

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Parts 206 and 207

RIN 3067-AD29

#### Management Costs

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 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 while adequately protecting Federal financial interests.

**DATES:** We invite comments on this proposed rule. Please submit written comments on or before September 30, 2002.

**ADDRESSES:** Please address all comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (facsimile) (202) 646-4536 or (e-mail) [rules@fema.gov](mailto:rules@fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Veandeen H. Pace, Financial and Acquisition Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202-646-3256, (facsimile) (202) 646-3846, or (e-mail) [veandeen.pace@fema.gov](mailto:veandeen.pace@fema.gov).

#### SUPPLEMENTARY INFORMATION:

##### Introduction

Section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b,<sup>1</sup> requires FEMA: (1) To establish management cost rates for grantees and subgrantees that will be used to determine contributions for management costs; and (2) to review the management cost rates established not later than three years after the date of establishment of the rates and periodically thereafter.

The Management Cost Rate will replace what we currently pay State and local governments through the "sliding scale" under section 406(f) of the Stafford Act, State Management Costs, and indirect costs that are paid in

accordance with 44 CFR 206.228(a)(2) through 206.228(a)(3)(ii) and §206.228(b) for Public Assistance (PA), and 44 CFR 206.439(b)(1) through (c)(2) for the Hazard Mitigation Grant Program (HMGP). Management costs include any direct or indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project for PA and HMGP.

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 Project Worksheet (PW) or HMGP application for the project.

In the proposed rule, we state that management costs as outlined will be effective to apply to major disasters and emergencies declared on or after October 1, 2002. We anticipate implementing management costs on October 1, 2002; however, this date may change as the implementation process progresses. We invite comments from the public on the proposed implementation date.

Because management costs are authorized by a section separate from those authorizing PA and HMGP, we propose to implement section 324 separately from those two programs.

##### Calculation of Management Costs

We propose to use the "lock-in" concept to determine the amount of funds that we will make available to a State for management costs for a particular major disaster or emergency. We will base the lock-in on a flat percentage of the Federal share for the combined programs (PA and HMGP); the percentage will be equivalent to the average percentage amount paid by FEMA to grantees and subgrantees for those programs for management and administrative costs, including indirect costs, for major disaster and emergency declarations from 1995 through 2000.

To determine the percentage to be used for management costs, we collected data on management, administrative, and indirect costs from our Automated Disaster Assistance Management System, National Emergency Management Information System, Hazard Mitigation Historical Database, Integrated Financial Management Information System, and Disaster Financial Status Report. These systems and reports contain the accounting and financial data for FEMA and we believe it is logical to use these data types and sources when calculating the management cost rates.

We compiled raw data on actual obligations for PA and HMGP (total program obligations); administrative costs ("sliding scale"); and management

costs, including indirect costs, for major disasters and emergencies declared 1995–2000. The data were as of September 30, 2000 and represented what grantees and subgrantees received in total administrative costs. The raw data were then sorted various ways to determine whether trends existed. Among the data sorts we conducted were by type of declaration (major disaster or emergency), type of disaster, size of disaster, State, area or region of country, and number of declarations within the State. The data, when sorted, generally did not demonstrate any clear trends to support a multi-tiered rate structure. However, because on average management and administrative costs for emergency declarations were substantially less than for major disasters, we believe the data support having different rates for major disaster and emergency declarations.

Although we considered the feasibility of providing different management cost rates to States that participate in either the HMGP as a Managing State or in PA as a State managing a small disaster, we do not have any information at this time to support different rates for those initiatives. We encourage States that participate in either of these initiatives to document extraordinary management costs for our use in the required review of the rates.

FEMA contracted with a managerial cost accounting firm to validate our methodology for calculating the management cost rates. The firm reported to us at the conclusion of its review that the methodology used to set the rates was both reasonable and correct, and that we fairly assessed other possible alternatives in coming to our conclusions.

In the proposed rule, we state that the rate on or after October 1, 2002 will be 4.41% for major disaster declarations and 3.16% for emergency declarations. We invite comments from the public on the rates and the calculation.

Not earlier than 30 days from the date of declaration, we propose to provide the State a preliminary lock-in amount for management costs based on the combined estimated projections at that time of the Federal share for PA and HMGP. At the time of the preliminary lock-in, we will obligate up to 25 percent of the estimated lock-in amount to States through an obligation separate from the obligations for PA and HMGP.

