

#### § 302.4

State administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1-3 may be made by letter to the Deputy Administrator for the National Preparedness Directorate, signed by an authorized State official and submitted through the Regional Administrator. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Administrator within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Administrator.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1-3 may submit an appeal through the State to the Regional Administrator. Upon receipt of such an appeal, the Regional Administrator shall forward the letter, together with all available pertinent documentation from the Regional Administrator's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Deputy Administrator for the National Preparedness Directorate, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the Administrator. The State and local jurisdiction (if applicable) will be notified in writing of the Administrator's decision, including a statement of the reasons therefor.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986; 74 FR 15354, Apr. 3, 2009]

#### § 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Of-

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fice of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

#### § 302.5 Allocations and reallocations.

(a) The Administrator shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfillment of the statutory requirement to give due regard to "the relative state of development of

civil defense readiness of the State” (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State’s population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfillment of the statutory requirements to give due regard to “population” and to “the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation.”

(3) Fifteen (15) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico.

(4) In consonance with the statutory provision allowing the Administrator to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in §302.5(b) inequitable. Therefore, the Administrator will consider prior-year allocations, percentage of total United States population, and the factors set out in §302.5(e) (1), (2), (4), and (5) in determining their allocations. The remaining balance of the reserve fund will then be used to restore any State which would receive less by formula share than its formula share for the previous fiscal year, provided that the reserve balance is sufficient to do this for all such States. Any remaining balance after this has been done will constitute a supplemental fund from which the Administrator will consider State requests for additional funding and the needs of any interstate civil defense authorities.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Administrator. The State will base its initial EMA application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential

State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Administrator, based on the current situation in each State, the requests of all States, and recommendations by the Regional Administrators. The Administrator will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Administrators, the Administrator will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Administrator a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Administrator will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with

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the regulations in this part and CPG 1–3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Administrator may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1–3) in an appropriate amount which does not exceed the amount of the State's share of the Administrator's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1–3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Administrator a final annual submission which meets all requirements in this part and CPG 1–3. If no changes are necessary, a State and the Regional Administrator may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Administrator) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Administrator shall execute an amended award document obligating the balance of such State's formal allocation.

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Administrator may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason

are to be released to headquarters for reallocation on a national basis. In addition, the Regional Administrator may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Administrator. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Administrator.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986; 51 FR 43924, Dec. 5, 1986; 56 FR 29905, July 1, 1991]

### § 302.6 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds