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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 206**

**[Docket ID: FEMA-2014-0013]**

**RIN 1660-AA80**

**Hazard Mitigation Grant Program (HMGP); Program Administration by States**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Advance notice of proposed rulemaking.

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) is seeking public comment on implementing a provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act regarding State administration of the Hazard Mitigation Grant Program (HMGP). The provision directs FEMA to establish criteria to delegate authority to States to administer HMGP. FEMA is seeking input from the public to help inform the development of this new method of program delivery.

**DATES:** Written comments must be submitted on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** <mailto:>You may submit comments, identified by Docket ID: FEMA-2014-0013, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472-3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For instructions on submitting comments, see the Public Participation portion of the SUPPLEMENTARY INFORMATION section.

**FOR FURTHER INFORMATION CONTACT:** Cecelia Rosenberg, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598-3015. Phone: (202) 646-3321. E-mail: [Cecelia.Rosenberg@fema.dhs.gov](mailto:Cecelia.Rosenberg@fema.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the advance notice of proposed rulemaking (ANPRM). FEMA specifically invites comments that relate to the economic, environmental, or federalism effects that might result from implementation of any final rule stemming from this ANPRM. Comments most helpful to FEMA will address one or more of the questions identified in this notice, and will include as much explanation of the commenter's views as possible. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. If you submit a comment, please include the Docket ID for this rulemaking, FEMA-2014-0013.

#### **A. Privacy Act**

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). For more information, you may want to review the Federal Docket Management System system of records notice published in the Federal Register on March 24, 2005 (70 FR 15086).

**B. Submission of Sensitive Information**

Do not submit comments that include trade secrets, or confidential commercial or financial information to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address specified in the ADDRESSES section of this ANPRM. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Homeland Security's FOIA regulation found in 6 Code of Federal Regulations (CFR) part 5 and FEMA's regulations found in 44 CFR part 5.

**II. Background**

**A. General Description of the Hazard Mitigation Grant Program**

The Hazard Mitigation Grant Program (HMGP or Program) provides grants to States, Indian Tribal governments, and U.S. Territories (all of which are collectively called "State" or "States" in this notice) to implement long-term hazard mitigation measures after a major disaster declaration. The HMGP is intended to reduce the loss of life and property resulting from natural hazards and to help States implement mitigation

measures during recovery from a disaster. The HMGP is authorized by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5170c. States wishing to participate in the program must request an HMGP grant as part of their request for disaster assistance. See 44 CFR 206.36(c)(4), 206.40(a), and 206.432.

HMGP funds may be used for mitigation planning and mitigation projects that will reduce or eliminate damage, loss, or suffering from future disasters. Projects must contribute to a long-term solution to an existing or anticipated hazard. For example, elevation of a home to reduce the risk of flood damages is considered hazard mitigation, but buying sandbags and pumps to fight the flood is not. In addition, a project's anticipated benefits must be equal to or more than the cost of implementing the project, which is demonstrated through a benefit cost analysis that compares the cost of the project to the benefits anticipated to occur over the lifetime of the project. Funds may be used to protect either public or private property. In the post-disaster context, the quicker the program is implemented, the more effectively it aids individuals and communities in their recovery efforts.

Both at the time of the request for assistance and at the time FEMA obligates funds to the State, the State must have a FEMA-approved State Mitigation Plan. Section 322 of the Stafford Act, 42 U.S.C. 5165(a). As part of the State planning process, States identify and rank mitigation activities that the State will support if funding is available. HMGP project applications, known as subapplications, are developed and submitted to the State by State agencies, local jurisdictions, Indian Tribal governments, and private non-profit organizations. Section 322 of the Stafford Act, 42 U.S.C. 5165(b) requires

local or Tribal governments to each have a mitigation plan as a condition of receiving HMGP funding. Proposed projects must be consistent with the goals and objectives of the State Mitigation Plan and relevant Local or Tribal Mitigation Plan. The projects selected must also meet minimum criteria identified in 44 CFR part 206. The criteria are designed to ensure that cost-effective and beneficial projects are selected for funding.

To properly manage its HMGP grant, the State is required by 44 CFR 206.437 to prepare an Administrative Plan, which is different than a State Mitigation Plan. The Administrative Plan details the State's HMGP processes and procedures. It governs program operations and describes how the State will ensure that proposed projects meet all regulatory criteria. Among other requirements, the Administrative Plan must identify the general staffing and resource needs to manage the HMGP; provide details on how the State will seek, review, and select applications for projects; describe how the State will forward selected applications to FEMA; and describe how the State will manage projects approved by FEMA.

