

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
<b>74:36:13 Continuous Emission Monitoring Systems</b>				
74:36:13:02 .....	Minimum performance specifications for all continuous emission monitoring systems.	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
74:36:13:03 .....	Reporting requirements .....	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
74:36:13:04 .....	Notice to department of exceedance .....	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
74:36:13:06 .....	Compliance certification .....	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
74:36:13:07 .....	Credible evidence .....	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
74:36:13:08 .....	Compliance Assurance Monitoring .....	6/13/2006	[Insert <b>Federal Register</b> page number where the document begins]; 10/11/2007.	
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<sup>1</sup> In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

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 [FR Doc. E7-19831 Filed 10-10-07; 8:45 am]  
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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Parts 206 and 207**

[Docket ID FEMA-2006-0035]

RIN 1660-AA21

**Management Costs**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In so doing, it simplifies and clarifies the method by which FEMA contributes to costs incurred by grantees and subgrantees in implementing the Public Assistance and Hazard Mitigation Grant programs and establishes fixed management cost rates for compensating eligible grantees and subgrantees.

**DATES:** *Effective Date:* This rule is effective on November 13, 2007.

*Comment Date:* Comments are due on or before November 13, 2007.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2006-0035, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* FEMA-RULES@dhs.gov.

Include Docket ID FEMA-2006-0035 in the subject line of the message.

*Fax:* 866-466-5370.  
*Mail/Hand Delivery/Courier:* Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

*Instructions:* All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of [www.regulations.gov](http://www.regulations.gov).

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Jonna M. Long, Office of the Chief Financial Officer, Federal Emergency Management Agency, PP 632, 500 C Street, SW., Washington, DC 20472, 202-646-7057, (facsimile) (202) 646-4268, or (e-mail) [jonna.long@dhs.gov](mailto:jonna.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, and its implementing regulations, the Federal Emergency Management Agency (FEMA) has the

authority to assist State and local governments in carrying out their responsibilities pursuant to a Presidentially-declared major disaster or emergency. Two of the major programs authorized by the Stafford Act that provide assistance to State and local governments are the Public Assistance (PA) program and the Hazard Mitigation Grant Program (HMGP).

- PA, implemented at part 206 subparts G and H of this chapter, provides funding through grants for emergency protective measures, debris removal, and repair, replacement, or restoration of facilities not met by insurance.

- HMGP, implemented at part 206 subpart N of this chapter, 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 this regulation, include 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.

Funding for management and administrative costs for PA and HMGP grantees and subgrantees is provided currently through one of three mechanisms:

- 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;

- State Management Costs, which include regular time labor costs for grantee and temporary employees, contract costs, equipment and office supplies, and communications costs; and

- 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 § 206.228(a)(2) through 206.228(a)(3)(ii) and 206.228(b) for PA, and § 206.439(b)(1) through (c)(2) for HMGP which are revised by this interim final rule.

The management cost rates set forth in this regulation replace what FEMA previously paid State and local governments for associated costs through the “sliding scale,” State management costs, and grantee indirect costs. Management cost funding will be requested through the PA Project Worksheet (PW) or HMGP project application process. PWs and HMGP project narratives are already submitted by grantees. Any costs that can be directly attributable to a project (at the grantee or subgrantee levels) will continue to be added directly to the PA PW, or HMGP application for the project.

## II. Comments, Responses, and Changes to the Proposed Rule

FEMA published a Notice of Proposed Rulemaking (NPRM) (67 FR 56130, August 30, 2002) proposing a methodology for calculating the management cost rates, and guidance for the implementation of section 324 of the Stafford Act. In the NPRM, FEMA

proposed to implement section 324 of the Stafford Act by creating an entirely new grant program for management cost funds, separate from grants awarded for PA and HMGP. FEMA also proposed to provide a set amount based on a percentage of the Federal share of PA and HMGP projections for a declaration. That amount would be available for PA and HMGP grant management and administration, and for grantees and subgrantees, and would allow grantees the flexibility to distribute funds in a manner representative of their priorities for management of the two programs.

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 this interim final rule. A summary of the comments received, as well as FEMA’s responses, is set forth below.

### *a. General Comments and Changes*

#### 1. Adequacy of Rates

FEMA received several comments about the rates that were published in the proposed rule, with many of the commenters claiming the rates were inadequate for effective program management and that FEMA did not accurately reflect costs not paid with Federal funds. As the rates are based on what FEMA historically paid grantees and subgrantees for program management, and historically, grantees and subgrantees were able to administer and manage PA and HMGP at that level of funding, FEMA does not believe the rates will be inadequate for future program management.

FEMA acknowledges that the rates prescribed may not cover all costs incurred by a grantee. The Stafford Act, however, in sections 101(b), 401, and 501(a), establishes the Federal Government’s role in disaster response and recovery as supplementing State efforts in carrying out their responsibilities; management cost funds are contributions, not full funding. FEMA believes that basing the rates on historical Federal obligations is appropriate and, as the rates will be applied to the Federal share of program projections, grantees and subgrantees are reasonably expected to contribute at least a comparable amount of management cost funds to the non-Federal share.

In any case, as several commenters noted, the funds that FEMA will provide for management costs are only meant to contribute to costs that are not directly chargeable at the project level. FEMA will continue to reimburse

administrative or project management costs that can be properly documented and directly charged to the project.

#### 2. Separate Indirect Costs

Several commenters were concerned that the proposed funding for management costs did not comport with OMB Circular No. A–87 and part 13 which allow for the reimbursement of indirect costs and part 13 because in the proposed regulations separate payment for indirect costs would not be allowed. However, section 324 of the Stafford Act defines management costs as including indirect costs; therefore, separate reimbursement for indirect costs is not permitted, because doing so would be duplicative.

