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Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency
8NE, 500 C Street, SW
Washington, DC 20472

RE: Docket ID FEMA-2016-0003 – Establishing a Deductible for FEMA's Public Assistance Program

I. Introduction and Background

The National Rural Electric Cooperative Association appreciates the opportunity to submit comments on the above captioned item.

The National Rural Electric Cooperative Association ("NRECA") is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states. Member systems cover 75% of the United States landmass. NRECA membership is composed of 838 distribution cooperatives and 65 generation and transmission ("G&T") cooperatives. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

Every year, NRECA's member cooperatives lose critical facilities and infrastructure (including, but not limited to, poles, lines, and transformers) to ice storms, tornadoes, floods, hurricanes and the like. If this damage is caused by an event declared to be a disaster by the President of the United States, then many of the cooperatives' response and recovery costs are eligible for reimbursement through grants from the Federal Emergency Management Agency ("FEMA"). These grants, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act and administered under FEMA's "Public Assistance Program," can amount to tens of millions of dollars and are critical to the ability of cooperatives to recover from disasters. Thus, FEMA's implementation of the statutes and regulations applicable to grants made under its Public Assistance Program are of critical importance to NRECA and its members.

Unlike investor-owned utilities, electric cooperatives cannot claim tax breaks for storm expenses, nor can electric cooperatives create interest earning balance sheet accounts to draw down at a later date for storm expenses. Electric cooperatives have only two sources of funding for storm expenses: (i) FEMA reimbursement under the Stafford Act, or (ii) a rate increase to their member-owners.

Cooperatives serve the vast majority of the nation's persistent poverty counties (327 out of 353, or 93%). These counties have deeply entrenched poverty with rates consistently 20% or above for the last three decades. In all, one-in-six of the 42 million Americans served by cooperatives live below the poverty line, many of them in these counties.[1]

The provision of electric service is critical to society's needs. Americans have come to expect as rapid as possible post-disaster return to support the production, transmission, and distribution of energy services for police stations, fire stations, hospitals, nursing homes, military bases, and residential consumers with life-saving electric-powered medical devices. Even the ordinary purposes to which reliable and affordable energy are put prevent human injury and property damage, including pumping clean water for human and animal consumption, air conditioning and heating for sensitive human populations and temperature-sensitive poultry and livestock, refrigeration of food and dairy to prevent disease and spoilage, heating water and cooking food to prevent disease, and many, many others. Extended interruptions in energy delivery can lead to deaths and serious injuries, the loss of property and livestock, and billions of dollars in lost internet and financial sector revenue.

On January 20, 2016 FEMA published an Advanced Noticed of Proposed Rulemaking ("ANOPR")[2] setting forth its proposal to consider the establishment of a disaster deductible and posing numerous questions to stakeholders regarding the concept of a disaster deductible. In the comments below, NRECA sets out its view of the deductible concept, offers some alternatives to a deductible that we believe will meet FEMA's goals without the complexity of a deductible program, and answers some of the specific questions posed by FEMA in the ANOPR.

II. NRECA Opposes the Deductible Concept

1. ***We support FEMA's goals to reduce federal spending on disasters and to make that spending as efficient as possible.***

We want to be clear that we understand the goals FEMA is trying to meet by establishing a disaster deductible. FEMA is under pressure from appropriators and policy makers to spread scarce federal resources efficiently and widely. This is not an easy task.

FEMA states that it "believes the deductible model would incentivize Recipients to make meaningful improvements in disaster planning, … and increase stakeholder investment and participation in disaster recovery and building for future risk…"[3]. Electric cooperatives have a fiduciary duty to their member owners to make meaningful improvements to their systems each and every day, whether in the presence or absence of federally declared disasters. In order to keep the lights on during steady state operations, cooperatives invest constantly in upgrades, hardening, undergrounding, and

[1] See, for example, http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx

[2] "Establishing a Deductible for FEMA's Public Assistance Program; Advanced Notice of Proposed Rulemaking" 81 Federal Register 12 (20 January 2016), pp. 3082-3085.

[3] Ibid, p. 3082

other measures that FEMA considers mitigation and that we consider the regular course of business. If we didn't perform these functions, there is a risk of loss of electric service. Therefore, electric cooperatives don't need the type of incentive FEMA describes in the ANOPR to be constantly upgrading, improving and hardening our systems.

Nevertheless, NRECA and its member cooperatives understand the need for FEMA to safeguard American taxpayer dollars and we support FEMA's initiating a dialogue with stakeholders on methods that allow FEMA to spend less on natural disasters.

