



FEMA

RP9525.7

RECOVERY POLICY

- I. **TITLE:** **Labor Costs – Emergency Work**
- II. **DATE OF ISSUANCE:** **NOV 19 2015**
- III. **PURPOSE:** To provide guidance on the eligibility of labor costs for an applicant's permanent, temporary, and contract employees, who perform emergency work under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5207.
- IV. **SCOPE AND AUDIENCE:** This policy applies to all emergencies, major disasters, and fire management assistance declarations declared on or after the date of publication of this policy. It will continue in effect until rescinded or superseded. If rescinded or superseded, this policy will continue to apply to all emergencies, major disasters, and fires declared between the date in Paragraph II and the date it is rescinded or superseded. This policy does not apply retroactively to emergencies and disasters declared prior to the date of issuance in Paragraph II. The Public Assistance (PA) Alternative Procedures Pilot Program for Debris Removal, authorized by the Sandy Recovery Improvement Act (SRIA) of 2013 (P.L. 113-2), is exempt from the provisions of this policy regarding the payment of force account labor straight-time. (SRIA also amended Section 403 of the Stafford Act to add certain labor cost provisions. FEMA is undertaking a rulemaking to implement those provisions. These provisions are not effective until FEMA completes the rulemaking.) This policy is intended for all personnel involved in the administration of the Public Assistance Program.
- V. **AUTHORITIES:** Sections 403, **Essential Assistance**; 407, **Debris Removal**; 420, **Fire Management Assistance**; and 502, **Federal Emergency Assistance** of the Stafford Act and Title 44 Code of Federal Regulations (CFR) §204.42, **Eligible Costs**; §206.202 **Application Procedures**; §206.224, **Debris removal**; §206.225, **Emergency work**; and §206.228, **Allowable Costs**.
- VI. **OBJECTIVES:**
- A. The objective of this policy is to provide Federal assistance to eligible applicants for eligible labor costs they incur in the performance of emergency work resulting from a major disaster, emergency or fire declaration.
- B. Sections 403, 407, 420, and 502 of the Stafford Act authorize Federal agencies to provide assistance to eligible applicants, including labor costs to perform emergency
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work, essential to meeting immediate threats to life and property resulting from a major disaster, emergency, or fire, respectively. This may include labor costs incurred for prudent measures in anticipation of and immediately preceding such an event.

VII. DEFINITIONS:

- A. **Force account labor:** An applicant's own labor force.
- B. **Emergency work:** Work that must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.
- C. **Budgeted employee:** A person whose position and salary are included in the applicant's budget.
- D. **Backfill employee:** Replacement employee who performs the regular duties of another employee, who is performing eligible emergency work under the PA Program.
- E. **Stand-by Time:** Time spent waiting to conduct activities after initial deployment or wait time between activities.

VIII. POLICY:

A. Applicant Labor Policies

FEMA determines the eligibility of overtime, premium pay and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided that the policy:

1. Does not include a payment contingency clause subject to Federal funding.
2. Is applied uniformly regardless of a Stafford Act declaration.
3. Has set non-discretionary criteria for when the Applicant activates various pay types. All costs, including premium pay, must be reasonable and equitable for the type of work being performed.

If these requirements are not met, FEMA limits PA funding to reasonable costs for the work performed.



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B. Eligibility Criteria Based on Type of Employee

1. Budgeted Employees: For budgeted employees performing emergency work, only overtime labor is eligible. Budgeted employees may include:
 - Permanent employees
 - Seasonal employees working during their normal season of employment
2. Unbudgeted Employees: For unbudgeted employees performing emergency work, both straight-time and overtime labor are eligible. Unbudgeted employees may include:
 - Permanent employees funded from an external source
 - Temporary employees hired to perform eligible work
 - Essential employees called back from administrative leave
 - Seasonal employees who work outside of their normal season of employment
3. Backfill Employees: The costs of force account or temporary labor to backfill regular employees who perform eligible emergency work may be eligible. There are several circumstances that may affect the eligibility of costs to use backfill employees.
 - If a backfill employee is hired on a contract or temporary basis, straight-time and overtime costs are eligible.
 - If a backfill employee is a budgeted employee, the cost of straight-time salaries and benefits is not eligible, regardless of any inter-departmental agreements.
 - If the backfill employee is a budgeted employee who is called in on his/her day off (weekend or other off day), there may be an extra cost to the applicant. If so, regular and overtime costs will be eligible.
 - If the backfill employee is called in from scheduled leave, there should be no extra cost as the leave can be rescheduled. Only the overtime is eligible.
 - Generally, exempt employees (i.e., those who are exempt from minimum wage and overtime provisions of the Fair Labor Standards Act) are not eligible for overtime, unless specified in an applicant's pre-disaster labor policy.