#### 3. Increased Costs Due to New Grant Process

Some commenters were concerned that the management cost rates as calculated did not account for the additional costs of application, administrative, monitoring, and reporting requirements of the new grant program outlined in the proposed rule. Since publication of the proposed rule, and in response to comments, FEMA has decided to implement section 324 of the Stafford Act as part of the PA and HMGP programs and not as a separate grant program. The additional requirements of a separate grant program no longer apply.

#### 4. Combined Rate for PA and HMGP

In the proposed rule, FEMA proposed to provide a combined set amount that would be available for both PA and HMGP grant management and administration to allow grantees the flexibility to distribute funds in a manner representative of their priorities for management of the two programs.

Some commenters felt that providing a set amount for a declaration that would be available for PA and HMGP did not provide the flexibility to distribute the funds in a manner representative of the grantee’s priorities for management of the two programs, but rather would be impractical and create additional burden to program managers. Because FEMA has decided to implement section 324 of the Stafford Act as part of PA and HMGP and not as a separate grant program, these concerns are moot. In this interim final rule, FEMA is publishing three management cost rates: One for PA pursuant to major disaster declarations; one for HMGP pursuant to major disaster declarations; and one for PA pursuant to emergency declarations.

## 5. Combined Rate for Grantee and Subgrantees

FEMA received a few comments critical of its proposal to provide management cost funds to grantees for both grantee and subgrantee use. One State commented that the process could be very divisive unless State plans were in place and accepted prior to declaration. FEMA agrees; accordingly, in the interim final rule, FEMA is requiring States to outline their plans for subgrantee treatment in the State administrative plans required for PA and HMGP.

Moreover, two States commented that management cost funding administration would be simplified if subgrantee costs were based on project award or the total cost of the project. FEMA agrees that these are viable options for States to consider. Nevertheless, for the reasons set forth below, FEMA has not changed the combined rate concept.

FEMA's relationship in PA and HMGP is with the grantee; the grantee has the direct relationship with its subgrantees. FEMA believes that, just as a grantee has the right and the ability to determine cost-sharing requirements for its subgrantees, it has the right and the ability to determine reasonable contributions for management costs that cannot be directly charged to projects.

## 6. Updated Calculation of Management Cost Rates

In the proposed rule, FEMA published rates for major disaster and emergency declarations based on obligations for major disasters and emergencies declared in the 6-year period 1995 through 2000 and supplemented by data from States that were able to provide information on costs not reimbursed by FEMA. As FEMA's disaster processing systems were not fully automated for that period, data came from various sources.

In August 1998, FEMA implemented its National Emergency Management Information System (NEMIS). NEMIS provides the capability to extract data on sliding scale, State management cost, and indirect costs obligations. In this interim final rule, FEMA is publishing three management cost rates: One for PA pursuant to major disaster declarations; one for HMGP pursuant to major disaster declarations; and one for PA pursuant to emergency declarations. NEMIS data for major disasters and emergencies declared in the six-year period August 1998 through July 2004 were used to update the management cost rate calculations.

## b. Section-by-Section Analysis

### 1. Definitions

FEMA received comments from five States on § 207.2 of the proposed rule. One commenter requested that FEMA add a definition of "close out;" this was done.

In the proposed rule, FEMA defined "lock-in" as the amount of management cost funds available to a grantee for a particular major disaster or emergency, as FEMA determines at 30 days, 6 months, and after the final HMGP lock-in. Two germane comments were received on the definition of "lock-in." One commenter suggested that large projects that take more than 6 months for FEMA approval would not be factored into the rate and therefore the amount available to the State would be reduced. FEMA believes this is incorrect as the amount of management cost funding that will be made available will be based on program projections—not approved projects. Another comment asserted that this "produces an even harder financial hit to the grantee and subgrantee" because current subgrantee administrative costs are based on the total obligation, not just the Federal share. This disparity is addressed because the percentage is based on what FEMA paid out over a 6 year period, including the funding paid to subgrantees that is based on the total project obligation, not just the Federal share.

One State asked what the basis for the management cost funding would be for the HMGP when only Individual Assistance (IA) and HMGP are declared. Under an IA/HMGP declaration, the HMGP management cost rate would be provided for management of that program based on the estimated projections (Federal share) for the HMGP program.

### 2. Applicability and Eligibility

FEMA received several comments about the applicable date described in § 207.3. In the preamble of the proposed rule, FEMA noted that the anticipated implementation date was subject to change. Progress toward implementation was slowed by several factors and the implementation date for management costs has been changed accordingly.

### 3. Responsibilities

One commenter suggested that, rather than reviewing the rate no later than three years after the rule is in effect, FEMA should review after 1 year. Because section 324 of the Stafford Act requires FEMA to review the management cost rates established not

later than 3 years after the date of establishment of the rates and periodically thereafter, FEMA retains the discretion to review sooner, if necessary. Accordingly, this change was not made.

Two States asked whether pass-through funding to subgrantees was mandatory. The Stafford Act defines the management cost rates as being for grantees and subgrantees. FEMA has added language to clarify the grantee's responsibility for determining the amount or percentage of management cost funding to be passed through to subgrantees and ensuring that it provides such funds to subgrantees.

Other States expressed concerns about setting a fixed rate. However, the Stafford Act requires FEMA to set management cost rates to be used to determine contributions for management costs—full compensation to a grantee or subgrantee is not implicit. FEMA believes that the sharing of costs—as PA and HMGP costs are shared—leads to better fiscal responsibility and accountability.

### 4. Determination of Management Costs

The title of this section has been renamed "Determination of management cost funding" to more accurately reflect that what is being determined is the amount of funding that will be available for management costs, not whether specific costs are eligible as management costs.

