; and

(v) The state IA program is activated to support eligible disaster survivors. Disaster survivors must first apply to the SBA for a disaster loan except to access the household needs grant and extended sheltering assistance state IA programs.

(c) Scenario 3: Washington state has received both an SBA disaster declaration and a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program.

(i) At least 25 homes have "major" or "destroyed" damage categories in one county or tribal land. In this scenario, the damage profile will likely greatly exceed 25 homes with "major" or "destroyed" damage categories to warrant both FEMA and SBA assistance;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state's request for a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program has been approved;

(iv) The state's request for an SBA disaster declaration has been approved; and

(v) The state IA program is activated to support eligible disaster survivors and address any remaining disaster-caused unmet needs not covered by federal assistance or any other means.

(3) Multicounty impacted areas are allowable to reach the minimum 25 primary home threshold. The area of greatest impact will be determined by the Washington state emergency management division and derived from National Weather Service reports and county, tribal, or state government official damage assessments or reports.

(4) The incident period is determined by the department and may be adjusted with good cause. The incident start and end date may in-

clude, but is not limited to, National Weather Service warnings, level 3 "go now!" evacuation level notices, and the impacted jurisdiction's community lifeline status, including safety and security, food, hydration, shelter, health and medical, energy, communications, transportation, hazardous materials, and water systems.

NEW SECTION

WAC 118-11-060 Application process. (1) **Applications.** Applications for state IA program funds may be accepted in the following ways:

(a) In person (disaster recovery center, disaster loan outreach center, multiagency resource center, etc.);
(b) By phone (call center/disaster assistance hotline);
(c) Online; or
(d) U.S. mail/paper (then entered by staff into the online system).

(2) **Application reviews.** Two types of application reviews are possible under the state IA program to approve or deny applications: Initial review and advanced review.

(a) Initial review. Occurs upon receipt of the application and represents the standard decision process for most applications. Initial review is performed by a local or tribal government disaster case worker and the county or tribal government designated IA officer.

(b) Advanced review. Intended to support decisions for complex applications or those needing additional review. Advanced review is performed by the state IA branch director and the state coordinating officer.

(3) **Application period.**

(a) The application period deadline is 60 calendar days from the date of the initial public notice.

(b) The department may accept late applications beyond the original application deadline.

(c) The application period for late applications shall be 30 days after the initial deadline. The department reserves the option to further extend the late application period for good cause.

NEW SECTION

WAC 118-11-070 Disaster types eligible for assistance. Disaster types eligible for assistance are identified in the Washington state enhanced hazard mitigation plan.

NEW SECTION

WAC 118-11-080 Types of assistance. (1) The award amounts and maximum awards for each program category are defined annually by the Washington military department and outlined in the department's state IA program administrative plan. Maximum awards for the housing assistance and household needs assistance programs align with FEMA's Individuals and Households Program maximum awards, determined annually by

the federal government. The categories of programs offered under the Washington state disaster individual assistance program include the following:

- (a) Housing assistance;
- (b) Rental assistance;
- (c) Home repair assistance;
- (d) Home replacement assistance.
- (2) **Household needs grant.** Award based on household size and verified damage categories "destroyed" or "major."
- (3) **Household needs assistance.**
 - (a) Medical/dental assistance;
 - (b) Funeral assistance;
 - (c) Childcare assistance;
 - (d) Transportation assistance (repair or replace);
 - (e) Other, based on needs.
- (4) **Special programs.**
 - (a) Extended sheltering assistance (ESA);
 - (b) Disaster case management (DCM).

NEW SECTION

WAC 118-11-090 Survivor and local or tribal government responsibilities. (1) Declared counties or tribal governments must have a signed opt-in grant agreement with the state in place prior to activation. A completed state IA grant agreement between the impacted jurisdiction and the Washington military department with incident-specific information will be finalized at program activation.

(2) County or tribal governments requesting extended sheltering assistance must have a shelter transition plan in place to receive funding for that program.

(3) Survivors receiving continued rental assistance or extended sheltering assistance must provide evidence of continued displacement and progress on a permanent housing plan.

NEW SECTION

WAC 118-11-100 Applicant general eligibility. (1) To be eligible for state IA program assistance, recipients must meet all general eligibility requirements provided in this section in addition to any program-specific requirements.

