

# Foreword

In recent years, tremendous strides have been made by Federal, State, Tribal, and local governments to educate the public about natural disasters. Localities are now better able to respond to disasters, recover from their impact, and mitigate future damage. However, it remains a fact that in situations of catastrophic proportions, nothing that technology or preparedness has provided can prevent the inherent discontinuity in our lives caused by major disasters. Such events must be responded to through a cooperative Federal, State, Tribal, and local effort.

When a disaster occurs, it is the responsibility first of the local community and then the State to respond. Often, their combined efforts are not sufficient to cope effectively with the direct results of the disaster. This situation calls for Federal assistance to supplement State, Tribal, and local efforts. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 – 5207, authorizes the President to provide such assistance. Assistance is coordinated through the Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security. This guide explains how FEMA implements that portion of the law that authorizes Federal grants for infrastructure recovery through its Public Assistance (PA) Program. Potential recipients of this funding include State, Tribal, and local governments and certain types of Private Nonprofit (PNP) organizations.

A fundamental goal of the PA Program is to ensure that everyone shares a common understanding of the program policies and procedures. To support this goal, FEMA has undertaken an effort to provide the State, Tribal, and local partners with more and better information about the PA Program. This guide describes the PA Program's basic provisions and application procedures. The guide may be of interest to elected leaders, emergency managers, city engineers, public works directors, financial management personnel, managers of eligible PNP organizations, and other individuals who have the responsibility for restoring a community's infrastructure in the wake of a disaster. An electronic version is available on the FEMA website ([www.fema.gov/government/grant/pa/](http://www.fema.gov/government/grant/pa/) and click on Policy and Guidance). **Because this document is not exhaustive and the provisions are subject to modification, the information contained herein should be verified with FEMA PA Program officials before becoming the basis for decision making.**

We invite comments that will make this guide as helpful as possible to all users, applicants, and administrators of Public Assistance. Please send your comments, as well as any other suggestions on ways to improve the program, to:

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With a shared understanding of the program and through a partnership with all participants, we expect to efficiently, effectively, and consistently provide recovery grant funding to all eligible applicants whose lives and infrastructure have been disrupted by disaster.

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# List of Acronyms

ADA	Americans with Disabilities Act
CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resources System
CEF	Cost Estimating Format
CFR	Code of Federal Regulations
CWA	Clean Water Act
DHS	Department of Homeland Security
DRM	Disaster Recovery Manager
EMAC	Emergency Management Assistance Compact
EO	Executive Order
ESA	Endangered Species Act
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIA	Federal Insurance Administration
FICA	Federal Insurance Contributions Act
FIRM	Flood Insurance Rate Map
GAR	Governor's Authorized Representative
HUD	Department of Housing and Urban Development
ICS	Incident Command System
INF	Immediate Needs Funding
JFO	Joint Field Office
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
OCC	FEMA's Office of Chief Counsel
PA	Public Assistance
PDA	Preliminary Damage Assessment

- PL Public Law
- PNP Private Nonprofit
- PW Project Worksheet
- RA Regional Administrator (FEMA)
- SBA Small Business Administration
- SCO State Coordinating Officer
- SHPO State Historic Preservation Officer
- SMD State Management of Disasters
- SOP Standard Operating Procedure
- THPO Tribal Historic Preservation Officer
- USACE U.S. Army Corps of Engineers
- USFWS U.S. Fish and Wildlife Service

**Incident Command System (ICS) Titles for  
Public Assistance Positions (PA)\***

Former Title	New Title
Infrastructure Branch Chief	PA Infrastructure Branch Director/Deputy
Public Assistance Officer (PAO)	PA Group Supervisor
Deputy Public Assistance Officer (DPAO)**	PA Task Force Leader
Public Assistance Coordinator (PAC)	PAC Crew Leader
Project Officer (PO)	PA Project Specialist
Specialist***	PA Technical Specialist****
Debris Monitor	PA Debris Monitoring Specialist
Administrative Assistant	PA Administrative Specialist
Data Processing Coordinator	PA Data Processing Manager
Data Processing Technician	PA Data Processing Specialist
Resource Coordinator	PA Ordering Specialist
Instructor	PA Training Specialist
New Position*****	PA Planning Specialist