To aid States in planning, we will revise the lock-in amount at six months after the date of the declaration. We will determine the final lock-in amount after the final HMGP lock-in amount is determined. At that time, we will

<sup>1</sup> Enacted in the Disaster Mitigation Act of 2000, Pub. L. 106-390, § 202.

obligate the full amount of management costs to the State.

The dollar amount provided to a State for management costs for a single declaration will not exceed \$20,000,000. The grantee must justify in writing to the FEMA Regional Director (RD) any requests to change the amount of the lock-in or the cap, or extend the time before lock-in. The RD will recommend to the FEMA Chief Financial Officer (CFO) whether to approve the extension or change. We may also initiate such changes. We will not make extensions or changes to lock-in time or amounts without approval of the CFO.

#### Eligible Use of Funds

Because grantees have the primary relationship with their subgrantees, States are responsible for passing through to their subgrantees a portion of the management cost funds that FEMA provides. States will have the flexibility to determine the amount of management costs funding used for each program (PA and HMGP) and passed through to their subgrantees under the two programs for their administrative costs. States will be responsible for managing the funds in order to ensure that the programs can be properly implemented and closed out in a timely manner.

We may allow the grantee or subgrantee to retain any management cost funds not needed for a particular major disaster or emergency so long as the grantee or subgrantee uses the remaining funds to cover costs associated with disaster programs' general financial and grants management enhancements. Remaining funds may not be used for disaster-specific PA and HMGP management for any declarations other than the major disaster or emergency for which FEMA provided them.

The grantee must submit a plan in writing to the FEMA Regional Director after the PA and HMGP grants are closed describing how it proposes to spend any remaining funds. The Regional Director will recommend to the FEMA Chief Financial Officer whether to approve the plan. Examples of allowable charges include grants

management training, financial systems improvements, and accounting enhancements. Grantees must spend all such funds in compliance with 44 CFR 13.22.

The State must spend management cost funds, including approved remaining funds, within six years from date of major disaster or emergency declaration, or by 90 days after grant closeout, whichever is sooner. This may only be extended at the request of the State, with the recommendation of the FEMA Regional Director, and with the approval of the FEMA Chief Financial Officer.

#### Disasters Declared Prior to Implementation of Management Costs

Associated expenses (administrative costs commonly known as costs paid through the "sliding scale") and State management costs paid in accordance with 44 CFR 13.22 will continue to be eligible for reimbursement for major disasters or emergencies declared before the effective date of this rule. We will reimburse such eligible costs for a maximum of six years from the date of the major disaster or emergency declaration. We will only extend payment of these costs at the written request of the State justifying the extension, with the recommendation of the FEMA Regional Director, and with the approval of the FEMA Chief Financial Officer.

#### National Environmental Policy Act (NEPA)

44 CFR 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 44 CFR 10.8(d)(2)(i), such as the provision of management costs. We have not prepared an environmental assessment or environmental impact statement for this proposed rule.

#### Paperwork Reduction Act of 1995

FEMA has determined that the implementation of management costs is subject to the Paperwork Reduction Act

of 1995, 44 U.S.C. 3501–3520. As required by the Paperwork Reduction Act of 1995 and concurrent with this proposed rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of information, which is contained in this proposed rule. This request for collection of information and notice for comment will be processed under OMB's clearance procedures in accordance with 5 CFR 1320.10 and complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

#### Collection of Information

*Title:* Management Costs.

*Type of Information Collection:* New.

*OMB Number:* New OMB number 3067–XXXX.

*Form Numbers:* SF 424, Application for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–16, Summary Sheet for Assurances and Certifications; FEMA Form 20–16A, Assurances "Non-Construction Programs; FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; FEMA Form 20–20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

*Abstract:* This collection is in accordance with our responsibilities under 44 CFR part 207 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance contributes funds toward the cost of managing and administering public assistance and hazard mitigation grant programs provided as a result of a Presidential major disaster or emergency declaration.

*Affected Public:* State and Indian tribal governments.