Two comments were received about the timing of, and adjustments to, the lock-in amount. One commenter felt that locking into a final amount at 9 months would cause unfair fiscal burdens on grantees and subgrantees. In the proposed rule, FEMA stated it would determine the final lock-in amount for management cost funding at 9 months or after the final HMGP lock-in ceiling was determined, whichever was later. After HMGP lock-in, the projected amount of funding for that program is set. FEMA believes that locking into a management cost amount after the HMGP ceiling is established maximizes the amount available for management costs. However, since the HMGP ceiling is currently expected to lock at 12 months, FEMA has changed the final lock-in date for management costs to 12 months or after HMGP lock-in, whichever is later. The other commenter suggested that the phased lock-in process should allow for increases as disaster cost estimates change; the rule as written allows this.

Two States provided comments on the \$20 million cap proposed for the total amount of management cost funds to be provided pursuant to a single

declaration. One State claimed that \$20 million equated to a \$453 million event, which would not be out of the ordinary. FEMA does not agree with this calculation, as it assumes the \$453 million was derived by calculating that \$20 million is 4.41 percent (the rate in the proposed rule) of \$453 million. In this case, \$453 million would indeed represent combined PA and HMGP projections; however, on average, PA and HMGP represent approximately 58 percent of total disaster costs. Therefore, \$20 million in management cost funding would approximately equal a \$781 million event ( $\$781 \text{ million} \times .58 = 453 \text{ million}$ )—far more out of the ordinary.

The other State commented that “[t]he identification of \$20 million as the “not to exceed” amount for management costs appears to be the real reason for this proposed rule.” FEMA disagrees with this statement, as the rule is being promulgated in response to a change in law (section 324 of the Stafford Act, 42 U.S.C. 5165b).

Although FEMA is now providing separate management cost rates and funding for PA and HMGP as part of the programs and not as a separate grant program, the single cap for management costs for the declaration has been retained.

#### 5. Eligible Use of Funds

Since publication of the proposed rule, and in response to comments, FEMA has changed the title of this section to “Use of funds” to more accurately reflect the content of the section.

FEMA received a number of comments and questions on this section, many related to individual items that were listed as “eligible” or “ineligible.” The items listed in the proposed rule were not meant to be exhaustive, but rather were to be representative of the types of costs for which the use of management cost funding would be appropriate. In response to comments, FEMA has determined that the lists are not necessary. Instead, the interim final rule states that all charges must be related to administration of PA and HMGP, must be properly documented, and must be made in accordance with § 13.22.

FEMA received a number of questions about the treatment of indirect costs. Because the statutory definition of management costs in section 324 of the Stafford Act, 42 U.S.C. 5165b, includes indirect costs, grantees and subgrantees may not add such costs to project costs or request reimbursement separately. After the effective date of this interim final rule, the only available mechanism for reimbursement of indirect costs for

PA and HMGP is use of management cost funding provided in this section.

In the NPRM, FEMA proposed that any management cost funds that were not needed for a specific declaration could be retained by the grantee or subgrantee, upon approval of a spending plan for improvement of the disaster programs’ general financial and grants management. Because such costs are already eligible management costs, if directly attributable to program management for that declaration, FEMA has determined there is no need for a second spending plan. Any such planned expenditures should be included with the documentation submitted to support the management cost funding request and any management cost funds not properly expended in direct support of PA or HMGP will be deobligated by FEMA.

#### 6. Application Procedures

FEMA received several comments about the proposed process and timing for applying for management cost funding. Because the requirements of a separate grant program no longer apply, the process for requesting management cost funding is simplified. Accordingly, FEMA has decided to implement section 324 by continuing to use the same application processes for management costs as it is currently using, rather than as a separate grant program. That is, grantees will continue to apply for PA management cost funding using a PW and its associated forms, if applicable, and for HMGP management cost funding using a project narrative.

Additionally, FEMA will not require detailed justifications to support management cost funding requests until 120 days after the date of declaration. This change will alleviate the burden to the grantee, at the busy time of initial response and recovery, and afford the opportunity for the grantee to provide a more thorough and accurate request to FEMA.

In the interim final rule, the “Application procedures” section has been changed to “Procedures for requesting management cost funding.”

#### 7. Grants Management Oversight

Since publication of the proposed rule, and in response to comments, FEMA has decided to implement section 324 of the Stafford Act as part of the PA and HMGP programs and not as a separate grant program. Subsequently, this section of the rule has been changed to “Management cost funding oversight.”

In the proposed rule, FEMA stated that management cost funds would need

to be expended not later than 6 years from the date of major disaster or emergency declaration, or by 90 days after grant closeout, whichever is sooner. The 6 year limit was meant to encourage proper grant management, which includes timely grant closeout. In response to comments asking for additional time and after further analysis, FEMA has changed the 6 year limit to a maximum of 8 years for major disaster declarations and 2 years for emergency declarations, or 180 days after the latest performance period date of a non-management cost PA PW or HMGP project narrative, respectively, for both types of declarations, whichever is sooner.

#### 8. Declarations Before October 1, 2002

Since publication of the proposed rule, FEMA has changed the implementation date of section 324 of the Stafford Act. Subsequently, § 207.9 of the rule has been changed to “Declarations before November 13, 2007.” This section includes provisions on administrative and management costs previously described in §§ 206.228 and 206.439.

FEMA received four comments disagreeing with the provision in the proposed rule that imposed a timeframe on performance periods for declarations made before implementation of section 324. In the interest of ensuring responsible grant management practices and moving towards consistency in the administration of management and administrative costs provided for the affected programs, FEMA believes this provision, which allows a reasonable amount of time for grantees to comply, is an appropriate and necessary provision.

#### 9. Review of Management Cost Rates

One State commented that it did not believe the “solution to controlling expenses is to adopt the flat rate percentage as published and then go back to the drawing board after this rule is in effect” and suggested deleting the periodic review and documentation requirements. FEMA did not make this change, as the Stafford Act requires the review and documentation. Further, section 324 of the Stafford Act is not a “solution to controlling expenses,” but rather a simplification of the multiple methods currently used to contribute to grantee and subgrantee costs.