*2. **The Deductible Concept is Inconsistent with the Stafford Act.***

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 ("Stafford Act"), enacted in 1988, articulates how the Federal Government will provide assistance to state, city and Tribal governments, including financial aid. The Stafford Act's Congressional Findings and Declarations, identified the intent of Congress "to provide an orderly and continuous means of assistance" to minimize the damage and impact of disasters[4]. Of the six stated principles under Section 101, the principle directly relating to recipients' financial obligation is sub-paragraph (4), which purported to minimize disaster impact by "encouraging individuals, States and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance."

Beyond its reference to encouraging the purchase of insurance products, there is little statement of Congressional intent explicitly imposing an initial financial obligation on Recipients and Sub-recipients that would exist under FEMA's proposed deductible concept. The imposition of a deductible program essentially constitutes a defunding of the Public Assistance Program by shifting the burden of hazard mitigation and reconstruction and recovery to the entities often least qualified to absorb the costs, particularly rural electrical cooperatives.

Further, Section 406 of the Stafford Act specifies:

> *"(b) Federal Share - (1) Minimum Federal Share - Except as provided in paragraph (2)[5], the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section."*

The regulations implementing the Stafford Act state at 44 CFR 206.65 (Cost sharing) state:

> *"The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs*."

Thus we believe that the action contemplated by FEMA may require Congress to amend the Stafford Act before FEMA may lawfully implement a deductible concept.

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[4] 42 U.S.C. 51212 § 101(b)

[5] Paragraph 2 gives the *President* authority to reduce the federal share to note less than 25 percent for a facility that (i) has been damaged on more than one occasion within the preceding 10-year period by the same type of type of event and (ii) whose owner has failed to implement appropriate mitigation measures to address the hazard.

3. ***<u>The Deductible concept is overly complex, will push fiscal pressure from the federal level to the Recipients and Subrecipients, and will create unnecessary friction among stakeholders.</u>***

The number of questions FEMA poses in the ANOPR point to the extreme complexity FEMA and stakeholders would face in developing, measuring and implementing the deductible concept. There are alternatives that are much more simple, easy to administer and equitable to shareholders.

The complexity surrounding the calculation of the deductible (which financial or economic indicators should form the basis? Should there be exemptions? How can stakeholders get credit or buy down the deductible?) creates additional administrative burdens on FEMA and all stakeholders. Again, simpler and easier to administer alternatives exist and we discuss them below in our comments.

We are also very concerned about the divisive nature of the deductible concept. Given the variety of disaster types, geography, economic stress, disaster frequency, capacity to absorb additional storm costs, we are concerned that it will be virtually impossible to design a deductible that doesn't penalize some area of the country, or group of stakeholders. A deductible would serve to pit states against each other in terms of how the deductible is measured. States with high numbers of economically stressed counties won't want certain measures, states with dense population areas will argue for population metrics, etc.

Rather than spending countless hours and dollars to design a deductible concept that will inevitably penalize some and reward others but not for the reasons FEMA desires, a simpler approach would be less expensive to develop, less time consuming and more equitiable. Tracking and submitting documentation related to each manner of satisfying the deductible would be extremely burdensome. Subrecipients and Recipients and FEMA would have to agree to a common reporting and recording systems. FEMA and stakeholders would have to develop audit processes and principles. Administrative time to track and record each action that could satisfy the deductible would be a huge commitment of time. FEMA expense to comb through records that document actions to satisfy the deductible would be huge.

We address our concerns more fully in the answers to FEMA's questions below.

4. <u>Alternatives to the deductible</u>

The three alternatives we offer below would require Congressional authority in the form of an amendment to the Stafford Act. Nevertheless, we believe that these alternatives are less complex, less burdensome and more equitable to American tax payers, FEMA, Recipients and Subrecipients and would therefore be more likely to be approved by Congress. Thus, FEMA should consider one of the following alternatives;

a. Create a sliding scale federal cost share that rewards FEMA for prompt resolution of claims[6].

Under this concept, NRECA proposes that FEMA should consider using the federal cost share as the tool to meet its fiscal goals. NRECA proposes that FEMA should decrease the federal cost share to 73% across the board, down from the current 75%. This initial decrease will provide savings to FEMA immediately although increasing costs for Recipients and Subrecipients. For calendar 2015 storms, for example, a 2% reduction in the federal cost share would have saved FEMA from obligating $13.5 million.[7]As a second step under this proposal, FEMA should consider further decreasing the federal cost share should FEMA be able to meet certain speed of payment goals. For example, if FEMA delivered payments within 60 days of the obligation of funds, the federal cost share would remain at 73%. If payment takes longer than 90 days, the federal cost share would increase to 74%. If payment takes longer than 120 days, the federal cost share would increase to 75%. We want to be clear that we do not propose this due to any negligence on the part of FEMA in disbursing payments. We simply offer it as a way to incent increased efficiency.