The Stafford Act sets forth criteria to calculate the amount of funding available for the HMGP under any particular declaration for disaster assistance. FEMA may provide a State with an HMGP grant that is an amount up to 15 percent of the estimated total disaster grants awarded by FEMA for the major disaster. States may qualify for a larger percentage if they have an Enhanced State Mitigation Plan. 42 U.S.C. 5170c. In addition to meeting the State Mitigation Plan requirements, the Enhanced plan must demonstrate, among other factors, that the State is committed to a comprehensive mitigation program, that the State uses available mitigation funding effectively, and that it is capable of managing the increased funding.

For a declared disaster, FEMA can fund up to 75 percent of eligible costs for FEMA-approved projects. The State must provide a 25 percent match, which can be cash, in-kind, or fashioned from a combination of cash and in-kind sources. The State generally sets its own deadline for subapplication submittal, but all subapplications must be submitted by the State to FEMA within 12 months from the date of disaster declaration. 44 CFR 206.436(d). After a disaster, the State is encouraged to coordinate HMGP activities with recovery and reconstruction efforts so that States can maximize mitigation opportunities.

Upon Presidential approval of a State's request for disaster assistance and upon signing of a FEMA/State HMGP grant management agreement, the State becomes a grantee and is responsible for providing and managing subgrants from the overall grant award to eligible entities. The State establishes funding priorities and criteria for selecting proposed mitigation activities, solicits program interest, and helps subapplicants determine eligibility and develop their subapplications. Eligible subapplicants include State agencies, local governments, Indian Tribal Governments, and some private not-for-profit organizations (all of which are also known as "program participants"). The State, as grantee, establishes deadlines for submission of those subapplications, and selects and forwards subapplications to FEMA for final project eligibility review. FEMA reviews the entire subapplication, with an emphasis on technical feasibility—whether the project will substantially reduce the risk of future damage—as well as engineering and cost-effectiveness. Concurrently, FEMA reviews the subapplication to ensure that it contains all required information regarding potential impacts to environmental and historic

resources, and that FEMA has the necessary information to fulfill its environmental planning and historic preservation (EHP) review responsibilities.

Prior to making funding decisions for the HMGP, FEMA is required by law to evaluate the impacts of the proposed mitigation action on the quality of the human environment. The EHP requirements include compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470 et seq., and the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq. Other requirements contained in Executive Orders ensure that FEMA evaluates and avoids adverse impacts to floodplains and wetlands, and avoids adverse and disproportionate environmental impacts on low-income and minority populations. Executive Order (EO) 11988 Floodplain Management, EO 11990 Protection of Wetlands, and EO 12898 Environmental Justice for Low Income and Minority Populations.

If a subapplication is approved by FEMA, funds are obligated to the State as part of the overall grant. The State then disburses the funding to the successful subapplicant who becomes the subgrantee. The State must ensure that subgrantees adhere to all programmatic, administrative and audit requirements. The State does this by monitoring and evaluating compliance with programmatic requirements and monitoring the progress of completing funded projects. The State submits quarterly reports to FEMA indicating the status and completion date for each approved project. The State must ensure project completion and closeout, or settlement, of all the financial obligations related to the subgrant. In addition, the State evaluates the effectiveness of completed projects as part of their mitigation planning processes.

States perform all of these functions in a managerial role as they do not make the final eligibility and funding decisions. Those decisions fall within FEMA's purview, as the overall administrator of the grant.

### **B. Early Steps Towards Delegation—The Managing State Concept**

In 1998, FEMA introduced the Managing State Concept (MSC) for implementation of the HMGP in selected States. Thirteen States that wished to assume a greater role in the application review and approval process participated in the MSC. No Indian Tribal governments or Territories participated in the MSC. The MSC was seen as a means to enhance FEMA-State collaborative partnerships, and an opportunity to provide States with an increased level of flexibility in program management. The MSC was also aimed at streamlining the implementation of the HMGP, which is a significant consideration for program delivery in the aftermath of a disaster; and facilitates incorporating mitigation into the recovery process.