### III. Regulatory Requirements

#### *Administrative Procedure Act*

Even though an NPRM has been published, FEMA is publishing this interim final rule rather than proceeding

to a final rule to provide the public with an additional opportunity to comment. FEMA has opted to provide this additional opportunity to comment although the changes to the regulations made in this interim rule are a logical outgrowth of the proposed regulations published in the NPRM and additional opportunity for public comment is not mandatory. As previously addressed in this preamble, the substantive changes to this regulation are as follows:

- Because of comments that raised concerns of increased costs and workload due to the creation of a new grant process, FEMA revised the regulations to incorporate management cost funding into the existing PA and HMGP programs.

- FEMA received comments from the public concerned that providing a combined set amount in management cost funds that would be available for both PA and HMGP would be impractical and create additional burden to program managers. Because of these comments, FEMA has revised the regulations to provide three management cost rates: PA pursuant to major disaster declarations; HMGP pursuant to major disaster declarations; and PA pursuant to emergency declarations. Due to the availability of better data provided by the use of the National Emergency Management Information System (NEMIS), in this interim rule FEMA updated the management cost rate calculations for those three rates.

- FEMA received comments that providing management cost funds to grantees for both grantee and subgrantee use could be divisive unless State plans are in place and accepted prior to declaration. FEMA agreed and revised the regulation to require States to outline their plans for subgrantee treatment in the State administrative plans already required for PA and HMGP.

- The implementation date was changed, as noted in the preamble to the NPRM.

- In response to comments concerned that locking into a final amount at 9 months would cause unfair fiscal burdens, FEMA changed the final lock-in date for management costs to 12 months or after HMGP lock-in, whichever is later.

- FEMA received several comments about the proposed process and timing for applying for management cost funding. As a response, FEMA will not require detailed justifications to support management cost funding requests until 120 days after the date of declaration to alleviate the burden on the grantee and

afford them the opportunity to provide a more thorough and accurate request.

- In response to comments asking for additional time to expend management cost funds, FEMA extended the limit of 6 years from the date of major disaster or emergency declaration or 90 days after grant closeout, whichever is sooner, to a maximum of 8 years for major disaster declarations and 2 years for emergency declarations, or 180 days after the latest performance period date of a non-management cost PA, PW or HMGP project narrative, respectively, for both types of declarations, whichever is sooner.

Further, under 5 U.S.C. 553(b)(B) FEMA finds that good cause exists for not publishing a Supplemental Notice of Proposed Rulemaking (SNPRM), because publishing an SNPRM would be contrary to public interest since immediate action is needed to correct weaknesses in awarding funds to cover grantee operations associated with the administration of PA and HMGP grants. As stated earlier in the preamble to this interim rule, Public Law 106-390, section 202(b)(2), created section 324 of the Stafford Act which becomes effective when FEMA has promulgated a management cost rate regulation (this regulation). Until this regulation is published, management cost funding is provided pursuant to subsection 406(f) of the Stafford Act, OMB Circular No. A-87, and part 13.

In its "Review of FEMA Policy for Funding Public Assistance Administrative Costs" (GC-HQ-06-40) dated April 28, 2006, FEMA was advised by the Department of Homeland Security Office of Inspector General (OIG), that it should take immediate action to implement section 324 of the Stafford Act. This was reiterated in the OIG's "Review of FEMA Internal Controls for Funding Administrative Cost under State Management Grants" memorandum dated January 9, 2007 (OIG-07-21). This interim rule is intended to establish management cost rates to replace the administrative allowance and state management grants and address funding and related control weaknesses immediately, while continuing to take public comment and, perhaps, further amend the regulations in light of those comments.

Pursuant to 5 U.S.C. 553(d), FEMA is making this rule effective 30 days after publication in the **Federal Register**. FEMA invites further comment from the public on this interim final rule.

#### *Congressional Review of Agency Rulemaking*

FEMA has sent this 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 rule is not a "major rule" within the meaning of that Act and will not result in an annual effect on the economy of 100,000,000 or more. Moreover, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor does FEMA expect that it will have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

#### *National Environmental Policy Act (NEPA)*

FEMA explained when the proposed rule was published that § 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under § 10.8(d)(2)(i), such as the provision of funding for management costs. No commenters disagreed with our determination. FEMA has not prepared an environmental assessment or environmental impact statement for this interim final rule.

#### *Paperwork Reduction Act of 1995*

In the proposed rule, FEMA proposed to provide management cost funding through a new grant program. Because that new grant program would collect new information from the public, FEMA determined that it would be subject to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520, and obtained Office of Management and Budget (OMB) approval for Control Number 1660-0063, Management Costs information collection. As a result of public comments and further analysis, as discussed elsewhere in the preamble of this interim rule FEMA has withdrawn its proposal to create a new grant program, and has decided to implement section 324 of the Stafford Act as part of the already existing PA and HMGP programs. FEMA submitted an OMB83D form on September 16, 2005 to discontinue OMB Control Number 1660-0063, Management Costs information collection; OMB approved the discontinuance on September 21, 2005. FEMA no longer intends to collect information with respect to that proposed grant program.

In this interim rule, FEMA implements section 324 by continuing to use the same application processes for management costs as it is currently

using, rather than as a separate grant program. That is, grantees will continue to apply for PA management cost funding using the Project Worksheet (PW) and its associated forms, if applicable, as already approved by OMB. The PW and associated forms for PA management cost funding are approved under OMB Control Number 1660-017, Public Assistance Progress Report and Program Forms information collection which expires on October 31, 2008. HMGP management cost funding would be provided using the project narrative approved under OMB Control Number 1660-0076, Hazard Mitigation Grant Program Application and Reporting information collection which expires May 31, 2010.