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4. Other Labor Resources Including Labor Obtained Under Agreement:

- The straight-time and overtime costs of employees who are funded from sources other than the applicant's own budget (e.g., a grant from a Federal agency, statutorily dedicated funds, rate-payers, etc.) to work on specific non-disaster tasks are eligible when they perform emergency work that the external source does not fund. FEMA must confirm no duplication of funding prior to approval.
- Mutual aid costs are eligible in accordance with Disaster Assistance Policy DAP9523.6, *Mutual Aid Agreements for PA and Fire Management Assistance* and an existing agreement;
- Contract costs are eligible based on the terms of the contract, provided the Applicant meets Federal procurement and contracting requirements. The straight-time salary and benefits of force account labor overseeing the contractors performing emergency work are not eligible.

5. Volunteer Labor: The value of volunteers who perform eligible emergency work can be credited toward the non-Federal cost share of the applicant's emergency work in accordance with Disaster Assistance Policy DAP9525.2, *Donated Resources*.

C. Other Eligibility Considerations

1. Extraordinary costs (including but not limited to, call back pay, night-time or weekend differential pay, hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the costs were provided for in a written policy implemented prior to the disaster.
2. Salaries and benefits for employees sent home or told not to report due to emergency conditions are not eligible for reimbursement.
3. In cases where firefighters are deployed to work on both declared and undeclared fires, the applicant should track which days/hours are related to each fire. In the event it is not tracked and documented, FEMA will evaluate any claims and determine whether sufficient data is provided to fund costs on a prorated basis.



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D. Stand-by Time

Subject to the provisions of the specific labor cost eligibility criteria above, FEMA will also reimburse costs for stand-by time incurred in preparation for and directly related to actions necessary to save lives and protect public health and safety, provided it is reasonable, necessary and consistent with the applicant's practice in non-federally declared events. Examples of when FEMA may reimburse stand-by time include, but are not limited to:

1. When bus drivers are prudently deployed to transport evacuees, even if the bus is not ultimately used for evacuations.
2. When first responders are prudently deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives or protect health and safety, even if the employee does not ultimately perform eligible emergency work.
3. When a contract or union agreement requires payment for stand-by time.

E. Cost Reasonableness

In order to be eligible, costs must be reasonable and necessary. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.

1. Hours worked: FEMA will determine whether the number of hours claimed are reasonable and necessary based on evaluating:
 - The severity of the incident
 - Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident
 - The function of the employee for which the hours are claimed
 - The number of consecutive hours the employee worked
2. Stand-by time: FEMA will determine whether any stand-by time claimed is reasonable and necessary based on the following:



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- If there is a contractual obligation to pay for stand-by time based on a labor agreement.
- If the stand-by time occurred at a time when it was necessary to have resources available to save lives and protect health and safety.

For instance, Applicants may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. However, FEMA will limit its reimbursement to that which is reasonable and necessary, not to exceed 14 calendar days from the start of the incident period.

F. Pre-positioning resources

Subject to the provisions of the specific labor cost eligibility criteria above, the labor costs to pre-position resources may be eligible. FEMA will only reimburse costs incurred in response to a declared incident.

1. Pre-positioning resources under the Fire Management Assistance Grant Program is eligible for a limited period if the resources were actually used to suppress a declared fire and requested and approved in accordance with 44 CFR 204.42(e), *Pre-positioning costs*.
2. Pre-positioning resources under the PA Program for the purpose of evacuating, or providing emergency medical care during the evacuation period (such as ambulances and busses), is also eligible even if those resources are not ultimately used, provided the staging of those resources was necessary and prudent based on the data at the time of staging.

Pre-positioning resources for purposes other than evacuation and emergency medical care is also eligible under the PA Program when those resources are used in the performance of eligible emergency work.

3. Unused pre-positioned resources – FEMA will consider E.1. and E.2. above to determine the reasonableness of labor costs associated with the deployment of unused resources.

IX. RESPONSIBLE OFFICE: Recovery Directorate (Public Assistance Division)



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- X. **SUPERSESSSION:** For all disasters declared after the date of issuance in Paragraph II, this policy supersedes RP9525.7 dated November 16, 2006, and all previous guidance on this subject.
- XI. **REVIEW DATE:** It is FEMA's Policy to review policies and reissue, revise or rescind the policy within three years of the date of issuance.

A handwritten signature in blue ink, appearing to read "Alex Amparo".

Alex Amparo
Assistant Administrator
Recovery Directorate