



PEMA Directive


Number:	D2022-01
Effective Date:	January 24, 2022
Termination Date:	NA
Rescinds Directive Number:	D2001-01

Subject:
Act 165 Revenue Expenditure Requirements

Scope:
Counties in the Commonwealth of Pennsylvania

- Distribution:**
- www.pema.pa.gov
 - Directors, PEMA Area Offices
 - Chairpersons, County Boards of Commissioners/County Executives
 - County Coordinators
 - Chairpersons, County Local Emergency Planning Committees

By Direction of:



David R. Padfield, Director
PA Emergency Management Agency

I. PURPOSE

- A. The authority for this directive is identified within Sections 207, 208, 210 and 302 of the Hazardous Material Emergency Planning and Response Act (Act 165), 35 P.S. § 6022.201(g)(10) and 35 P.S. § 6022.209(a). It provides the Commonwealth of Pennsylvania and the State Emergency Response Commission (SERC) with the requirement, power, and duty to prescribe standards and guidelines for the expenditure of Act 165 generated revenues and grant funds. As the delegate of the SERC, and by virtue of this Directive, the Pennsylvania Emergency Management Agency (PEMA) is establishing specific criteria and standards for the use and management of Act 165 expenditures in the Commonwealth of Pennsylvania.
- B. The expenditure policy explained herein applies to all Act 165-generated revenues at the county level to include the following:
1. Chemical and planning fees collected by the county from owners or operators of facilities subject to the payment of Act 165 fees, as established by county ordinance.
 2. Private donations provided specifically to support a county's hazardous materials safety program.

Comments and Questions Regarding this Directive Should be Directed to:
Bureau of Technological Hazards, Hazardous Materials Division, 717-651-7076

3. Penalties and fines collected by the county for violations of the provisions of Act 165.
4. Interest accrued on Act 165 revenues listed above and on grant funds provided under Act 165.
5. Emergency management grants awarded annually to counties from the State's Hazardous Material Response Fund (HMRF).
6. Funds received as reimbursement for Act 165 revenue expenditures in response to hazardous materials incidents.

II. AUTHORITY AND REFERENCES

- A. PA Emergency Management Services Code 35 Pa.C.S. §7101 *et seq.*, as amended.
- B. Hazardous Material Emergency Planning and Response Act, Act 165 of 1990, P.L. 639, No. 165, as amended, 35 P.S. §6022.101 *et seq.*
- C. PEMA Directive D2019-01 Hazardous Materials Emergency Response Preparedness (HMERP) Annual Report Requirements

III. GENERAL INFORMATION

- A. Section 207(b)(1) of Act 165 requires that all counties in the Commonwealth of Pennsylvania establish "a non-lapsing restricted account to be known as the Hazardous Material Emergency Response account (HMER)." In addition, Section 207(b)(1) of Act 165 states, "The account shall consist of revenue from fees authorized by this section, county, Federal or State funds, grants, loans or penalties and any private donations provided to finance the hazardous material safety program. Expenditures from the account shall be authorized by the county consistent with the needs identified in the periodic report prepared in accordance with guidelines established by PEMA."
- B. Each county is required by Act 165 to have a hazardous material safety program. In some counties the total cost of the program can be funded with the fees and fines authorized to be collected from facility owner/operators as authorized by the Superfund Amendments and Reauthorization Act (SARA). In others, a portion of the program costs is assumed by the county. The county Local Emergency Planning Committee (LEPC) is responsible for the management of the county hazardous materials safety program.
- C. In accordance with Act 165, the LEPC in each county will manage and approve expenditures of Act 165-generated revenues in accordance with this Directive, and the Hazardous Materials Safety Program Expenditures Guide. The Expenditures Guide will be published annually, or as required, as a detailed guide for allowable,

unallowable, and special request or conditional purchases using Act 165-generated revenues and grant funds.

IV. BUDGET AND RECORDS

This Directive is in accordance with Commonwealth accounting best practices and methods, which require that all counties maintain a dedicated budget and expenditure plan specifically for Act 165-generated revenues.

- A. This budget is reportable to PEMA in the annual county HMER Report and is required to be maintained as a county record.
- B. Annual budgets and spending plans must provide detailed accounting of all revenues and expenditures of the county restricted HMER account.
- C. The HMRF grant program under Act 165 is intended to enhance the county's hazardous material safety program through the supplementation of funds.
- C. Budget shortfalls should be reported to PEMA as unmet needs on the county annual report in accordance with PEMA Directive D2019-01, *Hazardous Materials Emergency Response Preparedness (HMERP) Annual Report Requirements*.
- D. Unmet needs are items to which the annual HMRF grant from the State may be applied if they fall within one of the seven eligible costs listed in Section 208(c) of the Act.
- F. The county restricted HMER account budget, spending plan, and account balance are required to be reported to PEMA annually through the county annual HMERP report or by the request of PEMA, as required.