Use of these collections under this interim final rule does not impose additional burden under those program collections. By allowing grantees to continue to request management cost funding via the same processes with which they are familiar, FEMA expects that this rule will simplify the process and reduce the burden to the public.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Regulatory Flexibility Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

This interim final rule affects grantees that are State governments, or in certain situations, Indian tribal governments. It does not impact private sector entities. Further, the result of this interim final rule will be to reduce the administrative burden on both grantees and the Federal government by simplifying and clarifying the application process, grant administration, and reimbursement methods for management and administration costs by reducing the current three methods and processes to one. Further, grantees currently make numerous petitions for payment. Implementation of this interim final rule is expected to reduce the number of times grantees will need to petition to receive payment for management costs.

This 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. Although there is a proposed cap on the amount of management costs that can be provided per declaration, the interim final rule provides a mechanism for waiver in extraordinary circumstances.

Because this interim final rule does not impact the amount of funds provided to grantees, but simply reduces the administrative burden to State and Indian tribal government grantees, FEMA certifies that it will not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of 100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is not a "significant regulatory action" under Executive Order 12866; therefore, OMB has not reviewed it under that Order. As FEMA stated in the proposed rule, it would not have an annual effect on the economy of 100 million or more and FEMA knows of no other conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order.

As explained in the Regulatory Flexibility Act section, this interim final rule does not impact the amount of funding that will be provided by FEMA for management costs. Rather, the interim final rule simplifies and clarifies the processing and administration of management cost funding. The interim final rule will reduce the administrative

burden to both grantees and FEMA by reducing the multiple methods of reimbursement from three to one. Further, grantees currently make numerous petitions for payment. Implementation of this interim final rule will greatly reduce the number of times grantees will need to petition to receive payment for management costs.

This interim final rule does not materially alter the budgetary impact of the Public Assistance and Hazard Mitigation grant programs as the amount of funding available for management costs under this interim final rule is based on historical average obligations. Although there is a proposed cap on the amount of management costs that can be provided per declaration, the interim final rule provides a mechanism for waiver in extraordinary circumstances.

Because this interim final rule simplifies, clarifies, and reduces the administrative burden to grantees and FEMA, there are no additional costs due to this regulatory action.

#### *Executive Order 13132, Federalism*

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA reviewed the proposed rule under Executive Order 13132 and determined that the rule did not have "substantial direct effects on the States" and therefore did not have the type of federalism implications contemplated by the Executive Order. Four commenters disagreed, believing that there would be a shift of power and responsibilities. FEMA believes that the interim final rule is consistent with the terms of Executive Order 13132 in that it "shall grant the States the maximum administrative discretion possible" and "shall encourage States to develop their own policies to achieve program objectives" as directed by the Executive Order. The interim final rule does not significantly affect the rights, roles, and responsibilities of States, involves no additional preemption of State law, and does not limit State policymaking discretion.

*Executive Order 12898, Environmental Justice*

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994, FEMA has undertaken to incorporate environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin. FEMA stated when it published the proposed rule that no action it could anticipate under the proposed rule would have a disproportionately high and adverse human health effect on any segment of the population. No commenter disagreed with this determination and accordingly, FEMA reiterates that the requirements of the Executive Order do not apply to this rule.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13175, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal government, or FEMA consults with those governments.

This rule is required by statute, and, as FEMA stated when the proposed rule was published, it did not believe that the rule would significantly and uniquely affect the communities of Indian tribal governments, or the relationship between the Federal Government and Indian tribes, or the distribution of power and responsibilities between the Federal Government and Indian tribes. Moreover, the rule did not impose substantial direct compliance costs on tribal governments, nor did it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments. FEMA received no comments disagreeing with this determination. The interim final rule will also not significantly and uniquely affect the communities of Indian tribal governments, or the relationship

between the Federal Government and Indian tribes. Moreover, the rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

**List of Subjects**

*44 CFR Part 206*

Administrative costs, Administrative practice and procedure, Disaster assistance, Grant programs, Management costs, Reporting and recordkeeping requirements.

*44 CFR Part 207*

Administrative costs, Administrative practice and procedure, Disaster assistance, Grant programs, Management costs, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Federal Emergency Management Agency amends 44 CFR chapter I as set forth below:

**PART 206—FEDERAL DISASTER ASSISTANCE**

- 1. Revise the part heading of 44 CFR part 206 as set forth above:
- 2. The authority citation for part 206 is revised to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

- 3. Add new paragraph (b)(1)(iii)(K) to § 206.207 to read as follows:

**§ 206.207 Administrative and audit requirements.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*

(K) Determining the reasonable percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

- \* \* \* \* \*

- 4. Remove paragraphs (a)(2), (a)(3), and (b); reserve paragraph (b); redesignate paragraph (a)(4) as paragraph (a)(2) and revise it; and add new paragraph (a)(3) to § 206.228 to read as follows:

**§ 206.228 Allowable costs.**

- \* \* \* \* \*
- (a) \* \* \*

(2) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Stafford Act, 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

- 5. Add new paragraph (b)(4)(xiv) to § 206.437 to read as follows:

**§ 206.437 State administrative plan.**

- \* \* \* \* \*
- (b) \* \* \*
- (4) \* \* \*

(xiv) Determine the percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

- \* \* \* \* \*

- 6. Revise § 206.439 to read as follows:

**§ 206.439 Allowable costs.**

(a) General requirements for determining allowable costs are established in 44 CFR 13.22. Exceptions to those requirements as allowed in 44 CFR 13.4 and 13.6 are explained in paragraph (b) of this section.

(b) Administrative and management costs for major disasters will be paid in accordance with 44 CFR part 207.

