

November 16, 2022

Comments of the National Rural Electric Cooperative Association on FEMA's draft policy: Public Assistance Simplified Procedures

Filed Electronically to: FEMA-Recovery-PA-Policy@fema.dhs.gov

The National Rural Electric Cooperative Association (“NRECA”) appreciates the opportunity to submit comments on FEMA’s draft Public Assistance Simplified Procedures, which were posted to the agency’s website for comment on October 17, 2022¹.

NRECA is the national service organization for more than 900 private nonprofit rural electric utilities that provide electric energy to over 42 million people in 48 states.

Every year, ice storms, tornadoes, floods, hurricanes, and similar natural disasters destroy NRECA’s member cooperatives’ critical facilities and infrastructure (such as poles, lines, and transformers). If this damage is caused by a major disaster declared by the President of the United States, then many of the cooperatives’ response and recovery costs are eligible for reimbursement through grants from the Federal Emergency Management Agency (“FEMA”). These grants, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act and administered under FEMA’s Public Assistance Program, can amount to tens of millions of dollars and are critical to the ability of cooperatives to recover from disasters and get the lights back on quickly and safely. The Public Assistance program best serves its purpose when it is adequately funded by Congress and efficiently administered so that meritorious cost reimbursement grants are speedily disbursed and subject to minimal or no risk of deobligation. NRECA’s member cooperatives are best positioned to support the communities they serve and help restore strong local economies when the grant program is administered fairly and efficiently and offers certainty.

NRECA appreciates FEMA’s efforts to simplify the Public Assistance procedures. As FEMA knows, the process for successfully applying for Public Assistance funds can be lengthy, confusing, cumbersome and involve duplicative

¹ See https://www.fema.gov/sites/default/files/documents/fema_draft-small-project-policy_public-assistance-simplified-procedures.pdf.

and repeated requests for the same documentation. While we appreciate FEMA's role as a steward of federal taxpayer dollars, any movement toward clarity and simplicity in the Public Assistance procedures is greatly appreciated.

Effective Date: in response to FEMA's question during its Listening Session on the draft, we would prefer the simplified procedures be effective retroactively, so that they apply to declared disasters that occurred on or after August 1, 2022. This change would align the effective date with the date that the agency increased the small project threshold to \$1 million. Aligning the dates will reduce confusion and avoid small projects falling within the increased threshold, but not being eligible for the simplified procedures. Without aligning the effective dates, events that would fall within that window include Hurricanes Fiona and Ian and Tropical Storm Nicole.

Under **Section B, Documentation Requirements**, we recommend revising the Applicant's 3-year document retention requirement to begin with the date the *Applicant* submits its final expenditure report to the Recipient. Aligning the document retention period to the Applicant's own action is consistent with 2 C.F.R. 200.334 and reasonable. Requiring an Applicant to adhere to a document retention period that is tied to the Recipient's certification of completion of the last Small Project, as proposed in the policy, pegs the deadline to a date that is outside the Applicant's control and possibly, awareness.

Under **Section B, Documentation Requirements**, we recommend removing or clarifying the sentence "If requested, Applicants must provide documentation to FEMA." If retained, we recommend that it be revised to read "Subject to 2 C.F.R. 200.337(c), if requested, Applicants must provide documentation to FEMA."

Under **Section B, Documentation Requirements**, we recommend deleting the last two sentences of the 2nd paragraph ("Recipients may require documentation not otherwise required by FEMA (such as actual cost documentation for Small Projects). In such cases the Applicant must provide the documentation to the Recipient.") If FEMA itself is not requiring this documentation, it seems burdensome and unnecessary for the Recipient to request this information.

Under **Subsection 1 of Section C – Cost Estimates**, the draft states that FEMA will accept "certified" cost estimates for completed work. The draft would be improved by clarifying who must provide the certification, and what that certification must state. This information is provided for construction estimates (see Subsection 2e of Section C), but not for other types of estimated costs.

Subsection 2b of Section C – Cost Estimates. We appreciate the less burdensome requirement for documenting employee labor costs, recognizing that the summary information will be based on the more detailed data that will no longer be required for submittal.