This concept would be easy to administer and create incentives for both FEMA and Recipients and Subrecipients. Recipients and Subrecipients would receive a lower of reimbursement from FEMA funds, unless FEMA is effective in conducting reviews and obligating funds. Recipients and Subrecipients would be incented to quickly and accurately report damages in order to receive funds quickly.

-OR-

b. Increase the per capita amount used to assess damages

Pursuant to 44 CFR 206.48, FEMA evaluates the per capita impact of a disaster to support its recommendation that a disaster be declared and thus make federal assistance available via the Public Assistance Program to eligible entities. FEMA adjusts this figure based on the Consumer Price Index.

In the same section of regulation cited above, FEMA explains why it evaluates the impacts of disasters at the county and local government level, as well as Tribal Government levels: "*because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met.*"[8]

Given that FEMA already has the program, processes and people in place to evaluate the extent of disasters according to a per capita figure; it makes sense for FEMA to consider simply increasing the per capita level of damages that must be met for FEMA to recommend a federal disaster declaration.

There are some potential hazards that come with this recommendation and we urge FEMA, if it chooses to assess this option, to hold meetings with all impacted stakeholders in order to assess how to implement an increase in the per capita threshold equitably.

[6] NRECA recognizes that this alternative would require Congressional action to amend the Stafford Act.
[7] Source: www.FEMA.gov, Disaster Declarations for 2015, Financial Assistance, Total Public Assistance Grants – Dollars Obligated, by storm.
[8] 44 CFR 206.48

-OR-

c. Lower the Federal Cost Share

While we prefer the concept of holding all stakeholders accountable for lower spending as discussed above, FEMA could also simply lower the federal cost share. This proposal is simple, straightforward and equitable. The disadvantage to this proposal is that it doesn't create incentives for FEMA to make its management and administration of its programs more efficient, a result that Congress and policy makers seem to be seeking. In addition, not every Subrecipient receives a make whole payment from the state government. Congress left room for states to decide how to allocate the 25% non-Federal share.

5. FEMA should facilitate listening sessions on the deductible concept with every state.

Regardless of which concept FEMA chooses to meet its goals, and we urge FEMA to forego adopting a deductible, NRECA recommends that FEMA conduct listening sessions with stakeholders prior to making any final decisions on adopting a deductible or other concept. NRECA members have had preliminary conversations with state emergency managers in many of the 47 states in which we operate. There is a variety of opinion and sentiment within the stakeholder community that is worthy of FEMA's attention. The responses to the ANOPR will reflect some of the opinion and sentiment but we encourage FEMA to conduct listening sessions with the states and/or by region.

III. Answers to specific questions FEMA posed in the ANOPR

Despite our general opposition to the deductible concept and our belief that the alternatives we offer above would better serve the American taxpayer, FEMA, Recipients and Subrecipients, we answer below some of the specific questions about the deductible concept FEMA has posed in the ANOPR.

1. Calculating the Deductible: How should FEMA calculate the deductible amount for each Recipient to adequately reflect individual Recipient capacity?

a. Using the Public Assistance per capita indicator established by 44 CFR 206.48(a)(1)? Why?

As stated above, NRECA is opposed to the deductible concept and would recommend instead that FEMA consider:

a. Developing a sliding federal cost share scale. The federal cost share would increase or decrease depending on how quickly reimbursements are made; **OR**
b. Increasing the per capita amount used to evaluate recommendations for the declaration of a federal disaster; **OR**
c. Decreasing the federal cost share.

b. Using population estimates? Why?

Using population estimates to develop a deductible measure would be particularly inequitable and harmful to the rural areas our members serve. Given the sparse populations in our service territories, electric cooperatives would, under this metric, contribute to neither the deductible itself, nor to any credits applicable to the deductible.

i. If so, should FEMA continue to rely upon the decennial census population calculations, consider population estimates, or consider other population calculation sources and why?

See our response to b. above.

b. Using the Recipient's fiscal capacity? Why?

We repeat our opposition to a deductible. This question supports our contention that a deductible would be overly burdensome, complex and give rise to disparities between and among states, localities, tribes and other stakeholders.