- \* PA Crew/Squad Leaders may be assigned as needed to optimize span of control.
- \*\* With or without Debris Specialty.
- \*\*\* The Liaison positions no longer reside within PA. Those individuals who are liaisons will be labeled “unassigned” in the crosswalk unless determined otherwise.
- \*\*\*\* Technical Specialties include: Debris, Hazard Mitigation, Insurance, Preliminary Damage Assessment, Estimating, Environmental/Historical, Private Nonprofit, Quality Assurance.
- \*\*\*\*\* Position added to ensure the planning function is addressed until further ICS implementation has been achieved.

# Disaster Assistance Overview

Federal assistance in the wake of disasters is coordinated by the Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security. Under the Public Assistance (PA) Program, FEMA provides supplemental aid to States<sup>1</sup>, communities, and certain private nonprofit organizations (PNPs) to help them recover from disasters as quickly as possible. This chapter describes the events that occur after a disaster strikes and introduces the PA Program.

## When Disaster Strikes

Each year, the United States is struck by disasters that severely affect communities and State and local governments. The list of events that cause disasters includes natural events, such as hurricanes, tornadoes, storms, earthquakes, volcanic eruptions, landslides, snowstorms, and droughts; and regardless of cause, fires, floods, and explosions. The effects of disasters may be limited to a single community, such as when a small town is hit by a tornado, or they may be widespread, such as when a hurricane affects several States. Regardless of the scope of a disaster, the affected communities and States often need the assistance of the Federal government when responding to and recovering from the event. This assistance is available under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 – 5207 (hereinafter referred to as the Stafford Act).

Communities are responsible for the protection of their residents, and local emergency response forces will always be the first line of defense when a disaster strikes. The intent of the Stafford Act is that Federal assistance be supplemental to local, State, and private relief organizations. Nevertheless, it is not necessary for the community to exhaust its resources before it requests Federal assistance.

1. For purposes of this document, the term “State” refers to the Grantee. Grantees include the States, the District of Columbia, U.S. territories, and insular areas; and can include Indian Tribes and Alaskan Native Tribal governments.

When a disaster occurs and a locality has responded to the best of its ability and is, or will be, overwhelmed by the magnitude of the damage, the community turns to the State for help. The Governor, after examining the situation, may direct that the State's emergency plan be executed, direct the use of State police or the National Guard, or commit other resources, as appropriate to the situation. If it is evident that the situation is or will be beyond the combined capabilities of the local and State resources, the Governor may request that the President declare, under the authority of the Stafford Act, that an emergency or major disaster exists in the State.

While this request is being processed, local and State government officials should not delay in taking the necessary response and recovery actions. Such actions should not be dependent upon whether there will be Federal assistance.

## **Declaration Process**

The request for a declaration must come from the Governor or Acting Governor. Before sending a formal request letter to the President, the Governor will request that FEMA conduct a joint Preliminary Damage Assessment (PDA) with the State to verify damage and estimate the amount of supplemental assistance that will be needed. If the Governor believes that Federal assistance is necessary after this assessment is complete, the Governor sends a request letter to the President, directed through the Regional Administrator (RA) of the appropriate FEMA region. The RA reviews the request and forwards it with a recommendation to the Director of FEMA who, in turn, makes a recommendation to the President. In the aftermath of a significant event causing extensive damage and loss of life, the declaration process may be expedited. The President makes the decision whether to declare a major disaster or emergency. After the initial declaration, the person designated by the Governor as the Governor's Authorized Representative (GAR) may request additional areas to be eligible for assistance or for additional types of assistance as deemed necessary.