Subsection 2c of Section C – Cost Estimates, Equipment and Supplies. The policy currently states that “Items that meet the PAPPG definition of equipment and supplies must include a reduction for depreciation or fair market value (estimated or actual).” We recommend that this be revised to read “... must include a reduction for the actual or estimated fair market value at the time the equipment or supply is no longer needed.” One would not reduce the amount of the Public Assistance grant by depreciation but would instead reduce the amount of the Public Assistance grant by the amount of value that the depreciated item retained at closeout or pre-closeout sale.

Further, the policy states that FEMA does not reduce Small Projects for disposition of unused supplies. Some supplies are durable, with a useful life of more than one use.² For clarity, we recommend that sentence be revised to state that FEMA does not reduce Small Projects for disposition of *used or* unused supplies.

Subsection 2f of Section C – Cost Estimates, Hazard Mitigation. We appreciate that the policy continues to envision the inclusion of 406 mitigation in small projects. Can all applicants unilaterally include estimated costs for 406 mitigation in every project, or are there any restrictions or guidance that applicants should follow when considering whether or how to add mitigation costs to a project?

Subsection 3 of Section C – Cost Estimates, FEMA Estimates. It is understood that when work is not complete, FEMA *may* develop the SOW or cost estimate based on Applicant provided information. However, is there any guidance as to if, when, or why FEMA may develop the SOW or cost estimate if presented with an SOW or cost estimate provided by the applicant? For example, if an applicant competitively bid a Small Project and awarded a contract, but the work is not complete, would the contract scope and amount be acceptable to FEMA, or would FEMA develop its own SOW and cost estimate?

Subsection 9 of Section G – Damage Work Certifications. This requires insurance coverage against future damages involving, among other things, equipment. We recommend adding the phrase “where available” to the second sentence (“When FEMA provides assistance for permanent work, the Applicant will obtain and maintain insurance coverage, **where available**, against future damages...”) This addition clarifies that much of the equipment used by electric cooperatives is not insured, due to lack of insurance products offered to cover equipment such as poles, transformers and conductor.

Subsection J – Net Small Project Overrun. We appreciate that FEMA includes the Net Small Project Overrun appeal process, so that all risk of project overruns is not borne entirely by the Applicant.

² See, e.g. FEMA’s definitions of supply and equipment in its COVID-19 Pandemic: Public Assistance (PA) Disposition Requirements for Equipment and Supplies Frequently Asked Questions (FAQs)
https://www.fema.gov/sites/default/files/documents/fema_pa-covid-19-disposition-requirements-equipment-supplies-faq.pdf

Subsection 3 of Section L – Timelines and Extensions. We recommend adding “Supply Chain Related Delays” and “delays due to subsequent declared disasters” to the list of examples of circumstances that may justify a time extension. Similar to many industries in the United States, the electric power industry has been struggling with dramatic shortages of critical grid equipment combined with lead times that have doubled and, in some cases tripled, for orders of equipment that is essential to restoring electric service. NRECA and others are working diligently to craft solutions and workarounds to the challenges and have engaged our federal partners for assistance with these challenges. We are aware of a mitigation project that recently was unable to meet a deadline due to lack of availability of equipment to complete the project. In addition, mitigation projects in Florida were unable to meet filing deadlines due to Hurricanes Ian and Nicole.

Summary and Conclusion

We appreciate FEMA’s continued efforts to streamline the Public Assistance process. We support issuance of simplified procedures for Small Projects, and the Net Small Project Overrun process, but encourage FEMA to consider the suggested refinements offered above. In sum, we recommend that the policy take effect for all disasters declared on or after August 1, 2022; that FEMA refine the document retention requirements; clarify the certification requirements for cost estimates; correct the equipment and supply disposition requirements; clarify when FEMA will develop the SOW or cost estimate for incomplete work if presented by a SOW or cost estimate from the applicant; clarify the insurance certification; and extend the circumstances that may justify time extensions to include two frequent circumstances NRECA members currently face that directly affect their ability to meet deadlines.

Thank you for the opportunity to provide feedback, and your consideration.

Respectfully submitted,



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