*Estimated Total Annual Burden Hours:* 3555.3 hours. A breakdown of the burden is charted below:

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (AxBxC)
SF–424: Application for Federal Assistance .....	56	2	45 minutes .....	84
FEMA Form 20–16: Financial Status Report .....	56	4	1 hour .....	224
FEMA Forms 20–16, 20–16A, 20–16C: Summary Sheet for Assurances and Certifications.	56	1	20 minutes .....	18.6
SF LLL: Disclosure of Lobbying Activities .....	56	1	10 minutes .....	9.3
FEMA Form 20–20: Budget Information Non-Construction Programs.	56	2	9.7 hours .....	1086.4
Narrative Statement .....	56	1	4 hours .....	224

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (AxBxC)
Progress Reports .....	56	2	2 hours .....	224
Extension or Change Requests .....	5	1	1 hour .....	5
Audits of States, Local Governments, and Non-Profit Organizations.	56	1	30 hours .....	1680
Total .....	.....	789	.....	3555.3

**Estimated Cost:** The total annual estimated costs to States and Indian tribal governments for information collection associated with management costs are \$67,195. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms.

**Comments:** Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Contact Veandean H. Pace, Financial and Acquisition Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646-3256, facsimile (202) 646-3846, or e-mail [veandean.pace@fema.gov](mailto:veandean.pace@fema.gov) for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone

number (202) 646-2625 or facsimile number (202) 646-3347 or email [muriel.anderson@fema.gov](mailto:muriel.anderson@fema.gov).

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

Under Executive Order 12866, 58 FR 51735, October 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 proposed rule would not have an annual effect on the economy of \$100 million or more and is not an economically significant rule under Executive Order 12866. Also, we know 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. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of the Executive Order.

#### **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.

We have reviewed this proposed rule under Executive Order 13132 and have determined that the rule does not have "substantial direct effects on the States" and therefore does not have the type of federalism implications contemplated by the Executive Order. We do not foresee that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

We believe that the publication of this proposed rule is consistent with the terms of Executive Order 13132. We invite comment from State and local representatives on this important issue.

#### **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, February 16, 1994, we have undertaken to incorporate environmental justice into our 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. No action that we can anticipate under the proposed rule will have a disproportionately high and adverse human health effect on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the

requirements of the Executive Order do not apply to this proposed rule.

### Executive Order 13084, Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, 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 we consult with those governments. If FEMA complies by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget a description of the extent or our prior consultations with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule is required by statute, but we do not believe that it will 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 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 in 44 CFR Parts 206 and 207

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

Accordingly, we propose to amend 44 CFR, Subchapter D—Disaster Assistance, as follows:

1. 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 costs.
- 207.6 Eligible use of funds.
- 207.7 Application procedures.
- 207.8 Grants management oversight.
- 207.9 Declarations before October 1, 2002.
- 207.10 Review of management cost rates.

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1979 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

#### § 207.1 Purpose.

The purpose of this part is to implement section 324 of the Stafford Act, 42 U.S.C. 5165b.

#### § 207.2 Definitions.

*Cap* means the maximum dollar amount provided to a State for management costs for a single declaration.

*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 publishes a listing of cognizant agencies.

*Grant* means an award of financial assistance. The management cost grant award will be based on a percentage of the projected Federal share of assistance provided under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act.

*Grantee* means the government to which a 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 Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP). When an Indian tribal government has chosen to act as grantee under PA and/or HMGP, it will also assume the responsibilities of a "grantee" under this part for the purposes of administering the management costs grant.

*Hazard Mitigation Grant Program (HMGP)* means the program authorized under section 404 of the Stafford Act, 42 U.S.C. 5170c and implemented at 44 CFR part 206, subpart N.

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

*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.

*Lock-in* means the amount of management cost funds available to a grantee for a particular major disaster or emergency, as FEMA determines at 30 days, six months, and after the final HMGP lock-in. The lock-in is a flat percentage of the Federal share for the combined dollar projections for PA and HMGP.

*Management Costs* means funding made available by FEMA to PA and HMGP grantees for use by grantees and subgrantees for contributions towards indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project.

*Project* refers to project as defined at 44 CFR 206.201(i) for PA and at 44 CFR 206.431(f) for HMGP.

*Project Worksheet* refers to FEMA Form 90–91, on which the scope of work and cost estimate for a logical grouping of work required as a result of a declared major disaster or emergency is documented.

*Public Assistance (PA)* means the program authorized under sections 403, 406, 407, 418, 419, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5172, 5173, 5185, 5186, 5192, and 5193, respectively) and implemented at 44 CFR part 206, subparts C, G, and H.