FEMA first initiated the MSC through the use of three individual FEMA-State operational agreements. The first agreement was entered into in May 1998 with Florida. In August 1998, North Dakota and Ohio signed agreements. Each agreement was formalized through a Memorandum of Understanding (MOU) specifically tailored to each State.

During implementation of the MSC, FEMA conducted partnership evaluations to review the MSC's progress. These evaluations included State staffs, FEMA program and financial specialists, attorneys, and Inspector General auditors. Based on these evaluations, in March of 2000 FEMA expanded the MSC to other interested States. Fundamental elements from the three initial agreements served as the basis for

agreements with the new States. These fundamentals included negotiating Managing State roles based on a State's capabilities and continuing partnership evaluations as an essential element. Ultimately, ten additional States were selected for participation.

Significantly, under the MSC, FEMA retained program administration responsibilities including final approval of subapplications and environmental reviews. The MSC consisted of agreements to implement processes that would expedite program delivery, but FEMA still retained sole authority to administer the program. Eventually, States stopped participating in the program for various reasons, and FEMA effectively dissolved the MSC with the publication of the 2010 Hazard Mitigation Assistance Unified Guidance.

### **C. Next Steps Toward Delegation—Program Administration By States**

On October 30, 2000, Congress passed the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000). The Act amended Section 404 of the Stafford Act by adding statutory authority for HMGP “Program Administration by the States” (PAS), including Indian Tribal governments and Territories. The amendment contained many provisions similar to the MSC but with several significant changes.

Specifically, the amendments to Section 404 of the Stafford Act direct FEMA to delegate program administration responsibilities to eligible, interested States. The amendments require the President to establish criteria for the approval of requests. The criteria, which must be developed in consultation with States and local governments, must require, at a minimum, that the State have an approved State Hazard Mitigation Plan, demonstrated ability to manage the HMGP, and demonstrated commitment to mitigation activities. Finally, the amendments provide FEMA with the authority to

withdraw delegated program responsibilities if the State is not administering the program in a satisfactory manner. These PAS provisions provide FEMA with a statutory mandate to advance beyond the former MSC and fully develop State administration of the HMGP.

Since passage of the Disaster Mitigation Act, FEMA did not implement PAS because it was implementing the MSC. After the MSC was terminated, one State expressed interest in PAS participation. That State submitted an application to FEMA, but criteria had not been developed for that method of program delivery so the application could not be adequately reviewed.

In January of 2013, the President signed into law the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113-2, 127 Stat. 4 (Jan. 29, 2013). SRIA amended Section 404(c) of the Stafford Act, adding a provision allowing FEMA to carry out a pilot program for PAS if FEMA determines it is necessary to expeditiously implement PAS and until such time as the Administrator promulgates regulations to implement PAS. Consistent with the SRIA mandate, FEMA is currently carrying out a pilot program for PAS.

Concurrently and consistent with the authority under the Stafford Act to promulgate program implementation regulations, FEMA is publishing this ANPRM and requesting the public's input on a number of general PAS-related concepts to develop a comprehensive program and implementing regulations.

SRIA's amendment to Section 404(c) applies to all major disasters or emergencies declared on or after SRIA's enactment date, January 29, 2013, and for major disasters or declarations for which the application period for processing requests for HMGP funding is still open as of SRIA's enactment date. Under the PAS pilot, FEMA

delegates certain program responsibilities to the State. Participation in the program is voluntary and States can select the grants management activities they would like to perform. To participate in the program, States must have an approved State Mitigation Plan, demonstrated ability to manage the HMGP, and demonstrated commitment to mitigation activities.

To determine whether a State has a “demonstrated ability to manage the HMGP” FEMA reviews HMGP grants activity within the past four quarters from the date of the State’s request. FEMA’s review for State demonstrated ability to manage HMGP includes reviewing documentation to determine the following:

- Whether in the past the State has submitted (and FEMA has approved) the State HMGP Administrative Plan within 90 days of the disaster declaration date;
- Whether the State has submitted applications in an electronic data system such as FEMA’s National Emergency Management Information System (NEMIS) or has completed a FEMA data collection form and application review checklist (or beginning in FY13, the Eligibility and Completeness checklist);
- Whether the State has submitted an Eligibility and Completeness checklist for all applications;
- Whether the State has provided requested information to FEMA for an application, enabling FEMA to approve the application within 60 days of subgrant application submittal for at least 75% or more of the applications (depending on the number of applications submitted); Whether 100% of the applications can be approved by FEMA within 90 days of application;

- Whether within the past five years from the date of application submittal, State staff have completed FEMA sponsored trainings (for instance, on Hazard Mitigation Assistance, Benefit Cost Analysis, Environment and Historic Preservation and Mitigation Planning);
- If the State has submitted a request to extend the application period, whether the request was submitted 30 days before the end of the application period; and
- If the State submitted a request to extend the period of performance, whether the request was submitted at least 60 days before the end of the application period and/or period of performance.