V. AUDIT

All Act 165-generated revenues are subject to financial audit and compliance with Act 165 and this Directive. PEMA will conduct annual random audits of all county HMER accounts and Act 165-generated revenues to include grants. Counties, as part of the audit process and at the request of PEMA, must provide HMER account revenues and expenditure reports, invoices, receipts, equipment purchase, and equipment issue/disposition records.

VI. ALLOWABLE EXPENDITURES

- A. Allowable expenditures must meet the requirements listed below, including any details as published in the Hazardous Materials Safety Program Expenditures Guide. While this Directive and the Expenditures Guide do not encompass every possible purchase, they provide guidance on what can and cannot be purchased and the parameters for purchasing items that fall outside these guidelines. Any projects utilizing any Act 165 funds (grant/non-grant) that do not meet the below requirements must be submitted for approval on a Grant Activity Request Form.

The Grant Activity Request Form does not alleviate the requirement to include these projects on a county's budget submission.

1. Act 165 revenues, including grant funds and interest earned by Act 165 revenues in the county's Hazardous Material Emergency Response Account, are to be expended only for the county hazardous material safety program. They are not to be used to fund general county expenditures, nor to fully fund the costs of general emergency management/public safety items and activities.
 2. No county employees or elected or appointed officials (e.g., commissioners, the treasurer, the comptroller, and county purchasing staff), except the county emergency management agency staff or others who work directly in the hazardous materials safety program, may be paid, or compensated with funds generated by or under Act 165.
 3. Act 165 establishes the following limitations on HMRF funds:
 - a. Up to 10% may be expended on training programs
 - b. Up to 10% may be expended for public and facility owner education, information, and participation programs
 - c. Up to 10% may be used for the general administrative and operational expenses of this Act
 - d. The remaining revenue in the fund shall be used as grants to support the activities of counties under this Act, as described in Section 208 of Act 165
- B. Allowable expenditures under each hazardous materials response program area as per Act 165 are listed below with further details and restrictions in the Hazardous Materials Safety Program Expenditures Guide.
1. Preparation of a periodic report on the county's hazardous material safety program.
 - a. Acquisition of computers, peripherals, and office equipment (Note: maintenance of such equipment is not an eligible allowance)
 - b. Costs associated with development of required program activity reports
 - c. Any costs directly related to an audit of the Hazardous Material Emergency Response Account in compliance with Act 165
 2. Developing, updating, & exercising emergency response plans (ERP)
 - a. Planning associated with hazmat training and exercises.
 - b. Replenishment of consumable supplies used in hazmat training and exercises.
 - c. Planning costs associated with developing hazardous materials Emergency Response Plans.

3. Public information functions
 - a. Costs associated with making facility off-site emergency response plans available to the public in accordance with SARA, Title III
 - b. Cost of advertising of meetings in accordance with Sunshine Act
4. Collecting, documenting, and processing chemical inventory forms and other documents required by SARA, Title III
 - a. Office supplies, telephone usage, postage, printing/document reproduction
 - b. Software purchases and license fees which are directly related and necessary for the county hazardous materials safety program
 - c. Cost of billing and collecting chemical and planning fees, records keeping, files maintenance of Act 165 documents
5. Develop emergency planning & response capability
 - a. Travel expenses for county employees, LEPC members or representatives, and rostered members of the county's HMRT for the purpose of attending approved training and exercises. (Travel expense payment is not to exceed current approved State rates.)
 - b. Hazmat response training for emergency response personnel in accordance with PEMA Directive D2021-01 or most current revision, National Fire Protection Association (NFPA) hazardous materials response training standards, and the National Incident Management Systems (NIMS).
 - c. Technical and other advanced hazmat training for rostered members of the county's HMRT as needed at the discretion of the LEPC, to include specialized training for response to incidents of terrorism, particularly those involving employment of weapons of mass destruction (WMD).
 - d. Decontamination training or exercises for all emergency response personnel; to include radiological decontamination if the county does not receive funding from the Radiological Emergency Response Fund (RERF).
 - e. Authorized training expenditures, all of which must meet the reasonable and prudent current practice standard. See Expenditures guide for further details.
 - f. Supplies and equipment as per Directive D2019-02 or most current revision. Some items may be purchased for state-certified teams only. See Expenditures guide for further restrictions.
 - g. Unmanned Aerial Vehicle (UAV). Equipment only and must comply with details outlined in the Expenditures guide.
 - h. Hazardous materials response vehicles and trailers. Must comply with details outlined in the Expenditures guide.