*Regional Director* is a director of a regional office of FEMA, or his/her designated representative.

*Stafford Act* refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, 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 non-profit organization, or Indian tribal government.

*We, our or us* means FEMA.

#### § 207.3 Applicability and Eligibility.

This rule applies to major disasters and emergencies declared by the President on or after October 1, 2002.

Only major disasters and emergencies for which the Public Assistance and/or Hazard Mitigation Grant Programs are declared and implemented are eligible for 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 Office of Management and Budget circulars and other applicable requirements.

(b) *FEMA.* Key responsibilities of FEMA include:

(1) Determining the lock-in amount for management costs at no earlier than 30 days, six months, and after the final HMGP lock-in ceiling, using the most currently available estimates of projected costs (Federal share) of PA and HMGP.

(2) Obligating funds for management costs under § 207.5(b) within five days of each applicable lock-in date.

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

(c) *Grantee.* Key responsibilities of the grantee include:

(1) Determining the amount of management cost funding to be applied to eligible costs for PA and HMGP.

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

(3) Managing management cost funds to ensure that PA and HMGP are properly implemented and closed out in a timely manner.

(4) Submitting a plan to the Regional Director for expenditure of any remaining management costs and ensuring that any such approved expenditures are closed out properly in a timely manner.

#### **§ 207.5 Determination of management costs.**

(a) *General.* This section describes how we determine the amount of funds that we will contribute under this part for management costs for a particular major disaster or emergency.

(b) *Lock-in.* We will determine the amount of funds that we will make available for management costs by a lock-in, which will act as a ceiling for funds available to grantees and subgrantees.

(1) We will determine the lock-in based on a flat percentage rate of the

Federal share for the combined programs (PA and HMGP, sections 403, 404, 406, 407, 418, 419, 502, and 503 of the Stafford Act, 42 U.S.C. 5170b, 5170c, 5172, 5173, 5185, 5186, 5192, and 5193, respectively). For major disaster declarations on or after October 1, 2002, the rate will be 4.41%. For emergency declarations on or after October 1, 2002, the rate will be 3.16%.

(2) Not earlier than 30 days from the date of declaration, we will provide the grantee a preliminary lock-in amount for management costs based on the combined estimated projections at that time of the Federal share for PA and HMGP. At the time of the preliminary lock-in, we will obligate up to 25 percent of the estimated lock-in amount to grantees separately from obligations for PA and HMGP.

(3) For planning purposes, we will revise the lock-in amount at six months after the date of the declaration.

(4) We will determine the final lock-in amount nine months after date of declaration or after we determine the final HMGP lock-in, whichever is later. We will obligate the remainder of the lock-in amount to the grantee at that time.

(c) *Grant limits.* The dollar amount that we will provide to a grantee for management costs for a single declaration will not exceed \$20,000,000.

(d) *Extensions or changes.* The grantee must justify in writing to the Regional Director any requests to change the amount of the lock-in or the cap, or to extend the time before lock-in. The Regional Director will recommend to the Chief Financial Officer whether to approve the extension or change. We will not make extensions or changes to lock-ins without the approval of the Chief Financial Officer.

(e) *Chief Financial Officer determination.* 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 that may warrant such changes. The Chief Financial Officer will not make such changes without consultation with the grantee and the Regional Director.

#### **§ 207.6 Eligible use of funds.**

(a) *General.* The grantee has primary responsibility for administration of management cost activities and accountability of funds as required by 44 CFR part 13, which details the general principles and requirements for allowable costs and grants management

to State, local and federally recognized Indian tribal governments.

(b) *Grant determinations.* Grantees will determine the percentage or amount of funding used for each program (PA and HMGP) and the percentage or amount to pass through for subgrantee use under the two programs.

(c) *Pre-award costs.* Pre-award costs incurred from date of declaration until the application is submitted and approved in accordance with § 207.7 may be eligible for reimbursement by funds provided under this part in accordance with 44 CFR 13.22.