After a declaration is made, FEMA will designate the area eligible for assistance and the types of assistance available. With the declaration, the President appoints a Federal Coordinating Officer (FCO). The FCO is responsible for coordinating all Federal disaster assistance programs administered by FEMA, other Federal departments and agencies, and voluntary organizations. At the same time, the RA or one of his or her staff will be appointed as the Disaster Recovery Manager (DRM). The DRM is responsible for managing the FEMA assistance programs.



The DRM authority often is delegated to the FCO. The Governor may appoint a State Coordinating Officer (SCO) as the FCO's counterpart. Generally, the SCO and the GAR are the same person. State emergency operations plans should describe the role of the SCO as the Governor's representative to act in cooperation with the FCO to administer disaster recovery efforts.

FEMA may also establish a Joint Field Office (JFO) in or near the disaster area. This office is used by Federal and State staff and is the focal point of disaster recovery operations. FEMA and the State manage the implementation of the PA Program from the JFO.

## The PA Program

Under the PA Program, which is authorized by the Stafford Act, FEMA awards grants to assist State and local governments and certain Private Nonprofit (PNP) entities with the response to and recovery from disasters. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure. The Federal share of these expenses typically cannot be less than 75 percent of eligible costs. The program also encourages protection from future damage by providing assistance for hazard mitigation measures during the recovery process. The PA Program encourages planning for disaster recovery, but PA Program funds may not be used for the costs of planning. The costs incurred implementing the plans are eligible for reimbursement only if they meet PA Program eligibility criteria.

The PA Program is based on a partnership of FEMA, State, and local officials.

**FEMA** is responsible for managing the program, approving grants, and providing technical assistance to the State and applicants.

The **State**, in most cases, acts as the Grantee for the PA Program. FEMA, the State, and the Applicant are all responsible for grants awarded under the PA program. The State educates potential applicants, works with FEMA to manage the program, and is responsible for implementing and monitoring the grants awarded under the program. In some instances, the State may take a more active role in overall management of certain disasters, as discussed later in this chapter under State Management of Disasters. Some State regulations prohibit the State from acting as Grantee for an Indian Tribe. In such cases, or upon the Tribe's choice, a Tribal government may act as its own Grantee.

**Local officials** are responsible for identifying damage, providing sufficient data for FEMA to develop an accurate scope and cost estimate for doing the work and approving grants, and managing the projects funded under the PA Program.

The PA Program staff consists of management and field personnel who assist the applicant during the recovery process. These staff members include a Public Assistance Group Supervisor (Public Assistance Officer), Public Assistance Coordination Crew Leader (Public Assistance Coordinator), Public Assistance Project Specialist (Project Officer), and Public Assistance Technical Specialists (Specialists). The duties of each are described below.

**PA Group Supervisor.** The PA Program is managed at the JFO by the PA Group Supervisor. As the program manager, the PA Group Supervisor advises the FCO on all PA Program matters; manages the operation of PA Program staff and any coordination between the PA Program and other arms of the Federal disaster recovery effort; works with State counterparts; and ensures that the PA Program is operating in compliance with all laws, regulations, and policies.

**Public Assistance Coordination (PAC) Crew Leader.** At the beginning of the disaster recovery process, FEMA, in coordination with the State, assigns a PAC Crew Leader to each applicant. The PAC Crew Leader is a customer service manager who works with the applicant to resolve disaster-related needs and ensure that the applicant's projects are processed as efficiently and expeditiously as possible. By being involved from the declaration to the obligation of funds, the PAC Crew Leader ensures continuity of service throughout the delivery of the PA Program. A PAC Crew Leader generally has responsibility for more than one applicant. The PAC Crew Leader's specific responsibilities are described in more detail in Chapter 3.