The less fiscal capacity, the lower the deductible should be. However, issues arise as the fairness and equity of penalizing states that have little to no fiscal capacity with a deductible. Along the same lines, states with high fiscal capacity that suffer few natural disasters shouldn't be penalized with a high deductible. Again, the issues with a deductible concept are complex and subject to judgement. Simpler solutions are offered earlier in our comments.

i. If so, how should FEMA measure fiscal capacity? Which metrics should be used to assess it and why? Please also identify preferred sources for suggested metrics. Potential metrics include but are not limited to:

1. Actual revenue.

This question supports our opposition to a deductible and our advocacy for a simpler alternative. If FEMA relies on actual revenue, disparities will abound and pleas for the need to average over some period of time to reflect actual revenue or normalize for "good" and "bad" years. The task of calculating and reflecting "actual" data would be enormous and fraught with political risk.

2. Potential revenue.

Contemplating the calculation of potential revenue should give FEMA reason to abandon the deductible concept. This metric is susceptible to wide variations and interpretations. For example, entities that wish to game the system would be inclined to underestimate potential revenue as a means to a lower deductible.

3. Total Taxable Resources.

Commenting on this question leads to further concern about the ability to equitably devise a deductible program. Would these be federal or state taxable resources? Different states tax different revenues at different rates. How would FEMA equalize the various tax rates and components?

4. Gross Domestic Product.

This metric is difficult as there seems to be little correlation between a state's GDP and the occurrence or frequency or intensity of natural disasters. While GDP is a good measure of the overall health of a state, using it as a basis for a deductible may have unintended consequences that don't take into consideration the fact that a state with high GDP may have fewer or more disasters than a state with a lower GDP. For example, in 2015, New York, ranked third in GDP by state, received $0 in public assistance funds. In the same year, West Virginia, ranked 40th in GDP, received $57 million in Public Assistance Funds[9]. In theory, New York should have a much higher deductible and New Mexico much lower, despite suffering similar disaster damages in that one year. And, in theory, New Mexico would receive more from FEMA under that scenario because of a lower deductible.

5. Budget surplus/deficit.
6. ***Economic projections.***
7. Bond ratings.
8. Unemployment rate.
9. Other.

Use of any of these metrics to calculate a deductible amount could further skew which states pay a higher deductible than others. A state's economic projections, bond ratings or unemployment rate have little to do with its ability to withstand damages from natural and other disasters. Stakeholders may argue that a state with healthy bond ratings, low unemployment rates and consistent budget surpluses should pay a much higher deductible. Alternatively, those states with healthy bond ratings, low unemployment rates and budget surpluses would likely and appropriately argue that they should pay the lowest of all deductibles. None of these potential metrics relate meaningfully to a state's ability to withstand the economic consequences of a major natural disaster.

d. Using a measurement of disaster risk? Why?

i. If so, how should FEMA measure disaster risk? Which metrics should be used to assess it and why? Potential metrics include, but are not limited to:

1. Past presidential declarations.

As FEMA well knows, past is not prologue in disaster frequencies, locations and intensity. This use of past declarations to calculate a deductible is neither appropriate nor equitable.

2. Past FEMA disaster relief.

[9] www.FEMA.gov and www.BEA.gov

See our response to question d.i.1 above.

3. Insurance industry data.

This metric wouldn't capture information on electric cooperatives as there are no insurance products that cover poles, towers and conductor - those assets that are typically subject to the most damage from natural disasters.

4. Climatological data, including projected future risk.

To the extent that FEMA ignores the opposition of NRECA and others to a deductible concept, this metric may be appropriate but FEMA should be prepared to gather additional stakeholder input on and propose which climatological data will be used, how it will be reported and most importantly, how future risk will be calculated. We suggest that FEMA's resources would be better spent focusing on data and processes it has well in hand today – i.e, federal cost share data and per capita data targets.

5. Priority placed on mitigation in the State or local budget.

The specter of using this metric increases the concern and opposition of NRECA to a deductible concept. How does FEMA propose to measure priority? Percentage of budget? Increase over prior years? This pits all human needs and public service expenditures against storm damage risk mitigation. To use this metric as a means for allocating disaster reimbursement dollars leads to the unfortunate, and we hope incorrect, conclusion that FEMA is trying to put itself out of business, or at least deny to Recipients and Subrecpients the very funding FEMA was created to allocate.