- 7. Add part 207 to read as follows:

**PART 207—MANAGEMENT COSTS**

- Sec.
- 207.1 Purpose.
- 207.2 Definitions.
- 207.3 Applicability and eligibility.
- 207.4 Responsibilities.
- 207.5 Determination of management cost funding.
- 207.6 Use of funds.
- 207.7 Procedures for requesting management cost funding.
- 207.8 Management cost funding oversight.
- 207.9 Declarations before November 13, 2007.
- 207.10 Review of management cost rates.

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978

Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

#### § 207.1 Purpose.

The purpose of this part is to implement section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b.

#### § 207.2 Definitions.

*Cap* means the maximum dollar amount that may be provided to a grantee for management cost funds for a single declaration pursuant to § 207.5(c) of this part.

*Chief Financial Officer (CFO)* is the Chief Financial Officer of FEMA, or his/her designated representative.

*Cognizant Agency* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed on behalf of all Federal agencies. The Office of Management and Budget (OMB) publishes a listing of cognizant agencies.

*Grant* means an award of financial assistance making payment in cash, property, or in kind for a specified purpose, by the Federal Government to an eligible grantee.

*Grantee* for purposes of this part means the government to which a Public Assistance (PA) or Hazard Mitigation Grant Program (HMGP) grant is awarded that is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State for purposes of administering a grant under PA, HMGP, or both. When an Indian tribal government has chosen to act as grantee, it will also assume the responsibilities of a "grantee" under this part for the purposes of administering management cost funding.

*Hazard Mitigation Grant Program (HMGP)* means the program implemented at part 206, subpart N of this chapter.

*HMGP lock-in ceiling* means the level of HMGP funding available to a grantee for a particular disaster declaration.

*HMGP project narrative* refers to the request submitted for HMGP funding.

*Indian tribal government* is a Federally recognized governing body of an Indian or Alaska Native tribe, band,

nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Indirect Costs* means costs that are incurred by a grantee for a common or joint purpose benefiting more than one cost objective that are not readily assignable to the cost objectives specifically benefited.

*Lock-in* means the amount of management cost funds available to a grantee for PA or HMGP, respectively, for a particular major disaster or emergency, as FEMA determines at 30 days, 6 months, and 12 months or upon calculation of the final HMGP lock-in ceiling, whichever is later.

*Management Costs* means any indirect costs, 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 or HMGP grant award. For HMGP, management cost funding is provided outside of Federal assistance limits defined at § 206.432(b) of this chapter.

*Project* refers to a project as defined at § 206.201(i) of this chapter for PA or eligible activities as defined at § 206.434(d) of this chapter for HMGP.

*Project Worksheet (PW)* refers to FEMA Form 90–91, or any successor form, on which the scope of work and cost estimate for a logical grouping of work required under the PA program as a result of a declared major disaster or emergency is documented.

*Public Assistance (PA)* means the program implemented at part 206, subparts G and H of this chapter.

*Regional Administrator* is the head of a FEMA regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to Regional Directors as discussed in Part 2 of this chapter.

*Stafford Act* refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206).

*State* is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Subgrantee* means the government or other legal entity to which a grantee awards a subgrant and which is accountable to the grantee for the use of the funds provided. Subgrantees can be

a State agency, local government, private nonprofit organization, or Indian tribal government.

#### § 207.3 Applicability and eligibility.

Only PA and HMGP grantees with PA and HMGP grants awarded pursuant to major disasters and emergencies declared by the President on or after November 13, 2007 are eligible to apply to FEMA for management cost funding under this part.

#### § 207.4 Responsibilities.

(a) *General.* This section identifies key responsibilities of FEMA and grantees in carrying out section 324 of the Stafford Act, 42 U.S.C. 5165b. These responsibilities are unique to the administration of this part and are in addition to common Federal Government requirements of grantees and subgrantees, consistent with OMB circulars and other applicable requirements, such as part 13 of this chapter.

(b) *FEMA.* FEMA is responsible for:

(1) Determining the lock-in amount for management costs in accordance with § 207.5.

(2) Obligating funds for management costs in accordance with § 207.5(b).

(3) Deobligating funds provided for management costs not disbursed in accordance with § 207.8(b).

(4) Reviewing management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(c) *Grantee.* The grantee must:

(1) Administer management cost funds to ensure that PA and HMGP, as applicable, are properly implemented and closed out in accordance with program timeframes and guidance.

(2) Determine the reasonable amount or percentage of management cost funding to be passed through to subgrantees for contributions to their costs for administering PA and HMGP projects and ensure that it provides such funds to subgrantees.

(3) Address procedures for subgrantee management costs amount or percentage determination, pass through, closeout, and audit in the State administrative plan required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGP.

#### § 207.5 Determination of management cost funding.

(a) *General.* This section describes how FEMA determines the amount of funds that it will contribute under this part for management costs for PA and/or HMGP for a particular major disaster or emergency.

(b) *Lock-in.* FEMA will determine the amount of funds that it will make

available for management costs by a lock-in, which will act as a ceiling for funds available to a grantee, including its subgrantees.

(1) Not earlier than 30 days and not later than 35 days from the date of declaration, FEMA will provide the grantee preliminary lock-in amount(s) for management costs based on the projections at that time of the Federal share for financial assistance for PA and HMGP, as applicable. In accordance with § 207.7(c), FEMA will obligate 25 percent of the estimated lock-in amount(s) to the grantee.

(2) For planning purposes, FEMA will revise the lock-in amount(s) at 6 months after the date of the declaration. In accordance with § 207.7(e), FEMA may obligate interim amount(s) to the grantee.

(3) FEMA will determine the final lock-in amount(s) 12 months after date of declaration or after determination of the final HMGP lock-in ceiling, whichever is later. FEMA will obligate the remainder of the lock-in amount(s) to the grantee in accordance with § 207.7(f).

