

acquired under the services contract is similar to the property exchanged or sold (e.g., for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

■ 11. Amend newly redesignated § 102–39.55 by revising the section heading to read as follows:

§ 102–39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?

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■ 12. Amend newly redesignated § 102–39.60 by revising the section heading, the introductory text, paragraph (a), the note to paragraph (a), and paragraph (i) to read as follows:

§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

Unless a deviation is requested of and approved by GSA as addressed in part 102–2 of this chapter and the provisions of §§ 102–39.25 and 102–39.30, you must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

- 10 Weapons.
- 11 Nuclear ordnance.
- 12 Fire control equipment.
- 14 Guided missiles.
- 15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).
- 42 Firefighting, rescue, and safety equipment.
- 44 Nuclear reactors (FSC Class 4470 only).
- 51 Hand tools.
- 54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).
- 68 Chemicals and chemical products, except medicinal chemicals.
- 84 Clothing, individual equipment, and insignia.

Note to § 102–39.60(a): Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

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(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI)

unless you meet the provisions of § 102–33.370 of this title.

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■ 13. New § 102–39.65 is added to Subpart B to read as follows:

§ 102–39.65 What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

- (a) The property exchanged or sold is similar to the property acquired;
- (b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;
- (c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;
- (d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and
- (e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated with each exchange/sale transaction. At a minimum, the documentation must include:
 - (1) The FSC Group of the items exchanged or sold, and the items acquired;
 - (2) The number of items exchanged or sold, and the number of items acquired;
 - (3) The acquisition cost and exchange allowance or net sales proceeds of the items exchanged or sold, and the acquisition cost of the items acquired;
 - (4) The date of the transaction(s);
 - (5) The parties involved; and
 - (6) A statement that the transactions comply with the requirements of this part 102–39.

Note to § 102–39.65: In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

■ 14. Revise newly redesignated § 102–39.80 to read as follows:

§ 102–39.80 What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law,

all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

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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: Reopening of comment period.

SUMMARY: The Management Cost Interim Rule implemented the management cost provisions in section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. The Federal Emergency Management Agency (FEMA) is reopening the public comment period on its Management Cost Interim Rule. FEMA is taking this action to solicit data from grantees and subgrantees to use in reevaluating the fixed management cost rates established in the rule.

DATES: Comments are due on or before September 29, 2008.

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.

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

SUPPLEMENTARY INFORMATION:**Background**

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5207, 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 (grants for emergency protective measures, debris removal, and repair, replacement, or restoration of facilities not met by insurance) and the Hazard Mitigation Grant Program (HMGP) (grants for sustained mitigation measures such as acquisition for open space, elevations of flood prone properties, and wind or seismic retrofitting of structures that will reduce or permanently eliminate the long-term risk to people and property from natural hazards and their effects).

Section 324 of the Stafford Act, 42 U.S.C. 5165b, required FEMA to establish management cost rates for PA and HMGP grantees and subgrantees to be used in determining contributions for management costs. On August 30, 2002, FEMA published a Notice of Proposed Rulemaking that proposed a methodology for calculating the management cost rates, as well as guidance for the implementation of section 324 of the Stafford Act (67 FR 56130). FEMA provided a 30 day comment period for the Notice of Proposed Rulemaking and considered the comments received in drafting the Interim Rule that was published on October 11, 2007 (72 FR 57869). For the Interim Rule, FEMA again provided a 30 day comment period. FEMA received 34 public comments on the Interim Rule (all of which are available in the docket for public inspection). Although FEMA continues to review those comments and will address them in the final rule, FEMA realized that it would be useful to solicit more specific information to properly address issues that were raised in those comments.

“Management costs,” for purposes of the implementing 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. As established by the Interim Rule, FEMA determines the amount of

management costs based on a flat percentage rate of the Federal share of projected eligible program costs for project assistance. The flat percentage rate for PA is 3.34 percent for major disaster declarations, and 3.90 percent for emergencies. The HMGP rate is 4.89 percent for major disaster declarations. The management cost funds provided are in addition to the grantee’s PA and HMGP funds and do not require a non-Federal cost share.

The management cost rates set forth in the Interim Rule replaced what FEMA previously paid State and local governments for associated costs through the “sliding scale,” State management costs, and grantee indirect costs. The percentages for reimbursement are based on historical average obligations. To create the figures in the Interim Rule, FEMA used data collected in the National Emergency Management Information System (NEMIS) for declarations from August 1998 to July 2004. FEMA added together actual obligations representing the Federal share of all PA projects for major disasters declared during that period. Obligations for sliding scale, State management costs, and grantee indirect costs were excluded from project obligations and were added together separately. Those totals were used to calculate the percentage of “pure” project dollars that historically has been required for administration and management.

The same calculations were performed for HMGP projects under major disaster declarations and PA projects under emergency declarations.

Request for Comments

Instructions: All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or supporting 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 <http://www.regulations.gov>.

Although comments on other aspects of the interim rule will not be rejected, FEMA solicits data in response to the specific requests set out below:

Request 1

Prior to November 13, 2007, FEMA used three mechanisms to reimburse grantees and subgrantees for management and administration costs:

a. “*Sliding Scale*”—per section 406(f) of the Stafford Act, FEMA reimbursed States for extraordinary costs incurred for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expense of such employees but not including pay for regular time of such employees, based on the total amount of assistance provided under section 403, 404, 406, 407, 502, and 503. Such funds were cost shared at the prevailing cost share rate for the declaration.