2. Scope of Deductible: How should FEMA define the applicability of the deductible to ensure it incentivizes meaningful improvements in planning, fiscal capacity, and risk mitigation?

a. Should the deductible apply to State governments, Territorial governments, Tribal governments, or all of the above?

We repeat herein NRECA's opposition to a deductible concept and urge FEMA to consider the alternatives we offer earlier in our comments.

Nevertheless, if FEMA decides to adopt a deductible program, for administrative ease, there should be one entity responsible for calculating the deductible, but that entity should be able to include credits and buy downs from all parties that are impacted by natural disasters and eligible to receive Public Assistance funding. The state, territorial government or Tribal government should serve as the entity that calculates and claims the deductible, in the unfortunate event that FEMA adopts this ill-advised policy. We strongly recommend that FEMA design the program in such a way as to give each state, territory or Tribe flexibility in how it works with local governments and other private not for profit entities eligible for FEMA Public Assistance funding, to calculate the deductible and any credits and buy downs.

b. To which of the following types of FEMA Public Assistance should the deductible apply and why?

i. Direct Federal Assistance (emergency work performed, or contracted for, by the Federal government at the request of the Recipient).

ii. Emergency Work (debris removal and emergency protective measures).
iii. Permanent Work (infrastructure repair and replacement).
iv. Management Costs.
v. Other.

We reiterate our opposition to the deductible concept. Nevertheless, should FEMA decide to proceed with the concept, NRECA is of the view that a deductible should be applied ***once*** and to ***all*** categories of work. This approach would increase the administrative ease of applying a complex concept. The deductible should be a dollar amount, not a percentage. Thus, for example, if the deductible for a state is $10,000, it shouldn't matter if emergency work or permanent work hits that level first – whichever category of costs totals over $10,000 should be used to demonstrate that the deductible has been met.

3. Satisfying the Deductible: How should a Recipient be able to satisfy its deductible?

a. Should only Recipient actions be allowed to satisfy the deductible, or should Subrecipient actions be considered as well and why?

Should FEMA proceed with developing the deductible concept despite opposition from many stakeholders including NRECA, we recommend that Subrecipient actions should be considered as satisfying any deductible. NRECA member co-op damages currently counts towards the declarations, so it is only fair that mitigation by co-ops be counted towards satisfying any deductible.

i. If Subrecipient actions should be considered, which of the following Subrecipients should be included and why?
1. Local governments.
2. Indian Tribal governments.
3. Private nonprofit organizations.

NRECA reiterates here our opposition to the deductible concept. We believe we are not alone in our opposition. However, if FEMA proceeds with the concept, we recommend that all Subrecipient actions should be considered towards calculation of a deductible and any credits against the deductible, as Subrecipients' damages count towards the declaration threshold.

c. What of the following types of actions should qualify towards satisfying the deductible and why?

i. Work that would be eligible for FEMA assistance but for the deductible.
ii. Management costs for work that would be eligible for FEMA assistance but for the deductible.
iii. Spending on incidents that do not receive a Presidential declaration and supplemental FEMA assistance (for example, emergencies declared by the Governor).
iv. For incidents that do receive a Presidential declaration, spending in jurisdictions that were not designated for supplemental FEMA assistance.
v. Cost-share requirements for FEMA programs.
1. If so, which programs and why?
vi. Spending on projects beyond the cost-share required amount.
vii. Investments in emergency management programs using non-Federal funds.
viii. Establishment of a disaster relief fund or ''rainy day'' fund.

ix. Expenditures from a disaster relief fund or ''rainy day'' fund.
x. Establishment of an individual assistance program.
xi. Expenditures from an individual assistance program.
xii. Planning, preparedness, or mitigation programs supported by non-Federal funding.
xiii. Adoption of standardized or enhanced building codes.
xiv. Proportion of the jurisdiction which is covered by standardized and/or enhanced building codes.
xv. Other.

The breadth and complex detail contained in this question underscores why NRECA and other stakeholders are opposed to the deductible concept. The expense of recording, tracking, auditing and otherwise managing all the elements listed above as part of proving a deductible has been met would involve inordinate waste of human capital not to mention create additional administrative burden at the state, local, tribal, and non-profit level.

In addition, we would in particular urge FEMA to recognize that, in the case of electric cooperatives, establishment of a rainy day fund may have unintended and negative consequences. Take, for example, a small rural cooperative facing a budgeting decision to either harden its system as a prudent utility operator, or divert its limited funds to a "rainy day" fund for the sole purpose of offsetting the financial impact of deductible. Either decision has implications for the cooperative and its ability to manage restoration of power after a natural disaster.

d. How much of an administrative burden would it be for Recipients to track, and submit for verification, documentation related to each manner of satisfying the deductible?