6. LEPC Operation and Administration costs
 - a. Costs associated with development of grant applications
 - b. Personnel costs to support the hazardous materials safety program
 - c. Cost of preparing, storing, and printing meeting minutes
 - d. Volunteer Emergency Service organization reimbursement: Response costs for a volunteer emergency service when acting in support of a certified HMRT, and the responsible party is unknown or unable to pay. Limited to \$1000/response and authorized by LEPC.

VII. UNALLOWABLE EXPENSES

- A. Items that are not utilized to directly support the hazardous materials safety program are not authorized to be purchased with funds generated by Act 165. PEMA has discretion over the purchase of any items purchased with Act 165-generated revenues.
- B. Examples of unallowable expenditures:
 1. Cellular phones, in excess of those required in Directive 2019-02 as amended
 2. Cellular internet access points, in excess of those required in Directive 2019-2 as amended
 3. Class A foam
 4. Fire Department Instructors Conference (FDIC) International
 5. Late fees on authorized purchases
- C. Other specifics are included in the Expenditure Guide.

VIII. LEPC PURCHASES WITH HMER FUNDS

Act 165 directs county treasurers to establish a non-lapsing restricted account, which consists of revenue from fees authorized by the act, to be used to support the hazardous materials safety program and specifically the needs identified in the annual report.

If an LEPC determines there is a need that either does not fall under the allowable expenses, or is identified as needing further approval, the county must complete a special activity request by using the Grant Activity Request Form. This will allow for timely review and feedback from the appropriate division at PEMA.

IX. GRANT ACTIVITY REQUESTS

Acknowledging that needs and priorities may change after submission of the HMRF budget, a process has been established to request a change, or special activity. This process will be the only accepted way to request a change to projects or to request extensions and special activities.

- A. Request process: Guidance on how to request a change is included in the Expenditures Guide and included in the Grants Management Program Updates as distributed by the Grants Management Division
- B. Approval/denial:
 - 1. After review by the appropriate divisions within PEMA, the county will be notified if the request was approved/denied.
 - 2. While PEMA works with counties to approve as many requests as possible, there may be instances where requests may be denied. Some situations that may necessitate denial include inappropriate project, failure to submit required documentation, excessive requests, funds are exhausted, etc. This list is not complete, and any denial will be discussed with the county.
- C. Request Types:
 - 1. Extension – Used to request more time to complete projects. Must include justification.
 - 2. Reallocation – Utilized for transferring money from one approved project to another. Changes of less than 10% of the approved budgeted project cost do not require an activity request.
 - 3. Addition/Deletion – For the addition or deletion of projects after the original budget has been approved.
 - 4. Multi-year, Multi-County and Special Activity – See below for more information.

X. MULTI-YEAR PROJECTS (HMRF GRANT FUNDS ONLY)

- A. Some projects and expenditures may exceed the HMRF grant funds allocated to a county in a single grant year. As such, a process has been established to request encumbering funds for a multi-year project. This process will be the only acceptable way to encumber funds for a multi-year project:
 - 1. Submit multi-year purchase request as outlined in the current year Expenditure Guide.
 - 2. Upon approval, indicate on the DGM-28 in the “Budgeted Item” column the item description and “MULTI-YEAR PROJECT” plus the tracking number assigned (i.e., HMRF 2021-015)
 - 3. Each subsequent year in which monies will be encumbered shall have the information above included.
 - 4. The year in which the final purchase is made shall have the words in outline above, plus “FINAL” added to the “Budgeted Item” column.
- B. Examples of acceptable multi-year projects are included in the Expenditure guide.

XI. MULTIPLE FUNDING STREAM PURCHASES

Act 165 revenues may be used to fund multi-hazard/multi-program items provided that the percentage of the item's cost that is funded by Act 165 revenues is equivalent to the percentage of that item's use in the county's hazardous material safety program. For example, if the item will be used 50% of the time for the hazardous materials safety program, then 50% of the item's cost may be funded by Act 165 revenues. County Emergency Management Coordinators, or higher approval authority, may determine which percentages are appropriate when utilizing county specific Act 165 revenues.