**PA Project Specialists and Technical Specialists.** Project and Technical Specialists are resources for the applicant. Typically, Project Specialists are responsible for assisting with the development of projects and cost estimates. While a Project Specialist is generally knowledgeable with regard to the PA Program, a Technical Specialist usually has a defined area of expertise that a Project Specialist may call upon in the development of a specific project. Technical Specialists assigned to a JFO may have experience in such areas as roads and bridges, utility infrastructure, debris removal and disposal, environmental and historic preservation compliance, insurance, and

cost estimating. The Project Specialist's and Technical Specialist's specific responsibilities are described in more detail in Chapter 3.

The Project Specialist and Technical Specialist positions are primarily staffed by FEMA personnel. However, FEMA often relies on State, other Federal agency and contractor resources to supplement these positions. State personnel may also be assigned to work with FEMA staff and local officials involved with response and recovery efforts.

Once the JFO is established and appropriate FEMA and State personnel are deployed, applicants can begin the process of requesting and receiving Public Assistance. The remainder of this guide:

- outlines the eligibility requirements of the PA Program, including a detailed discussion of the applicants, facilities, types of work, and costs that are eligible for assistance under the PA Program (Chapter 2);
- describes the process of applying for Public Assistance, including a discussion of the project formulation process and the Federal, State, and applicant roles and responsibilities in development of projects, scopes of work, and cost estimates (Chapter 3);
- identifies insurance requirements, hazard mitigation opportunities, environmental concerns including floodplain management, and historic preservation issues that affect program processing and funding (Chapter 4); and
- discusses project management operations (Chapter 5).

## **State Management of Disasters**

Under the State Management of Disasters (SMD) initiative, in some cases an interested and capable State, or Tribal government acting as its own Grantee, may manage the PA field operation, including project eligibility reviews, process control, and resource allocation on small disasters. The participating State voluntarily enters into an Operational Agreement with FEMA, which entrusts many aspects of program management to the State. FEMA retains obligation authority, ensures compliance with environmental and historic preservation laws, participates in quality control reviews with the State, and provides technical assistance as requested by the State.

Small disasters are disasters that warrant a major disaster declaration by the President, but are limited in scope and size generally as defined by the following:

- statewide infrastructure damage up to \$2 per capita, or
- limited to debris removal and emergency protective measures.

For a State to be eligible to manage a disaster under this initiative, the State must have:

- recent disaster experience;
- adequate State staff;
- an SMD Addendum to the State Administrative Plan for Public Assistance;
- a fiscal accounting system that can track specific projects, prepare for and undergo audit, and be used to evaluate appeals;
- an established record of having met deadlines for grant management activities; and
- approval by FEMA.

# Eligibility

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## **GOVERNING DOCUMENTS**

The PA Program is based on a hierarchy of statute, regulations, and policies. The statute is the Federal law that authorizes the program. From the statute, regulations are published to further define program scope, and policies are written to apply the statute and regulations to specific situations. These authorities govern the eligibility criteria through which FEMA provides funds for Public Assistance.

Additional statutes, Executive Orders (EOs), regulations, and policies that affect the administration of the PA Program are described in Chapter 4.

### **Statutes**

Statutes are laws passed by the U.S. Congress and signed by the President. They cannot be changed by FEMA or any other government agency. The law that authorizes the PA Program is the Stafford Act (Appendix A). The basic provisions outlined in the Stafford Act:

- give the President the authority to administer Federal disaster assistance;
- define the scope and eligibility criteria of the major disaster assistance programs;
- authorize grants and direct assistance to the States; and
- define the minimum Federal cost-sharing levels.

### **Regulations**

Regulations are rules designed to implement a statute based on an agency's interpretation of that statute. FEMA rules provide procedural and eligibility requirements for program operations. Typically, they are published through an official process that allows for public comment. Regulations have the same effect as law and must be complied with once they are published in final form. The regulations governing the PA Program, outlining program procedures, eligibility, and funding, are

published in Title 44 of the Code of Federal Regulations (CFR) Part 206, Subparts C and G–L (Appendix B). Additionally, regulations regarding grant administration and allowable costs can be found in 44 CFR Part 13 (Appendix C) – *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*.