(d) *Eligible costs.* The following represents eligible activities for which, if not charged directly to a project, the grantee or subgrantee may use management cost funds provided under this part in accordance with 44 CFR 13.22:

(1) Maintain a disaster administrative office, e.g., staff, staff travel, communications, printing, supplies, equipment, professional services, including indirect costs, directly related to the declaration for which the funds are provided;

(2) Provide technical assistance to disaster community applicants and subgrantees of disaster funding;

(3) Develop, revise, or update State administrative plans as required in 44 CFR 206.207(b) for PA and 44 CFR 206.437 for HMGP to assure that the plans are current with State policies and procedures and comply with program regulations;

(4) Review local plans for mitigation consistent with 44 CFR part 201;

(5) Assist in subgrantee application development, review, and selection of projects;

(6) Conduct or assist FEMA or the grantee in environmental consideration reviews;

(7) Provide oversight of grant, subgrant, or project contract implementation of:

(i) Grantee and subgrantee cash management;

(ii) Grantee and subgrantee accounting and reporting, including subgrantee accounting and tracking of progress and expenditure for projects;

(iii) Grantee and subgrantee cost documentation review;

(iv) Grantee and subgrantee monitoring, including report/desk reviews and site visits;

(v) Grantee and subgrantee audit compliance;

(vi) Closeout of subgrantee projects, e.g., final inspection, reconciliation of costs and payments, etc.; and

(8) Grantee closeout of all program activities.

(e) *Ineligible direct costs.* The following represents eligible project-related activities which, if paid with management cost funds provided under this part, may not be charged directly on a project worksheet:

- (1) Project worksheet and application preparation;
- (2) Small project validations;
- (3) Technical assistance;
- (4) Environmental consideration reviews;
- (5) Project inspections;
- (6) Cost reviews and/or financial audits; and
- (7) Quarterly and closeout reports.

(f) *Subgrantee costs.* Subgrantees may not charge indirect costs directly to a project, but rather will consider them eligible for funds provided under this part.

(g) *Overtime, travel, and per diem costs.* Overtime, travel, and per diem costs incurred during work under sections 403, 407, 502, and 503 of the Stafford Act are not eligible for reimbursement under this part, but rather will be reimbursed directly through a Project Worksheet.

(h) *Retained management cost funds.* We may allow the grantee or subgrantee to retain any management cost funds not needed for a particular declaration so long as the grantee or subgrantee uses the remaining funds to cover costs associated with the disaster programs' general financial and grants management enhancements. Remaining funds may not be used for disaster-specific PA and HMGP program management costs for any declaration other than the one for which FEMA provided them. After the PA and HMGP grants are closed, the grantee must submit a plan in writing to the FEMA Regional Director describing how it proposes to expend the remaining funds. The Regional Director will recommend to the FEMA Chief Financial Officer whether to approve the plan. Examples of allowable charges include grants management training, financial systems improvements, and accounting enhancements. All such funds expenditures must comply with 44 CFR 13.22.

#### **§ 207.7 Application procedures.**

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

(b) *Application submission.* The grantee must submit its initial management cost application to the Regional Director within 30 days of the declaration. We must receive the initial application before we will provide any assistance for management costs under

this part. FEMA will work with the grantee to approve or reject the application within 30 days after we receive the application. If we reject the application, the grantee will have 30 days to resubmit it for reconsideration and approval. Once we approve the application, we will obligate the balance of the management costs lock-in in accordance with § 207.5(b)(4).

(c) *Application Content.* The grantee will submit its management cost application to the Regional Director. The application must include:

- (1) Standard Form (SF) 424, Application for Federal Assistance;
- (2) FEMA Form 20–20, Budget Information—Non-Construction Programs and Budget Narrative;
- (3) Necessary Assurances, Certifications, and Lobbying Disclosures:
  - (i) FEMA Form 20–16, Summary Sheet for Assurances and Certifications;
  - (ii) FEMA Form 20–16A, Assurances—Non-Construction Programs;
  - (iii) FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements;
  - (iv) SF–LLL, Disclosure of Lobbying Activities; and
- (4) Narrative statement. The narrative statement must contain:

(i) A description of which types of activities described in § 207.6, Eligible use of funds, the grantee will undertake with management costs provided under this part;

(ii) A description of how the grantee will undertake activities described in § 207.6 if it does not plan to use management costs provided under this part to support them;

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

(iv) 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.

(5) Copies of the PA and HMGP Administrative Plans that were updated pursuant to the declaration.

(d) *Revised Application.* The grantee must submit a revised SF 424, FEMA Form 20–20 and Budget Narrative to the Regional Director after final lock-in is determined.