(4) Rates. (i) For major disaster declarations, FEMA will determine the lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance pursuant to sections 403, 406, and 407 of the Stafford Act, 42 U.S.C. 5170b, 5172, and 5173, respectively, but not including direct Federal assistance. For major disaster declarations on or after November 13, 2007, the PA rate will be 3.34 percent.

(ii) For major disaster declarations, FEMA will determine the lock-in for HMGP based on a flat percentage rate of the Federal share of projected eligible program costs under section 404 of the Stafford Act, 42 U.S.C. 5170c. For major disaster declarations on or after November 13, 2007, the HMGP rate will be 4.89 percent.

(iii) For emergency declarations, FEMA will determine the lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance (sections 502 and 503 of the Stafford Act, 42 U.S.C. 5192 and 5193, respectively), but not including direct Federal assistance. For emergency declarations on or after November 13, 2007 the rate will be 3.90 percent.

(c) The dollar amount provided to a grantee for management cost funds for a single declaration will not exceed 20,000,000, except as described in paragraphs (d) and (e) of this section.

(d) The grantee must justify in writing to the Regional Administrator any requests to change the amount of the

lock-in or the cap, extend the time period before lock-in, or request an interim obligation of funding at the time of the 6-month lock-in adjustment. The Regional Administrator will recommend to the Chief Financial Officer whether to approve the extension, change, or interim obligation. Extensions, changes to the lock-in, or interim obligations will not be made without the approval of the Chief Financial Officer.

(e) The Chief Financial Officer may change the amount of the lock-in or the cap, or extend the time before lock-in, if the Chief Financial Officer determines that the projections used to determine the lock-in were inaccurate to such a degree that the change to the lock-in would be material, or for other reasons in his or her discretion that may reasonably warrant such changes. The Chief Financial Officer will not make such changes without consultation with the grantee and the Regional Administrator.

#### § 207.6 Use of funds.

(a) The grantee or subgrantee must use management cost funds provided under this part in accordance with § 13.22 of this chapter and only for costs related to administration of PA or HMGP, respectively. All charges must be properly documented in accordance with § 207.8(f).

(b) Indirect costs may not be charged directly to a project or reimbursed separately, but rather are considered to be eligible management costs under this part.

(c) Activities and costs that can be directly charged to a project with proper documentation are not eligible for funding under this part.

#### § 207.7 Procedures for requesting management cost funding.

(a) *General.* This section describes the procedures to be used by the grantee in requesting management cost funding.

(b) *State Administrative Plan Requirements.* State administrative plans, as required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGP, must be amended to include procedures for subgrantee management costs amount or percentage determination, pass through, closeout, and audit, as required by § 207.4(c)(3) before management cost funds will be provided under this part.

(c) *Initial Funding Request Submission.* Upon notification of the preliminary lock-in amount(s) for management costs based on the Federal share of the projected eligible program costs for financial assistance at that time for PA and HMGP, as applicable, the grantee must submit its initial

management cost funding request to the Regional Administrator. FEMA must receive the initial funding request before it will provide any management cost funds under this part.

(1) For PA management costs, funding requests shall be submitted using a PW.

(2) For HMGP management costs, funding requests shall be submitted using an HMGP project narrative.

(d) *Request Documentation.* The grantee is required to submit, no later than 120 days after the date of declaration, documentation to support costs and activities for which the projected lock-in for management cost funding will be used. In extraordinary circumstances, FEMA may approve a request by a grantee to submit support documentation after 120 days. FEMA will work with the grantee to approve or reject the request within 30 days of receipt of the request. If the request is rejected, the grantee will have 30 days to resubmit it for reconsideration and approval. FEMA will not obligate the balance of the management costs lock-in pursuant to a final funding request as described in paragraph (f) of this section or any interim amounts as allowed under paragraph (e) of this section unless the grantee's documentation is approved. The documentation must include:

(1) A description of activities, personnel requirements, and other costs for which the grantee will use management cost funding provided under this part;

(2) The grantee's plan for expending and monitoring the funds provided under this part and ensuring sufficient funds are budgeted for grant closeout; and

(3) An estimate of the percentage or amount of pass-through funds for management costs provided under this part that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount (e.g., number of projects, complexity of projects, X percent to any subgrantee).

(e) *Interim Funding Request.* If the grantee can justify a bona fide need for an additional obligation of management cost funds at 6 months, the grantee may submit a request to the Regional Administrator. Any interim obligations by FEMA must be approved by the Chief Financial Officer and will not exceed an amount equal to 10 percent of the 6-month lock-in amount, except in extraordinary circumstances.

(f) *Final Funding Request.* Upon notification of the final lock-in amount(s), the grantee must submit a final management cost funding request to the Regional Administrator. Any

necessary revisions to supporting documentation must be attached to the final funding request.

#### **§ 207.8 Management cost funding oversight.**

(a) *General.* The grantee has primary responsibility for grants management activities and accountability of funds provided for management costs as required by part 13 of this chapter, especially §§ 13.20 and 13.36. The grantee is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Period of availability.* (1) For major disaster declarations, the grantee may expend management cost funds for allowable costs for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, the grantee may expend management cost funds for allowable costs for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW, whichever is sooner.

(3) The period of availability may be extended only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for an extension, and must demonstrate that there is work in progress that can be completed within the extended period of availability. In no case will an extended period of availability allow more than 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion. FEMA will deobligate any funds not liquidated by the grantee in accordance with § 13.23 of this chapter.

(c) *Reporting requirements.* The grantee must provide quarterly progress reports on management cost funds to the Regional Administrator as required by the FEMA-State Agreement.

(d) *Closeout.* The grantee has primary responsibility for the closeout tasks associated with both the program and subgrantee requirements. Complying with each program's performance period requirement, the grantee must conduct final inspections for projects, reconcile subgrantee expenditures, resolve negative audit findings, obtain final reports from subgrantees and reconcile the closeout activities of subgrantees with PA and HMGP grant awards.