Tracking and submitting documentation related to each manner of satisfying the deductible would be extremely burdensome. Subrecipients and Recipients and FEMA would have to agree to a common reporting and recording systems. FEMA and stakeholders would have to develop audit processes and principles. Administrative time to track and record each action that could satisfy the deductible would be a huge commitment of time. FEMA expense to comb through records that document actions to satisfy the deductible would be huge.

The issue of FEMA regional decision discrepancies would also come in to play as FEMA regional staff may differ on what qualifies as a credit against the deductible.

All of this argues for the simplicity of using existing data points (federal cost share and per capita benchmarks) that, can be increased or decreased in a very transparent way based on clear guidelines and goalposts[10].

i. How would Recipients track the documentation?
ii. How should FEMA verify the information?

The two questions above illustrate one of NRECA's many concerns with the deductible concept. FEMA would have to increase its administrative and management staff to oversee a deductible program. In an attempt to save federal dollars, FEMA would be spending more federal dollars. This is contrary to Congress' desires and the budget cuts FEMA (and every other federal agency) has suffered in the last

[10] We recognize that changing the federal cost share would require Congressional action to amend the Stafford Act.

several years. Of the critical work that FEMA performs, what work can the agency stop doing in order to administer a deductible program?

d. How should these actions be counted or credited toward satisfaction the deductible? Why?

i. Dollar-for-dollar reductions in the deductible. For example, each dollar spent through a Recipient's own individual assistance program could count as a dollar toward meeting the deductible.

ii. Percentage credits toward the deductible. For example, a Recipient may receive a credit of X percent of the deductible for establishing its own individual assistance program.

iii. Other. If so, please provide details regarding these other actions.

4. Incentivizing Change: FEMA believes a deductible could improve the United States' disaster management system and increase disaster resilience nationally by driving Recipient legislative action, budgeting, planning and other measures that further greater resilience. FEMA seeks comment on this, as follows:

a. Will a deductible requirement incentivize potential future Recipients of disaster assistance to adopt measures that make them more resilient or more capable to respond to future disasters? If so, how?

b. In which of the following areas should FEMA focus the incentives of a deductible approach in order to achieve those improvements in disaster management and resilience and why?

i. Increased fiscal capacity to address disasters at the Recipient level.

ii. Better planning by Recipients for the financial costs of disaster.

iii. Reduced long-term impact of disasters.

iv. Reduced risk of loss from disaster.

v. Decreased future disaster costs.

vi. Better levels of cooperation among neighboring jurisdictions.

vii. Increased State emergency management staffing and funding.

viii. Other.

NRECA respectfully disagrees with the premise of this question. A deductible will do nothing more than pass budgetary pressures from the federal level to the state, local, tribal and non-profit level. Like federal agencies, Recipients and Subrecipients are under extraordinary pressure to develop budget savings while responding to human and social needs of our constituents. Congress passed the Stafford Act specifically to, among others goals to provide "an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters…"[11] Our view is that the deductible concept is outside the goals Congress intended for the agency.

c. What specific actions should FEMA seek to incentivize and why? Potential actions include:

i. Acceptance of greater financial responsibility for disaster costs by non-Federal entities.

ii. Increased non-Federal investment in emergency management programs generally.

iii. Increased investment in mitigation strategies at Recipient levels.

iv. Establishment of Recipient disaster relief funds or ''rainy day'' funds.

1. Increased spending from such funds where they already exist.

[11] 24 USC 5121 Title I, Sec 101(b)

v. Establishment of Recipient individual assistance programs.

1. Increased spending from such funds where they already exist.

vi. Increased level of Recipient financial relief provided for incidents that do not receive a Presidential declaration pursuant to the Stafford Act.

vii. Other.

d. How could a deductible incentivize the actions necessary to achieve improvements in the selected areas and how should FEMA design the deductible to provide that incentive?

e. Are there alternatives to a deductible that could serve as a better incentive to the selected improvements and actions?

i. If so, what are those alternatives?]

NRECA's view is that FEMA does not need to seek to incentivize any of the behaviors and programs above. We won't speak for the States but our observation is that they are doing all they are financially capable of to mitigate natural disaster impacts. Our own experience as owners and operators of electric grids is that we have fiduciary duties to maintain and improve our systems in order to be able to keep the lights on and get them back on as quickly as possible in the event of an outage.