#### **§ 207.8 Grants management oversight.**

(a) *General.* The grantee has primary responsibility for managing management cost activities and accountability of funds as indicated in

44 CFR part 13, which details the general principles and requirements for grants management for state, local and federally recognized Indian tribal governments. The grantee is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Period of performance.* The grantee must expend all management cost funds not later than six years from the date of major disaster or emergency declaration, or by 90 days after grant closeout, whichever is sooner. We will deobligate and return to FEMA any funds that the grantee does not disburse within six years. We may extend this period only at the written request of the grantee, with the recommendation of the Regional Director, 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 performance.

(c) *Reporting requirements.*

(1) *Financial status reports.* The grantee must provide quarterly financial status reports to the Regional Director as required by the FEMA—State Agreement.

(2) *Progress reports.* The grantee must provide semi-annual progress reports to the Regional Director that describe overall progress on managing PA and HMGP, such as monitoring activities, results, obstacles to project completion, milestones, and upcoming events. Examples of progress that can be reported are completion of project identification and funding, pending environmental reviews, and scheduled technical assistance meetings to help local communities identify projects. The progress reports are due each April 30 and October 30 until the grant ends. The final progress report is due 90 days after the grant ends.

(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 costs and payments, 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 44 CFR 13.26 apply to all grant assistance provided under this part.

(f) *Document Retention.* In compliance with State law and procedures and with 44 CFR 13.42, grantees must retain records, including

source documentation to support expenditures/costs incurred against the grant award, for three years from the date of submission of the final Financial Status Report to FEMA. The grantee is responsible for resolving questioned costs that may result from the grant funding audit during the three-year record retention period and returning disallowed costs from ineligible activities.

#### **§ 207.9 Declarations before October 1, 2002.**

(a) *General.* This section describes how we will provide management costs for PA and HMGP for major disasters or emergencies declared before October 1, 2002.

(b) *Direct costs.* Eligible direct costs to complete approved activities are governed by 44 CFR part 13. The eligible direct costs for administration and management of the program are divided into two categories as follows:

(1) *Grantee costs*—(i) *Administrative costs.* We may provide funds to the grantee to cover the extraordinary costs that it incurred to prepare 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. We 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), three percent of such assistance.

(B) For the next \$900,000, two percent of such assistance.

(C) For the next \$4,000,000, one percent of such assistance.

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

(ii) *Management costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with 44 CFR 13.22. The grantee and we will share such costs under the cost share

provisions of applicable PA and HMGP regulations.

(2) *Subgrantee administrative costs.* 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, three percent of such costs.

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

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

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

(c) *Indirect costs*—(1) *Grantee.*

Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular No. A-87, if the grantee provides us with an Indirect Cost Rate approved by its Cognizant Agency.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because all costs are to be either charged directly, or covered by the subgrantee administrative costs allowed under paragraph (b)(2) of this section.

(d) *Availability.* We will reimburse allowable costs as described in this section for a maximum of six years from date of the major disaster or emergency declaration. The period may only be extended at the written request of the grantee justifying the extension to the FEMA Regional Director and with the approval of the FEMA Chief Financial Officer.

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

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

(b) In order for FEMA to review the management cost rates established, the grantee and subgrantee must document all costs expended for management costs (including cost overruns) and in accordance with 44 CFR part 13 and the

approved grant award budget. After review of this documentation, we will determine whether the established management cost rate is adequate for the administration and closeout of the PA and HMGP programs.

(c) We will publish as a Notice in the **Federal Register** any changes to the management cost rates.

### **PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988**

2. The authority citation for part 206 continues to read:

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; 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. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

#### **Subpart H—Public Assistance**

3. Amend §206.228 as follows:

(a) Remove paragraphs (a)(2), (a)(3) and (b), and reserve paragraph (b).

(d) Redesignate paragraph (a)(4) as paragraph (a)(2).

(e) Add paragraph (a)(3) to read as follows:

#### **§ 206.228 Allowable costs.**

(a) *Eligible direct costs.* \* \* \*

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

(b) [Reserved]

4. Revise § 206.439(a) to read as follows:

#### **Subpart N—Hazard Mitigation Grant Program**

#### **§ 206.439 Allowable costs.**

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

\* \* \* \* \*

Dated: August 20, 2002.

David A. Trissell,

Acting General Counsel.

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