(e) *Audit requirements.* Uniform audit requirements in § 13.26 of this chapter apply to all assistance provided under this part.

(f) *Document Retention.* In compliance with State law and procedures and with § 13.42 of this chapter, grantees must retain records, including source documentation to support expenditures/costs incurred for management costs, for 3 years from the date of submission of the final Financial Status Report to FEMA that is required for PA and HMGP. The grantee is responsible for resolving questioned costs that may result from audit findings during the 3-year-record-retention period and returning any disallowed costs from ineligible activities.

#### **§ 207.9 Declarations before November 13, 2007.**

(a) *General.* This section describes how FEMA provides administrative and management cost funding for PA and HMGP for major disasters or emergencies declared before November 13, 2007.

(b) *Eligible direct costs.* Eligible direct costs to complete approved activities are governed by part 13 of this chapter. The eligible direct costs for administration and management of the program are divided into two categories as follows:

(1) *Grantee.* (i) *Statutory administrative costs.* FEMA may provide funds to the grantee to cover the extraordinary costs incurred in preparing project worksheets or applications, final inspection reports, quarterly reports, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. FEMA will base the funds on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively):

(A) For the first 100,000 of total assistance provided (Federal share), 3 percent of such assistance.

(B) For the next 900,000, 2 percent of such assistance.

(C) For the next 4,000,000, 1 percent of such assistance.

(D) For assistance over \$5,000,000, one-half of 1 percent of such assistance.

(ii) *State management administrative costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with § 13.22 of this chapter. The grantee and FEMA will share such

costs under the cost share provisions of applicable PA and HMGP regulations.

(2) *Subgrantee.* The grantee may provide funds to the subgrantee to cover necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants, based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively), for an individual applicant (applicants in this context include State agencies):

(i) For the first \$100,000 of net eligible costs, 3 percent of such costs.

(ii) For the next \$900,000, 2 percent of such costs.

(iii) For the next \$4,000,000, 1 percent of such costs.

(iv) For those costs over \$5,000,000, one-half of 1 percent of such costs.

(c) *Eligible indirect costs:* (1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of part 13 of this chapter and OMB Circular No. A-87, if the grantee provides FEMA with a current Indirect Cost Rate Agreement approved by its Cognizant Agency.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (b)(2) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

(d) *Availability.*

(1) For major disaster declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or predecessor form or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW or predecessor form, whichever is sooner.

(3) The reimbursement of grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) may be provided by FEMA after the periods of availability described in this section only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for further reimbursement, and must demonstrate that there is work in progress that can be completed

within the extended period of reimbursement. In no case will reimbursement be provided after 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion.

#### § 207.10 Review of management cost rates.

(a) FEMA will review management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(b) In order for FEMA to review the management cost rates established, and in accordance with part 13 of this chapter, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). After review of this documentation, FEMA will determine whether the established management cost rates are adequate for the administration and closeout of the PA and HMGP programs.

Dated: October 4, 2007.

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E7-20035 Filed 10-10-07; 8:45 am]

BILLING CODE 9110-49-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 12

[EB Docket No. 06-119; WC Docket No. 06-63; FCC 07-177]

### Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) considers petitions for reconsideration and/or clarification (Petitions) of the Order that adopted the Commission's rule, which required that certain local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers have an emergency backup power source for all assets that are normally powered from local AC commercial power. The Commission modifies its rules to address several meritorious issues raised in the petitions. These modifications will facilitate carrier compliance and reduce the burden on LECs and CMRS providers, while continuing to further

important homeland security and public safety goals.

**DATES:** The rules in 47 CFR 12.2 contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Jean Ann Collins, Deputy Division Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418-2792. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at (202) 418-0214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration in EB Docket No. 06-119 and WC Docket No. 06-63, FCC 07-177, adopted October 2, 2007, and released October 4, 2007. The full text of this document is available for public inspection and copying on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Room CY-B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488-5300, fax (202) 488-5563; or via e-mail [FCC@BCPIWEWEB.COM](mailto:FCC@BCPIWEWEB.COM). Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432.

### Synopsis of the Order on Reconsideration

#### Background

In January 2006, Chairman Kevin J. Martin established the Katrina Panel pursuant to the Federal Advisory Committee Act, Public Law 92-463, as amended. The mission of the Katrina Panel was to review the impact of Hurricane Katrina on communications infrastructure in the areas affected by the hurricane and to make recommendations to the Commission regarding ways to improve disaster preparedness, network reliability and communications among first responders such as police, fire fighters, and

emergency medical personnel. The Katrina Panel submitted its report on June 12, 2006. The Katrina Panel's report described the impact of the worst natural disaster in the Nation's history, as well as the overall public and private response and recovery efforts. The Commission's goal is to take the lessons learned from that disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness.

The Commission issued a Notice of Proposed Rulemaking (NPRM) on June 19, 2006 inviting comment on what actions the Commission should take to address the Katrina Panel's recommendations. On July 26, 2006, the Commission issued a public notice asking commenters to address the applicability of the Katrina Panel's recommendations to all types of natural disasters (e.g., earthquakes, tornadoes, hurricanes, forest fires) as well as other types of incidents (e.g., terrorist attacks, influenza pandemic, industrial accidents). The public notice also asked parties to address whether the panel's recommendations are broad enough to take into account the diverse topography of our Nation, the susceptibility of a region to a particular type of disaster, and the multitude of communications capabilities a region may possess. The Commission received over 100 comments and reply comments in response to the NPRM. In June 2007, the Commission released the *Katrina Panel Order* directing the Public Safety and Homeland Security Bureau (PSHSB) to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel). Among other things, the Commission adopted a rule requiring some communications providers to have emergency/backup power. The backup power rule adopted specifically states:

Local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers should maintain emergency backup power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that are normally powered from local AC