There are several better alternatives to a deductible concept help FEMA meet its goals, be easier for FEMA to administer and be more effective than a deductible. These alternatives include two alternatives discussed earlier in our comments:

a. **Create a sliding scale federal cost share that rewards FEMA for prompt resolution of claims.**[12]

Under this concept, NRECA proposes that FEMA should consider using the federal cost share as the tool to meet its fiscal goals. NRECA proposes that FEMA should decrease the federal cost share to 73% across the board, down from the current 75%[13]. This initial decrease will provide savings to FEMA immediately although increasing costs for Recipients and Subrecipients. As a second step under this proposal, FEMA should consider further decreasing the federal cost share should FEMA be able to meet certain speed of payment goals. For example, if FEMA delivered payments within 30 days of the obligation of funds, the federal cost share would remain at 73%. If payment takes longer than 90 days, the federal cost share would increase to 74%. If payment takes longer than 120 days, the federal cost share would increase to 75%.

This concept would be easy to administer and create incentives for both FEMA and Recipients and Subrecipients. Recipients and Subrecipients would receive lower FEMA funds, unless FEMA is effective in conducting reviews and obligating funds.

-OR-

b. **Increase the per capita amount used to assess damages and recommend a federal declaration**.

Pursuant to 44 CFR 206.48, FEMA evaluates the per capita impact of a disaster to support its recommendation that a disaster be declared and thus make federal assistance available via the Public Assistance Program to eligible entities. FEMA adjusts this figure based on the Consumer Price Index.

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[12] NRECA recognizes that this concept would require Congressional action to amend the Stafford Act.

In the same section of regulation cited above, FEMA explains why it evaluates the impacts of disasters at the county and local government level, as well as Tribal Government levels: "because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met."

Given that FEMA already has the program, processes and people in place to evaluate the extent of disasters according to a per capita figure; it makes sense for FEMA to consider simply increasing the per capita level of damages that must be met for FEMA to recommend a federal disaster declaration.

There are some potential hazards that come with this recommendation and we urge FEMA, if it chooses to assess this option, to hold meetings with all impacted stakeholders in order to assess how to implement an increase in the per capita threshold equitably.

-OR-

c. Lower the federal cost share[13]

While we prefer the concept of holding all stakeholders accountable for lower spending as discussed above, FEMA could also simply lower the federal cost share. This proposal is simple, straightforward and equitable. The disadvantage to this proposal is that it doesn't create incentives for FEMA to make its management and administration of its programs more efficient, a result that Congress and policy makers are seeking.

ii. Why would those alternatives be more effective than a deductible?

The alternatives described above would be more effective than a deductible for several reasons:

1. **Ease of administration:** FEMA, Recipients and Subrecipients are all familiar with both the federal cost share and the per capita calculation. Programs and processes are in place to track both. No new recordkeeping, calculations or audits would need to be developed.

2. **Ease of calculation:** All stakeholders are familiar with gathering the data needed to document and calculate the per capita amount of damage at both the state and local levels. Again, no new systems, processes or calculations need to be developed.

3. **Transparency:** Both federal cost share proposals and the per capita proposal would be applied in the same manner no matter the state or region, thus removing the concern over regional differences with a deductible.

4. **Fairness:** Because both federal cost share options and the per capita proposed alternative would be applied the same way in every state, the concern over lack of equitably treatment inherent in a deductible concept is not an issue with the alternatives we propose.

5. Implementation Considerations:

[13] NRECA recognizes that this concept would require Congressional action to amend the Stafford Act

How could FEMA design deductible implementation so as to maximize effectiveness of the deductible as an incentive, but also ensure Recipients have sufficient opportunity to adjust to it?
a. What specific actions might Recipients take if a deductible were introduced to FEMA's Public Assistance Program? What specific types of actions should we seek to incentivize through the establishment of a deductible?
b. How would Recipients meet the deductible?
i. Would Recipients seek to pass the costs of the deductible on to Subrecipients? How?
ii. Would the passing on of costs to Subrecipients be appropriate? Why or why not?
iii. Should FEMA seek to prevent Recipients from passing the costs on to Subrecipients? Why?
iv. If so, what methods could FEMA use to prevent the transfer of responsibility for costs from Recipients to Subrecipients?
c. Should the deductible be applied on an annual basis or per disaster?
i. If annual, how should FEMA define the year? Why?
ii. If per disaster, should there be a cap on the number of deductibles, or total deductible amount, that a Recipient should be responsible for in a given year? Why? In what way can FEMA be sensitive to problems caused by recurrent disasters through a deductible policy?
iii. If appropriate, how should FEMA set the cumulative annual deductible cap for repetitive disasters?
d. Should FEMA ever consider waiving all or part of the deductible? Why?
i. If so, under what circumstances should FEMA consider waiving all or part of the deductible?
ii. If so, how should FEMA determine what portion of the deductible should what portion of the deductible should be waived?
iii. How frequently should FEMA consider waiving all or a portion of the deductible? Why?
e. If FEMA introduced a deductible concept to the Public Assistance Program, what steps would Recipients take to adjust?
i. How long would it take Recipients, working with relevant stakeholders, to appropriately adjust to the introduction of a deductible?
ii. Should FEMA consider a phased implementation approach through which the deductible would be applied over time? Why?