## Policies

Policies are issued by FEMA Headquarters. They clarify or provide direction for specific situations that arise in the implementation of Stafford Act provisions and various regulations that apply to the PA Program. Policies may be subject-specific (for example, applying eligibility criteria to landslides) or specific to a single disaster (for example, FEMA Policy 9524.1, Welded Steel Moment Frame Policy that was originally developed for the Northridge Earthquake). FEMA issues policies so that the regulations are interpreted consistently across the nation and from disaster to disaster. Policies are published in publications such as this and in the 9500 series policy publications. They can be obtained through the following sources:

- the PA Group Supervisor (Public Assistance Officer), who provides the most recent policies pertinent to a specific disaster;
- the *Public Assistance Policy Digest* (FEMA 321); and
- FEMA’s website (go to [www.fema.gov/government/grant/pa/](http://www.fema.gov/government/grant/pa/)).

The remainder of this chapter discusses the basic eligibility criteria for Public Assistance funding, as outlined in the governing documents. These criteria are presented in terms of the following four components: **applicant**, **facility**, **work**, and **cost**. These sometimes are referred to as the four building blocks.



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## APPLICANT



Following a disaster declaration by the President and a designation for Public Assistance grant funding by FEMA, assistance for response and recovery operations is made available to eligible applicants. Four types of entities are eligible applicants: State governments, local governments, Indian Tribes or authorized Tribal organizations and Alaskan Native Villages, and PNP organizations. Applicants that are successful in obtaining assistance are formally identified as subgrantees. In common usage, the terms “applicant” and “subgrantee” are often used interchangeably.

### State and Local Governments

State and local government agencies are eligible applicants for Public Assistance. Examples of State departments include transportation, environmental resources, parks and recreation, air and water quality, and solid waste and hazardous materials. A multitude of local governments are eligible, including towns, cities, counties, municipalities, townships, local public authorities, councils of governments, regional and interstate government entities, agencies or instrumentalities of local governments, special districts or regional authorities organized under State law, school districts, and rural or unincorporated communities represented by the State or a political subdivision of the State. (See FEMA Policy 9521.5, Eligibility of Charter Schools.)

The general principle for eligibility is that the facilities must be open to the public. If a local governmental entity forms a non-profit organization under IRS 501(c), the new entity is defined as a PNP organization for treatment under the PA Program.

### Indian Tribes

Federally recognized Indian Tribal governments, including Alaska Native villages and organizations, are eligible applicants. Privately owned Alaska Native corporations are not eligible applicants. (See FEMA Policy 9521.4,

Administering American Indian and Alaska Native Tribal Government Funding.)

Generally Indian Tribes are considered applicants or subgrantees and receive grant funds from the State (Grantee). In some States, however, State regulations prohibit the State from acting as Grantee for an Indian Tribe. In such cases or upon their own choice, the Tribal government may act as its own Grantee. The Tribe must apply to the FEMA RA to become its own Grantee.

An Indian Tribal government that chooses to act as its own Grantee becomes responsible for the entire non-Federal share of the Public Assistance grant. In addition, the Tribal government will be required to comply with the following conditions in order to receive funding:

- meet all requirements placed on a grantee in accordance with 44 CFR Part 13;
- execute a formal FEMA-Tribal Agreement similar to the FEMA-State Agreement; and
- develop and submit a PA Administrative Plan similar to the State Administrative Plan.

## **PNP Organizations**

PNP organizations that own or operate facilities that provide certain services of a governmental nature are eligible for assistance. These organizations, their facilities, and their services must meet additional eligibility criteria beyond those that apply to governmental applicants. (See FEMA Policy 9521.3, Private Nonprofit Facility (PNP) Eligibility.)

