



FEDERAL EMERGENCY MANAGEMENT AGENCY

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CONGRESSIONAL ADVISORY

INTERIM FINAL RULE – MANAGEMENT COSTS

On October 11, 2007, the Federal Emergency Management Agency (FEMA) published an interim final rule on Management Costs (72 FR 57869). The interim final rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The interim final rule is intended to simplify and clarify the method by which FEMA reimburses costs incurred by grantees and subgrantees in administering FEMA's Public Assistance (PA) and Hazard Mitigation Grant programs (HMGP) following a declared disaster or emergency, and establishes fixed management cost rates for compensating eligible grantees and subgrantees.

The interim final rule does not impact the amount of funding available for management costs, as the percentages for reimbursement proposed are based on historical average obligations.

Under the provisions of the Stafford Act (Stafford Act), 42 U.S.C. 5121-5206, and its implementing regulations, FEMA has the authority to reimburse State and local governments for administrative costs incurred in administering PA and HMGP programs. FEMA's PA Program provides funding through grants for emergency protective measures, debris removal, and repair, replacement, or restoration of facilities not met by insurance. The HMGP provides funding through grants to undertake sustained mitigation measures that will reduce or permanently eliminate the long-term risk to people and property from natural hazards and their effects. Sustained mitigation measures include acquisition for open space, elevations of flood prone properties, and wind or seismic retrofitting of structures.

Section 324 of the Stafford Act, 42 U.S.C. 5165b, requires FEMA to establish management cost rates for grantees and subgrantees that will be used to determine contributions for management costs and to review those management cost rates not later than 3 years after the date of establishment of the rates and periodically thereafter. "Management costs," for purposes of the interim final rule, are defined as any indirect costs, any administrative expenses and any other expenses not directly chargeable to a specific project that are reasonably incurred by a grantee or subgrantee in administering and managing a PA program or HMGP grant award.

Currently, funding for these management and administrative costs for PA and HMGP grantees and subgrantees are provided through one of three mechanisms:

1. Associated costs, also known as the Statutory Administrative Costs Allowance or the "sliding scale," under section 406(f) of the Stafford Act (which is repealed with the establishment of management costs under this rule pursuant to Pub. L. 106-390, sec. 202(b)(2)), which include:

- Extraordinary costs incurred by a grantee for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, such as overtime pay and per diem and travel expense of such employees, but not regular time; and
 - Necessary costs incurred by a subgrantee of requesting, obtaining, and administering Federal disaster assistance;
2. State Management Costs, which include regular time labor costs for grantee and temporary employees, contract costs, equipment and office supplies, and communications costs; and
 3. Grantee indirect costs, which are costs incurred through a project that are not directly related to it, such as utilities, rent, and other overhead.

These three types of costs are currently paid in accordance with Sec.206.228(a)(2) through 206.228(a)(3)(ii) and 206.228(b) for PA, and Sec. 206.439(b)(1) through (c)(2) for HMGP which are revised by the interim final rule.

The management cost rates set forth in the interim final rule replace what FEMA previously paid State and local governments for administering the PA and HMGP program through the three mechanisms and will be requested through the PA Project Worksheet (PW) or HMGP project application process. Management costs will be available for PA and HMGP grants awarded pursuant to declarations on or after November 13, 2007; management and administrative costs for declarations prior to that date will continue to be provided as outlined above.

On August 30, 2002, FEMA published a Notice of Proposed Rulemaking and proposed a methodology for calculating the management cost rates, as well as guidance for the implementation of section 324 of the Stafford Act. During the 30-day comment period, FEMA received comments from 23 States, the U.S. Virgin Islands, 2 associations, and 1 consulting firm. All comments were considered carefully in formulating the interim final rule. Although an NPRM was published, FEMA has published an interim final rule rather than proceeding to a final rule to provide the public with an additional opportunity to comment.

FEMA sent the interim final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801-808. The interim final rule is effective on November 13, 2007. The public comment period on the interim rule is open until November 13, 2007. All comments received are available for public inspection on www.regulations.gov under Docket ID FEMA-2006-0035.

If you have any questions, please feel free to contact FEMA's Office of Legislative Affairs at (202) 646-4500.