FEMA reimbursed subgrantees for associated expenses including necessary costs of requesting, obtaining, and administering Federal assistance. Such funds were 100 percent federally-funded.

b. *Category Z State Management Administrative Costs*—FEMA reimbursed State costs consistent with OMB Circular No. A–87 guidance, including such items as straight time salaries of State employees; straight time and overtime salaries, per diem and travel of contractors administering PA or HMGP grants; Emergency Management Assistance Compact (EMAC) costs for PA grants management; materials; equipment; *etc.* Such funds were cost shared at the prevailing cost share rate for the declaration.

c. *Indirect Costs*—FEMA reimbursed States for costs incurred for a common or joint purpose benefiting more than one cost objective that were not readily assignable to projects, if such costs were part of an approved Indirect Cost Rate Plan. Such funds were cost shared at the prevailing cost share rate for the declaration.

FEMA requests that grantees and subgrantees submit data on unreimbursed management costs incurred in the management and administration of Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP) prior to implementation of the Interim Rule on November 13, 2007. Specific costs and descriptions are needed and all costs must be attributable to and identified by a specific FEMA declaration number (DR-XXXX-ST or EM-XXXX-ST).

To assist grantees and subgrantees in answering this request, unreimbursed costs might include items eligible for sliding scale funds when such funds were insufficient, or subgrantee costs not eligible for sliding scale funds and therefore not eligible for FEMA reimbursement. Unreimbursed costs must have been incurred in support of the management and administration of

PA or HMGP under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP), and not in support of other programs such as community relations or Disaster Recovery Center staff, or staff supporting Individual Assistance programs. Unreimbursed costs do not include State cost shares required for sliding scale, Category Z, or indirect cost funding, nor do they include costs that were not reimbursed because they were inconsistent with applicable Federal rules and cost principles, such as OMB Circular No. A-87.

Request 2

FEMA requests that grantees and subgrantees submit available data on unreimbursed management costs incurred in the management and administration of Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP) under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP) since November 13, 2007. Specific costs and descriptions are needed and must be identified by FEMA declaration number.

Viewing the Docket

For access to the docket to submit comments, read the Notice of Proposed Rulemaking, Interim Rule, background documents and all comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. To the far right is a section titled "More Search Options." Below that title, click on "Advanced Docket Search." On the next screen, in the box provided for Docket ID, type "FEMA-2006-0035". The next screen will provide a link to the docket. Once viewing the docket, all documents are provided in chronological order, beginning with the 2002 Notice of Proposed Rulemaking. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Dated: August 22, 2008.

R. David Paulison

Administrator, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

Qualification and Certification of Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interpretation.

SUMMARY: FRA is issuing this notice of interpretation to inform interested parties of its application and enforcement of the requirements for each railroad responsible for controlling joint operations territory to maintain a list of person(s) certified as a qualified locomotive engineer for the purposes of the joint operations. FRA has discovered that a number of controlling railroads are not maintaining accurate lists primarily because foreign railroads are not providing the controlling railroads with accurate information and the controlling railroads are not demanding it. If an accurate list is not maintained, a controlling railroad has little chance of preventing an uncertified or unqualified person from operating a locomotive or train in the joint operations territory. This document is intended to inform interested parties of what information is required to be maintained on the required list and provides information as to how often the listings should be updated.

ADDRESSES: You may submit comments to Douglas Taylor, Staff Director, Operating Practices Division, or John Conklin, Program Manager Locomotive Engineer Certification, FRA Office of Safety Assurance and Compliance, by facsimile (202-493-6216) or e-mail (douglas.taylor@dot.gov) or (john.conklin@dot.gov). Comments may also be submitted to Alan Nagler, FRA Office of Chief Counsel, by facsimile (202-493-6068) or e-mail (alan.nagler@dot.gov).

FOR FURTHER INFORMATION CONTACT:

Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS-11, Mail Stop 25, Washington, DC 20590 (telephone 202-493-6255); John Conklin, Program Manager Locomotive Engineer Certification, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS-11, Mail Stop 25, Washington, DC 20590 (telephone 202 493-6318); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC-11, Mail Stop 10,

Washington, DC 20590 (telephone 202-493-6038).

SUPPLEMENTARY INFORMATION:

I. General Background

In 1991, FRA published a final rule requiring each railroad to qualify and certify each person the railroad would allow to operate a locomotive or train over its system. *See* 56 FR 28228. The final rule also required a railroad to maintain written listings identifying each person designated by it as: (i) A supervisor of locomotive engineers, (ii) a certified locomotive engineer, and (iii) a certified and qualified locomotive engineer for the purposes of joint operations. *See* 49 CFR 240.221(a) through (c). For each certified engineer, the listing is required to indicate the class of service the railroad determines the person is qualified to perform and the date of the railroad's certification decision. The rule specifies that the listing required by paragraphs (a), (b), and (c) shall be updated at least annually and that a railroad may obtain approval from FRA to maintain the listing electronically. *See* § 240.221(d) and (f). The rule also specifies where these records are required to be kept so that FRA may inspect and copy them during regular business hours. The requirements found in § 240.221 have not been amended since they became effective on September 17, 1991.

Overall, the industry is in substantial compliance with the requirements for identification of qualified persons under § 240.221. FRA has not noticed significant non-compliance with maintaining the lists required for a railroad's own employees, i.e., its own supervisors of locomotive engineers or its own certified locomotive engineers. Again, for its own employees, most railroads periodically update the listing with all the required information "so that it retains its usefulness" which FRA described as the goal of the listing in the section-by-section analysis when the rule was published. *See* 56 FR at 28249.

The purpose of this document is to address issues related to maintaining the listing of those locomotive engineers employed by other railroads (foreign locomotive engineers) that have been designated as certified and qualified for the purposes of joint operations pursuant to § 240.221(c). Several railroads that have been found not properly maintaining a listing of foreign locomotive engineers certified and qualified for joint operations have taken some affirmative actions to come into compliance. However, the number of railroads in partial non-compliance is sufficiently wide-spread that FRA believes that clarification of the