



PUBLIC ASSISTANCE

On January 29, 2013, President Barack Obama signed into law the Sandy Recovery Improvement Act of 2013 (SRIA). In many ways, SRIA represents the most significant legislative change to the Federal Emergency Management Agency's (FEMA) substantive authorities since the enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The law authorizes several significant changes to the way FEMA may deliver federal disaster assistance to eligible Public Assistance applicants.

Debris Removal Pilot Program Alternative Procedures

One of the significant changes outlined in the legislation is the authorization for FEMA to implement alternative procedures for the debris removal work under the Public Assistance Program. SRIA authorizes FEMA to implement these alternative procedures through a pilot program until regulations are promulgated. The pilot was first utilized following the Oklahoma tornadoes in May 2013, and the nationwide pilot program for debris removal was announced on June 28, 2013. SRIA allows for, and FEMA is currently piloting, the following debris removal alternative procedures:

- The use of a sliding scale to determine the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;
- The use of program income from recycled debris without offset to the grant amount;
- Reimbursement of base and overtime wages for employees of State, Tribal or local governments, or owners or operators of private nonprofit facilities performing or administering debris and wreckage removal; and
- Providing a cost-share incentive to a State or Tribal or local government to have a debris management plan approved by the FEMA Administrator and have pre-qualified one or more debris and wreckage removal contractors before the date of declaration of the major disaster.

Participation in the pilot program and use of alternative procedures for specific projects is voluntary.

The pilot program is available to any state, or Tribal government, upon request, for any major disaster or emergency declared on or after the date of the issuance of the Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal (June 28, 2013).

The debris removal pilot program will remain in place for one year, at which point FEMA will assess the pilot's effectiveness at achieving its goals and decide whether to continue, cease, or modify the pilot.

STATUS: The pilot was first implemented following the Oklahoma tornadoes in May 2013. The nationwide pilot guidance for debris removal, issued on June 28, 2013, is available at www.fema.gov/alternative-procedures

Permanent Work Alternative Procedures

SRIA also authorizes FEMA to implement Alternative Procedures for Public Assistance Permanent Work through a pilot program until regulations are promulgated. For permanent work, the law and the FEMA pilot:

- Allows for making grants for permanent work projects on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion of work if the State, tribal, or local government, or owner or operator of the private nonprofit facility agrees to be responsible for actual costs that exceed the estimate;
- Provides an option for a State, tribal, or local government, or an owner or operator of a private nonprofit facility to receive an in-lieu contribution, without reduction, on the basis of estimates for repair, restoration, reconstruction, or replacement of a public facility and management expenses;
- Allows for consolidating, as determined by the Administrator, the facilities of a State, tribal, or local government, or private nonprofits as a single project based upon estimates adopted under the procedures;
- Allows for the Administrator to permit a Grantee or Subgrantee to use all or part of the excess grant funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster and other activities to improve future Public Assistance operations or planning;
- Requires the Administrator to make available an independent expert panel to validate the estimated eligible cost if requested by a Subgrantee, and where the Administrator or certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5 million; and
- Requires the Administrator, at an applicant's request, to consider properly conducted and certified cost estimates prepared by professional licensed engineers (mutually agreed upon by the Administrator and the applicant).

In accordance with SRIA, State, tribal, and local governments and the owners and operators of certain private nonprofit facilities (subgrantees) may participate in the alternative procedures for permanent work. Participation in the permanent work pilot program and use of the alternative procedures for specific subgrants (or projects) is voluntary. The pilot program for permanent work is effective for any major disaster or emergency declared on or after the issuance of the Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (May 20, 2013).

FEMA may also approve subgrants using the alternative procedures for major disasters or emergencies declared before May 20, 2013 if construction has not begun. The alternative procedures apply retroactively (major disasters declared before May 20, 2013) only to permanent work subgrants. Agreement on the cost estimate of the fixed grant must be reached within nine months of the declaration date (or within nine months of May 20, 2013 for disasters occurring before that date). The Subgrantee must notify FEMA within 12 months of the declaration date of the subgrants to be consolidated.

STATUS: Pilot guidance was issued in May 2013 www.fema.gov/alternative-procedures

Straight Time

SRIA also authorizes FEMA to reimburse straight-time force account labor costs for state, tribal and local government employees performing emergency protective measures, if such work is not typically performed by those employees and is the type of work that may otherwise be carried out by contract or agreement with private entities or individuals. FEMA will implement this authority through regulations.

STATUS: FEMA will implement this authority through the normal notice and comment rulemaking process.

Simplified Procedures: Analysis of Public Assistance Small Project Threshold

SRIA requires the FEMA Administrator to complete an analysis to determine whether an increase in the Public Assistance grant program small project threshold is appropriate. This analysis must consider the following factors: cost-effectiveness, speed of recovery, capacity of grantees, past performance, and accountability measures. After analyzing the data, FEMA will submit its findings in a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Homeland Security and Governmental Affairs by January 29, 2014 statutory deadline. After the Administrator submits the report to Congress, SRIA requires that the immediate establishment of a threshold for eligibility in an appropriate amount adjusted annually to reflect changes in the Consumer Price Index. Not later than 3 years after the date on which the Administrator establishes a threshold, and every 3 years thereafter, the FEMA Administrator, shall review the threshold for eligibility under this section.

STATUS: Report was submitted to Congress on January 29, 2014 and available at: www.fema.gov/media-library/assets/documents/90458. FEMA published a final rule on the small project thresholds on February 26, 2014. In accordance with the law, these changes are taking effect for disasters declared on or after February 26, 2014, the date of publication of the Final Rule in the Federal Register. FEMA also plans to publish in the near future a Notice in the Federal Register seeking comment on the Simplified Procedures report. The Final Rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-26/pdf/2014-04220.pdf>.

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