A project justification may be required at the request of PEMA to clarify the request.

XII. MULTIPLE COUNTY PURCHASES

Counties may use HMER Account and/or HMRF grant funds for collaborative, or split, purchases with other counties provided the purchases are in accordance with this Directive and the current year Expenditures guide.

Counties may also collaborate to provide critical resources for a hazardous materials response team using hazardous materials funds. For example, counties which all have the same PEMA state-certified HMRT may split the purchase of equipment for the HMRT. These purchases must be requested through the process outlined in the current year Expenditures guide.

One county should be designated as the primary county to ensure accountability and proper disposition of the equipment purchased. In the event that the HMRT the equipment was purchased for no longer provides coverage to a contributing county, that county may request reimbursement for the amount contributed. If the HMRT which received the critical resource is no longer a state-certified team, regardless of cause, they shall immediately return or reimburse the primary county for the equipment. The primary county shall have the duty to coordinate with other participating counties to ensure proper disposition.

XIII. SPECIAL ACTIVITY

Not every project can be placed into one of the above categories, yet special attention may still be needed. A county must use the Grant Activity Request Form to submit these projects to PEMA for approval.

This category may be used to submit supporting documentation (i.e., quotes), agreements, or other information requested to support decision-making on a project.

XIV. ASSET MANAGEMENT AND DISPOSITION

Act 165-generated funds may be used to purchase various types of items. While some expenses are intangible (i.e., salaries), other purchases are for tangible items such as consumable/non-consumable equipment.

Outlined below are some basic asset accountability practices for items purchased in whole or in part with funds generated under Act 165. This is not intended to replace/alter any county-based accountability processes, but rather to supplement existing policies to safeguard purchases using these funds.

- A. Consumable items. These are items that must be replaced regularly because they reach end of life or are used up, and cost is less than \$1,000 per item (i.e., pads, socks, adsorbents/absorbents, seals, colorimetric tube). No special tracking required. Recommend log of external departments supported and quantity supplied.
- B. Non-consumable items. These are items which are reused numerous times (i.e., computers, 4-gas meters, turn-out gear, vehicles), or items that exceed \$1,000 per item (i.e., encapsulating suits, specialty equipment).
- C. Equipment inventory with issue log, yearly verification, and final disposition.
- D. Non-consumable items are subject to audit

XV. DOCUMENTATION REQUIREMENTS (FOR HMRF GRANT FUNDS)

- A. A DGM-28 Expenditures and Final Report detailing all project activities completed during the grant performance period is due by July 30. The format and procedure for submitting the report will be outlined in the yearly HMRF Grant Guidelines attachment to the county coordinator.
- B. Each report is to include the following:
 - 1. All supporting documentation for the expenses incurred
 - 2. Copies of paid invoices with descriptions of expenses
 - 3. Proof of payment for each expenditure
 - 4. Any other documentation supporting the expense (i.e. final quote, executed contract, purchase order, agenda, sign-in sheet, etc.)
- C. Acceptable documents providing proof of payment are:
 - 1. Cancelled check
 - 2. Bank statement showing paid funds
- D. Acceptable supporting documentation varies depending on the item. Such documentation may include:
 - 1. Payroll report from county-generated accounting system identifying hours worked and paid to each applicable employee by pay period, with costs annotated and highlighted
 - 2. Receipts for travel-related expenses
- E. For courses held by the county

1. Syllabus (if applicable)
 2. Sign-in Sheets
- F. For training and conferences: Sign-in sheet and syllabus if training or meeting is hosted by the county
- G. For exercises (must meet Homeland Security Exercise Evaluation Program (HSEEP) guidelines)
1. Copy of EXPLAN or Scenario
 2. Copy of After-Action Report or Improvement Plan from the Corrective Action Plan
- H. For training supplies or equipment
1. Copy of contract or purchase order showing deliverable
 2. Purpose of the supplies
 3. Hand receipt showing disposition of purchased equipment

XVI. INFORMATION

For additional information or answers to your questions, please contact the Bureau of Technological Hazards, Hazardous Materials Division at 717-651-7076.

Carbon Copy:

- Office of the Director
- Office of the State Fire Commissioner
- Deputy Director for Operations
- Director of Administration
- Director, Innovation & Business Transformation
- External Affairs Office
- Communications Office
- Chief Counsel's Office
- Legislative Affairs/Policy Office
- Bureau of Technological Hazards
- Bureau of Planning, Training, and Exercise
- Bureau of Grants Management
- PEMA Area Offices