A State must meet additional requirements before FEMA will delegate responsibility for specific activities. Depending on the nature of the requested delegation, FEMA's review may include determining the following:

- Whether past quarterly progress and financial reports are complete and were submitted on time;
- Whether past extension requests were supported by information in quarterly progress reports;
- Whether subgrant close-out and financial reconciliation were completed within six months of work completed;
- Whether grant program and financial close-out activities were completed within 90 days of the end of the period of performance;
- Whether there were no drawdowns requested or performed after the liquidation period has ended;

- Whether financial procedures and systems meet FEMA grants management standards;
- Whether there are any major findings on the last single audit obtained by the State related to Hazard Mitigation Assistance activities; and
- Whether all local hazard mitigation plans submitted to FEMA in the past four quarters are at least “approvable pending adoption.”

Under the pilot, applicants are required to use FEMA forms or documentation agreed upon by FEMA for application completeness review, benefit cost analysis, progress reporting, and financial reporting.

To document a State’s “Demonstrated Commitment to Mitigation Activities,” FEMA requires States to provide documentation of existing processes and activities in the following categories: (1) State management of a mitigation, hazard safety, and/or insurance program; (2) planning capability and authority to support risk reduction in the planning processes of local communities (e.g., statewide building codes); (3) State provision of resources and funding to support mitigation activities within local communities; and (4) State commitment to floodplain management.

If the State PAS application is approved, the State enters into an operational agreement with FEMA and updates the Administrative Plan to document how the State will implement the HMGP with reduced oversight from FEMA. As part of the rulemaking process, FEMA will use insight gained from implementing the pilot to draft program regulations.

#### **D. Developing PAS Regulations**

To successfully implement PAS, FEMA must determine how the program will operate, and how available resources can facilitate program performance. FEMA performs numerous and varied responsibilities in the administration of the HMGP. These include keeping States informed of the anticipated amount of available funding, reviewing subapplications selected by a State, and deciding if the subapplication proposals meet program requirements and merit funding. As part of this process, FEMA conducts detailed reviews of project information, examines the schedule, scope of work, engineering and technical feasibility, and cost-effectiveness, and performs environmental analyses. All of these reviews can affect a project's scope of work, budget, and delivery. Following an award of subgrant funding to the State, FEMA provides additional technical assistance and monitors quarterly reports to ensure subgrants are implemented as planned and on schedule.

To develop PAS, FEMA is exploring the extent to which its determinations regarding cost-effectiveness, technical feasibility and engineering, and final eligibility and funding can be made at the State level. FEMA is also exploring whether there are EHP responsibilities that FEMA may legally delegate to the States under applicable Federal law, and that the grantee or subgrantee would be interested in assuming. Consistent with Federal EHP laws, including NEPA, the NHPA, the ESA, as well as EOs 11988 (Floodplain Management) and 11990 (Protection of Wetlands), FEMA has final review and approval authority on the environmental impact of a proposed Federal action or undertaking. Only FEMA can perform certain EHP responsibilities, such as formal consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the ESA, or preparing an environmental impact statement under NEPA. However, FEMA

may delegate EHP responsibilities related to preparation for environmental review to the States. Those responsibilities include providing enough background information to assess the environmental impact of the Federal action on historic properties, endangered and threatened species, critical habitats, wetlands, floodplains, and on low income and minority populations. The responsibilities could also include initiating communication with appropriate Federal agencies, such as the USFWS, or United States Army Corps of Engineers (USACE), and with State regulatory agencies including the State or Tribal Historic Preservation Office for the purposes of allowing those agencies to identify any potential impacts from the project, and to allow FEMA to prepare the required documentation on project impacts and decisions.