iii. If so, over how much time should the deductible concept be phased in and in what way? Why?

Again, the number, breadth and depth of detail outlined in the question above amplify our concerns with the deductible concept.

First, there is little doubt that Recipients will pass on or share in some way a deductible requirement with Subrecipients, just as Recipients will no doubt want to count actions by Subrecipients into credits against a deductible.

Second, the issue of waiving all or a portion of a deductible is rife with issues of fairness and transparency. Who will decide who gets a waiver and who doesn't? How can this decision be made anywhere but at the federal level? Does FEMA have the bandwidth necessary to handle what will inevitably be a tsunami of requests for waivers? How will FEMA decide the merits of each request?

Third, we repeat our opposition to the deductible concept. However, if FEMA decides to proceed with the concept, we strongly recommend giving Recipients and Subrecipients years to phase in

the concept. The issues we have raised, and no doubt others we haven't raised, will take much experience to work out. NRECA appreciates the strong and deep working relationship we share with FEMA – that working relationship will come into play during any implementation period.

6. Estimating Impacts: Implementation of a deductible as a prerequisite for receiving Public Assistance would have an economic impact on future Recipients of disaster assistance.
a. Do Recipients currently maintain a disaster relief or ''rainy day'' fund?
b. If not, how much would it cost to establish and administer a disaster relief or ''rainy day'' fund?
c. If a Recipient could satisfy its deductible through provision of its own individual assistance program, would Recipients establish or expand existing individual assistance programs?
d. What are the costs of establishing and running various individual assistance programs?
e. If a Recipient could satisfy its deductible through an increase in planning, preparedness, or mitigation programs, would Recipients increase the level of such activities or programs?
f. If a Recipient could satisfy its deductible through adoption of enhanced building codes, would Recipients or Recipient communities adopt such codes?
g. What are the costs associated with adoption of such building codes?
h. What are the costs associated with the specific actions Recipients might take if a deductible were introduced to FEMA's disaster relief programs?
i. What, if any, disproportionate impacts might be borne by small nonprofit entities or small government jurisdictions (populations less than 50,000)?

As this question is specifically asked of Recipients, NRECA, whose members are Subrecipients will defer to our State partners to provide a detailed response. Due to our member-owned, not-for-profit status, we are required to collect from our member owners only the cost of providing electric service. Any over collection is repaid to member owners in the form of capital credits. Any undercollection results in a rate increase.

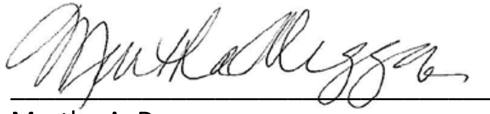
IV. Recommendations and Conclusions

As we state in the Introduction to these comments, NRECA understands the goals FEMA is attempting to meet by proposing a deductible concept. We are opposed to the method FEMA has chosen to meet those goals. We believe that FEMA's proposal is inconsistent with the Stafford Act. Other, more simple, efficient and equitable methodologies exist, that while still requiring Congressional action, are less complex, more efficient and more equitable. Our comments have focused on three alternatives to the deductible concept. These are: (i) devise a sliding scale federal cost share. The starting point for this concept is lower than the current 75% and could go lower if the speed with which FEMA disburses funds meets certain benchmarks; (ii) increase the per capita threshold for the declaration of federal disasters; and (ii) lower the federal cost share.

NRECA stands ready to meet with FEMA at any time to review our comments and our proposals.

Thank you for the opportunity to comment on this important topic.

Respectfully submitted,



Martha A. Duggan
Senior Principal Regulatory Affairs
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
Office: (703) 907-5848
Mobile: (202) 271-4395
Email: Martha.Duggan@NRECA.coop