



FEMA

September 6, 2022

MEMORANDUM FOR: Regional Administrators
FEMA Regions I – X

ATTENTION: Federal Coordinating Officers
Regional Recovery Division Directors
Consolidated Resource Center Directors

FROM: Melissa K. Forbes
Assistant Administrator
Recovery Directorate

SUBJECT: Simplifying the Public Assistance Program, Part 2

This is a follow up on my March 28, 2022 memorandum to further simplify the Public Assistance (PA) program. As stated in the memo and the [2022-2026 FEMA Strategic Plan \(Strategic Plan\)](#), we continue to look for opportunities to streamline the delivery of federal assistance and find ways for communities to navigate the PA program as seamlessly as possible. I am pleased to provide an update on our progress and announce additional changes to simplify the program.

Since March 2022, FEMA has been conducting a broad programmatic assessment evaluating program performance and customer experience. Through this assessment, FEMA met with representatives from all 50 states, 5 territories, and 9 tribes. FEMA conducted 1,009 interviews and surveyed 1,272 respondents to collect applicant feedback on the program. In May 2022, as recommended by the FEMA National Advisory Council (NAC), FEMA reestablished the Public Assistance Steering Committee. The Steering Committee is comprised of 10 federal and 23 state, local and tribal members and provides strategic feedback on programmatic changes. In April and July 2022, FEMA held two multi-day internal working sessions with representatives from all 10 regions and hurricane and wildfire prone states to discuss challenges that arise in recovery from major fires and hurricanes. Additionally, in August 2022, FEMA held its annual Public Assistance Workshop with 82 attendees from FEMA regions as well as state, tribal, territorial, and local governments to discuss potential program changes.

Based on that engagement and feedback, I am pleased to provide an additional update on near-term actions we are taking to simplify the PA program including: (1) streamlining administrative categorization of power restoration work; (2) eliminating the requirement to use consensus based codes and standards for replacement determinations; (3) streamlining documentation needed for work removal of hazardous limbs, trees and stumps; and (4) streamlining documentation needed for work performed through the Emergency Management Assistance Compact (EMAC).

Power Restoration Work Categorization

FEMA is providing applicants flexibility in how they claim costs for the work associated with power restoration projects.

During engagements, stakeholders reported delays in recovery due to administrative categorization of power restoration work. Work performed that restores the pre-disaster design and function of a facility in accordance with applicable codes and standards and incorporating hazard mitigation measures is defined as permanent work.¹ Work performed that saves lives, protects public health and safety, or protects improved property is considered emergency work.² FEMA recognizes that power restoration is unique in that the work can both save lives and restore the function of a facility. Slow power restoration can have devastating impacts on the overall response and recovery in the aftermath of a disaster.

To support rapid restoration of power and streamline administrative processes for power restoration projects, FEMA is providing applicants flexibility in how they claim costs for the work. For power restoration projects that meet both emergency work and the permanent eligibility criteria, to include being necessary to reduce or eliminate an immediate threat to life, health or safety and restoring the facility in accordance with applicable codes, standards and EHP requirements, Applicants may either claim the work as:

- an Emergency Protective Measure (Category B) (Note, force account labor straight-time for budgeted employees is not eligible as Emergency Work); or
- Permanent Work (Category F) (Note, mitigation funding authorized under the Robert T. Stafford Act Section 406 is only eligible when power restoration is funded as Permanent Work).

It should be noted that temporary power restoration work that is not completed in accordance with applicable codes and standards will be categorized as Category B. Applicants should work with their assigned Program Delivery Manager to categorize work appropriately.

Removal of Hazardous Trees, Limbs and Stumps

FEMA is eliminating size requirements for the eligibility of the removal of hazardous trees, limbs, branches, and stumps.

During stakeholder engagements, Applicants reported delays in recovery due to documentation required to support removal of hazardous trees, limbs, and stumps. Among other factors, debris removal is eligible for reimbursement when it is necessary to eliminate immediate threats to life, public health and safety, or reduce threats of significant damage to property.³ FEMA policy requires an Applicant to provide documentation on the size of each individual tree, limb, and stump to demonstrate its removal is necessary to address a threat to life, health, safety, or property.⁴ These

¹ 44 C.F.R. § 206.226.

² 44 C.F.R. § 206.225.

³ 44 C.F.R. § 206.224(a).