PAS eligibility criteria may consider the quality of State planning activities (administrative and mitigation planning), the availability of State financial resources for program administration, and a State's ability to perform all grant objectives in a timely manner. The PAS program will continue to support HMGP principles of fairness and transparency, and incorporate long term recovery. FEMA will provide appropriate guidance tools, and include standards for meeting and maintaining PAS status, and processing appeals. In summary, to participate in PAS a State should demonstrate an expanded ability to manage the Program to ensure that they will be able to successfully assume Federal-level responsibilities.

### **III. Questions for Commenters**

FEMA welcomes public comment on all aspects of PAS, but would derive particular benefit from commenters addressing one or more of the following questions:

1. Criteria for PAS Designation: FEMA seeks input on how to assess the State's ability to manage the HMGP throughout the program lifecycle. What approval criteria and documentation should FEMA consider when reviewing State requests for PAS designation? What metrics should be used? How should these be measured? How far back should past performance be measured (the last four quarters, 3 years, 5 years)? Possible considerations are:
  - a. The extent of technical and organizational resources committed to the program, such as whether staff have completed FEMA Hazard Mitigation Assistance-related trainings;
  - b. Ability to prepare and approve cost effective applications and to adhere to technical and program requirements; ability to use anticipated benefits or losses avoided in ranking projects for funding; ability to calculate actual losses avoided as a result of completed mitigation activities;
  - c. Ability to submit complete and eligible subapplications, prepared by the State or local communities, within 12 months of the disaster declaration date and any additional extensions (for example, whether FEMA needs to request additional information to complete subapplication reviews, and if the State uses the minimum application review checklist to validate that subapplications are complete);
  - d. Ability to perform EHP responsibilities that can be delegated to States by FEMA under applicable Federal laws;
  - e. Past experience in assisting and monitoring local governments in developing and completing mitigation activities (whether there is a monitoring and

auditing process in place, and whether quarterly reports are submitted to FEMA on time);

- f. Ability to maintain sound financial management (no major findings in audit reports);
- g. Ability to complete the grant in the regulatory timeframe (for instance, closeout activities are completed 90 days after the end of the period of performance, extension requests are supported by information in quarterly reports, and no more than two six-month extensions are required);
- h. Ability to close out the subgrants and the grant within the existing programmatic timeframe (i.e., whether subgrant activities are closed out within 90 days after the activities have been completed);
- i. Ability to manage other FEMA grants especially when the State has no recent experience with HMGP (evaluating past performance using data from Flood Mitigation Assistance Grants, Pre-Disaster Mitigation Grants, or other FEMA grants).

2. Enhanced State or Tribal Mitigation Plan: What should the relationship be, if any, between having a FEMA-approved Enhanced Mitigation Plan and receiving a PAS designation? Questions include the following:

- a. Should PAS approval be required before FEMA approves an Enhanced Plan?
- b. Should a FEMA-approved Enhanced Plan be required for PAS designation?
- c. Should an Enhanced Plan have no relationship to PAS designation?
- d. Should there be another relationship between the two?

- e. If Enhanced Plans are not required, how should States document losses avoided for completed mitigation projects?
3. Commitment to Mitigation: FEMA seeks input on how to assess the State's demonstration of commitment to mitigation. Possible examples of commitment to mitigation include State management of mitigation, hazard safety or insurance programs, statewide planning or building code authorities, State resources that are dedicated to support mitigation activities in local communities, and demonstrated State commitment to floodplain management. What documentation should FEMA consider in reviewing a State's request and granting a PAS designation?
4. Model Federal Performance Measures: What performance measures from other State-administered Federal programs could be considered or incorporated in PAS designation requests?
5. Administrative Planning: FEMA's program regulations at 44 CFR 206.437 and the State Administrative Plan set out minimum criteria. What additional elements, if any, should FEMA consider requiring in Administrative Plans for States with PAS designation?
6. Decision Making Processes: When States have an expanded role in application approval, how can States demonstrate impartial and consistent selection and management of applications when they are also eligible to be program participants and submit and manage their own subapplications (independent panels, blind applications, cost benefit ratio or other means)? What decision making documentation should FEMA consider?