(2) To apply for the state IA program, the applicant or survivor must:

(a) Be a resident of a county or tribal nation that has declared a state of emergency.

(b) If insured against the peril under, without limitation, a flood, homeowners, vehicle, mobile home, or health insurance policy, show proof of insurance and any claim settlement information related to the disaster-caused needs.

(c) Present evidence of damages that are attributed to the declared disaster including, but not limited to, proof that the primary residence was destroyed, sustained major damage, or is rendered inaccessible. Such proof may include the following without limitation:

- (i) Evidence that essential living areas in the residence have sustained major damage;
 - (ii) Evidence that essential living areas in the residence have been destroyed and pose serious health or safety hazards; or
 - (iii) Evidence that the survivor is displaced due to the home being rendered inaccessible.
- (d) Provide proof of disaster assistance received from any other entity for this event (to avoid duplication of benefits), such as receipt of assistance from the department of social and health services' disaster cash assistance program.
- (e) Have a household income equal to or less than 80 percent of the Housing and Urban Development (HUD) area median household income for the calendar year prior to the disaster, based on the number of persons in the household. HUD's area median income may include the county or nearest metropolitan statistical area (MSA) if it benefits the applicant.
- (f) Apply for SBA assistance, if available. An application for SBA assistance is not required for household needs grant or extended sheltering assistance.
- (i) Applicants who refuse an SBA loan if approved are ineligible for state IA program assistance.
 - (ii) If an SBA loan is approved and accepted by an applicant, an applicant may still be eligible for supplemental assistance provided by the state IA program.
 - (iii) State IA program assistance will only be provided to restore an applicant's living conditions to a safe, functional, and accessible state.

NEW SECTION

WAC 118-11-110 Appeals and reconsiderations. Impacted jurisdictions that have entered into a state IA program grant agreement with the department must allow survivors applying for assistance an opportunity to appeal and allow for reconsideration of application denials as provided in this section.

(1) **Number of appeals.** In cases where the application has been denied by the county or tribal disaster case worker, survivors may appeal determinations twice.

(2) **Deadline to appeal.** All deadlines provided in this subsection may be extended by the county or tribal IA appeal officer or by the department for good cause.

(a) **First appeal:** A survivor must be provided 30 calendar days from the date on the survivor's notification letter to appeal. The survivor's appeal must be postmarked on a physical submission or date-marked on an electronic submission.

(b) **Second appeal:** If the first appeal is denied, the survivor must be provided an additional 30 calendar days from the date on the appeal denial notification letter to submit a second appeal.

(3) **Appeal review process.** The declared county or tribal government must designate a person to serve as the county or tribal IA appeal officer. All deadlines provided in this subsection may be extended by the county or tribal IA appeal officer or by the department for good cause.

(a) **First appeal:** The county or tribal IA appeal officer shall review the appeal and eligibility, make a recommendation, and send the

recommendation to the department IA program staff for review and approval. The department must issue a decision granting or denying the appeal within 30 calendar days from date of receipt from the appeal officer.

(b) Second appeal: The county or tribal government must send the second appeal package to the department IA program staff. Department IA program staff will review the second appeal and send the package with a recommendation to the state coordinating officer for final determination. The department must issue a decision granting or denying the appeal within 30 calendar days from date of receipt from the appeal officer.

(4) **Reconsiderations.**

(a) In cases where a survivor was approved for assistance but needs additional assistance and has not yet reached a maximum award for the program category under review, the survivor may submit a reconsideration request up to the maximum award for that program category if the survivor can provide documentation demonstrating the need for additional assistance.

(b) To process a reconsideration, the local or tribal government disaster case worker reviews the package to determine if the survivor is eligible for additional assistance and works with the survivor to ensure that all necessary documentation is included in the package.

(c) If the survivor meets all general eligibility and program-specific requirements, the case worker then submits the package, confirming all eligibility requirements have been met, to the designated county or tribal IA appeals officer for final determination. If the survivor does not meet all general eligibility and program specific requirements, a determination letter is sent to the survivor by the county or tribal IA appeals officer, detailing which requirements were not met resulting in the ineligibility determination.