⁴ FEMA [Public Assistance Program and Policy Guide \(PAPPG\) V.4 \(2020\)](#) at 101-03.

requirements may delay debris removal operations and are confusing in many disasters where size of vegetative debris is not a proper way to evaluate the threat to life, health, safety or property. To simplify the PA program and streamline debris removal operations, I am eliminating the size requirements for the eligibility of the removal of hazardous trees (6 inches or larger in diameter and leaning at an angle greater than 30 degrees), limbs/branches (2 inches or larger in diameter), and stumps (2 feet or larger in diameter). FEMA still requires that Applicants retain, and provide when requested, documentation supporting the specifics of the immediate threat with the location and photograph or video documentation.⁵ Applicants must also ensure that any costs claimed are reasonable based on the work required to remove the debris.

Consensus-Based Codes and Standards in Replacement Determinations (50% Rule)

FEMA is providing Applicants the option to not use higher consensus-based codes, specifications and standards in 50% rule calculations.

During stakeholder engagements, Applicants reported delays in recovery due to the level of expertise needed to develop cost estimates and make replacement determinations under FEMA's "50% rule". Specifically, FEMA's [*Consensus-Based Codes, Specifications and Standards \(CBCSS\) for Public Assistance FEMA Recovery Interim Policy, FP- 104-009-11, V. 2.1*](#) has had the unintended consequence of contributing to delays performing 50% rule calculations due to the time it may take an Applicant's engineers to assess codes not adopted locally and conduct an analysis to determine the applicability of higher codes and standards to damaged facilities.⁶ In order to support timely replacement determinations in support of rapid recovery and streamline the process for 50% rule calculations, FEMA is providing Applicants the option to not use higher consensus-based codes, specifications and standards in 50% rule calculations. Please note that costs associated with compliance to meet existing federal, state, local, tribal, and territorial codes and standards must still be included in the calculation. Final PA eligibility and funding will still be determined in accordance with the requirements of the CBCSS policy. Applicants should work with their assigned Program Delivery Managers and CRC Technical Specialists to calculate replacement determinations. This provision is applicable to major disasters declared on or after the date of the issuance of this memo and it may also be applied at the request of an Applicant in disasters declared on or after December 20, 2019, for unobligated projects.

⁵ *Id.* at 103.

⁶ Section F.1 states "When evaluating whether a facility is eligible for replacement under 44 CFR § 206.226(f), upgrades to meet the identified consensus-based codes, specifications and standards under this interim Policy will be treated in the same manner as locally adopted codes, specifications and standards for the purposes of calculating repair and replacement costs."

Emergency Management Assistance Compact (EMAC)

FEMA will no longer perform a separate reasonable cost analysis of work performed through EMAC, as long as the project followed established EMAC rules.

Lastly, in order to support rapid recovery and streamline administrative processes, FEMA has reviewed documentation requirements to support reimbursement of costs incurred through use of the Emergency Management Assistance Compact (EMAC).⁷ When a state or territory is overwhelmed in response to an incident, it may request necessary resources from another jurisdiction through EMAC. Sharing resources in this manner is one of the most efficient ways for the Nation to respond to disasters. EMAC provides an established and reliable process for the provision of needed resources and for the reimbursement of those costs. Therefore, to streamline PA reimbursement of work performed through EMAC, where a project followed established EMAC rules, FEMA will not perform a separate reasonable cost analysis. Further, to support an eligible scope of work and cost estimate, when an Applicant seeks funding for EMAC-performed work, FEMA will only require the EMAC Resource Support Agreement signed by all parties for initial obligation. To reconcile costs and close an EMAC project, FEMA will only require the EMAC R-1, all associated R-2 forms, and proof of payment by the Requesting Entity to the Providing Entity.⁸

These changes are effective for major disasters and emergencies declared on or after the date of the issuance of this memo. The one exception is noted above for consensus-based codes and standards in replacement determinations. FEMA will incorporate these changes into the next version of the Public Assistance Program and Policy Guide (PAPPG). If you have any questions, please contact Ana Montero, Director, Public Assistance Division, at Ana.Montero@fema.dhs.gov.

⁷ EMAC is a national interstate mutual aid agreement that enables States and Territories to share resources in response to an incident. It is distinct from other mutual aid agreements in that it was ratified by the U.S. Congress in 1996 as PL 104-321 and has been enacted as law in all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. EMAC has a dynamic governance structure with oversight by the member emergency management directors, an operational support structure, as well as a task force that develops EMAC's policies and procedures. All EMAC's members agree to implement mutual aid agreements according to the [EMAC Operations Manual](#), using the EMAC Operations System (EOS) to collect offers of assistance and executing the EMAC Resource Support Agreement (RSA). Further, all members follow the EMAC reimbursement eligibility and documentation guidelines as adopted in the EMAC Operations Manual, which addresses critical issues upfront such as reimbursement, licensure reciprocity, liability, and workers' compensation.

⁸ All forms referenced are contained within the EMAC Operations Manual (EOM) v.4.3, March 2022.