7. Interaction: FEMA seeks input on the level and type of coordination necessary between eligible applicants and the public where the State has an expanded role in administering HMGP. What should be the level of interaction between FEMA, the State, local governments, and other program participants regarding day-to-day program administration (e.g., solicitation of applications, progress reporting, record-keeping, and closeout)?
8. Factors Affecting Delegation: Should PAS designation include limits or factors (such as the magnitude of the declared disaster or the number of open events) that would affect the level of State responsibility granted by FEMA? If so, what should these limits or factors be?
9. EHP Requirements and Responsibilities Under PAS: FEMA seeks input from States and other stakeholders as to which EHP responsibilities should be delegated to States under applicable Federal law. For instance:
  - a. Should States be able to initiate communication with appropriate agencies such as the USFWS, USACE, or State regulatory agencies (for instance, the State or Tribal Historic Preservation Office) for the purposes of identifying potential project environmental impacts or other considerations within these agencies' jurisdiction?
  - b. Should States be delegated the responsibility to collect information necessary for performing categorical exclusions and the eight-step floodplain or wetland analyses?
  - c. Could the States, rather than FEMA, engage other Federal agencies to streamline unified review where possible?

- d. What abilities and resources are needed to assume these types of responsibilities?
- e. What guidance from FEMA would States need to assume these or other similar EHP responsibilities?
- f. What methods or processes from other Federal programs should be considered?
- g. Are there existing State processes that perform a similar function?

10. Performance Evaluation: FEMA seeks input on criteria to assess performance of those States that receive PAS designations (e.g., grants management, technical and engineering feasibility, cost effectiveness, plan requirements, and EHP responsibilities and requirements):

- a. What elements/metrics should be used in this assessment?
- b. How frequently should FEMA assess a State's performance under PAS (quarterly, annually, 3 years, 5 years, or other)?
- c. What measures should FEMA use to address or correct deficiencies in performance?
- d. What level of monitoring or oversight should FEMA use to assess compliance with Federal EHP requirements?

11. Program Evaluation: How could the analysis of program benefits (economic, environmental, public health and safety, equity) justifying program costs be an indicator of state performance?

12. Significant Non-compliance: FEMA seeks input on what would constitute a significant non-compliance deficiency warranting temporary withdrawal or full

- termination of PAS designation. Areas of concern include subgrant eligibility determinations, cost effectiveness reviews, grant management, plan requirements, and EHP responsibilities and requirements. Under what circumstances should failure to meet requirements and responsibilities established by FEMA result in removal of a PAS designation? What criteria should FEMA consider using for PAS reinstatement? What other remedies should FEMA consider if a PAS jurisdiction fails to comply with Program requirements?
13. Electronic Systems: What, if any, are the States' concerns regarding the use of existing FEMA grant reporting and management electronic systems (such as NEMIS) when mandated for PAS participation?
  14. Participation: What factors could FEMA consider and use to facilitate and encourage State participation in PAS?
  15. Tribal Considerations: What factors should FEMA consider and use to encourage Tribal participation in PAS? What are the potential challenges for Tribes in applying for and maintaining PAS designation?
  16. Challenges and Resources: What are the potential challenges for States in maintaining PAS designation (such as keeping key personnel, covering multiple disaster and recovery needs, or liability concerns)? What resources do States need to successfully implement PAS (management cost support, training, guidance, job-aids, or other resources)?
  17. Program Participants Impacts: How would program participants be impacted when their State administers HMGP under a PAS designation? What are the potential benefits (increased access to funding, decreased duplication, faster obligation of

- funding, or other benefits)? What are the potential costs (e.g., increased time and paperwork, longer obligation timeframes)?
18. State Impacts: How would States be impacted by administering HMGP under a PAS designation? What are the potential benefits? What are the potential costs?
19. State Interest: For FEMA's State, Indian Tribal government and Territory stakeholders: Would your State or Tribe consider applying for the PAS option for your next disaster declaration?
20. Overall Effect: Do you think PAS would be beneficial in streamlining the provision of funding under the HMGP? Do you think PAS would be beneficial in implementing more effective hazard mitigation projects? If so, how?

#### **IV. Conclusion**

Comments most helpful to FEMA will address one or more of the questions identified above, and will include a detailed explanation of the commenter's views. FEMA also invites comments that relate to the economic, environmental, or federalism effects that commenters believe might result from any PAS program implementation model. All comments received will be considered by FEMA in designing future PAS program implementation regulations.

Dated: March 6, 2014.

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**W. Craig Fugate,**

Administrator,

Federal Emergency Management Agency.

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