Qualifying PNPs are those that provide education, medical, custodial care, emergency, utility, certain irrigation facilities, and other essential governmental services. Essential governmental services are:

- museums;
- performing arts facilities;
- community arts centers;
- zoos;
- community centers;
- libraries;



- homeless shelters;
- rehabilitation facilities;
- senior citizen centers;
- shelter workshops; and
- health and safety services of a governmental nature, such as:
  - ▶ low-income housing;
  - ▶ alcohol and drug treatment centers;
  - ▶ residences and other facilities offering programs for battered spouses;
  - ▶ facilities offering food programs for the needy; and
  - ▶ daycare centers for children or those individuals with special needs (such as those with Alzheimer’s disease, autism, and muscular dystrophy).

With the exception of educational, emergency, medical, and custodial care facilities, an eligible facility is only the location from which the qualifying service is delivered. Eligible PNPs are identified in 44 CFR §206.221(e), summarized in Table 1, and further described on pages 15–19.

In order to be eligible for Public Assistance, PNP organizations are required by law and regulation to provide certain types of services and to follow special procedures. PNP organizations must have an effective ruling letter from the Internal Revenue Service at the time of the disaster granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code, or satisfactory evidence from the State that the organization is a non-revenue producing, nonprofit entity organized or doing business under State law. Further, the specific facility for which the PNP organization is requesting funding must be used primarily for an eligible purpose consistent with the services identified above and, generally, be open to the public.

Certain types of PNPs are not required to be open to the public. These are educational, utility, emergency, medical, or custodial care services, as further defined in 44 CFR §206.221(e). For instance, a school run by a religious-oriented PNP that restricts enrollment to students of a particular religious faith will be eligible for assistance if the school is *primarily* used for secular educational purposes. All other types of PNPs are required to

**Table 1: Private Nonprofit Facilities: Permanent Work**

Eligible Facilities		Ineligible Facilities
Critical Services	Non-Critical Services	
<ul style="list-style-type: none"> <li>• Power facilities for generation, transmission and distribution of electric power</li> <li>• Water facilities for treatment, transmission, and distribution by a water company supplying municipal water. Water provided by an irrigation company for potable, fire protection, or electricity generation purposes</li> <li>• Sewer and wastewater facilities for collection, transmission, and treatment</li> <li>• Communications facilities for transmission, switching, and distribution of telecommunications traffic</li> <li>• Education facilities</li> <li>• Emergency medical care facilities that provide direct patient care, including hospitals, clinics, outpatient services, hospices, and nursing homes and rehabilitation centers that provide medical care</li> <li>• Fire protection/ emergency services; fire and rescue companies including buildings and vehicles essential to providing emergency services, and ambulance companies</li> <li>• Eligible facilities supporting facilities that provide critical services (e.g., hospital labs, storage, administration, and records areas) except for irrigation facilities</li> </ul>	<ul style="list-style-type: none"> <li>• Alcohol and drug treatment facilities that do not provide medical care</li> <li>• Rehabilitation centers that do not provide medical care</li> <li>• Animal control facilities directly related to public health and safety when under contract with State or local government</li> <li>• Community centers</li> <li>• Custodial care</li> <li>• Daycare and before/after school centers for children</li> <li>• Daycare centers for those individuals with special needs (e.g., those with Alzheimer’s disease, autism, muscular dystrophy, etc.)</li> <li>• Performing arts facilities</li> <li>• Community arts centers</li> <li>• Food programs for the needy</li> <li>• Homeless shelters</li> <li>• Libraries</li> <li>• Low-income housing (as defined by Federal, State, or local law or regulation)</li> <li>• Museums</li> <li>• Residential facilities for the disabled</li> <li>• Residences and facilities offering services for battered spouses</li> <li>• Assisted living facilities</li> <li>• Senior citizen centers</li> <li>• Shelter workshops</li> <li>• Zoos</li> <li>• Eligible facilities supporting irrigation facilities and facilities that provide non-critical services</li> </ul>	<ul style="list-style-type: none"> <li>• Advocacy or lobbying groups not directly providing health services</li> <li>• Cemeteries</li> <li>• Conference facilities</li> <li>• Daycare centers for those other than included as eligible</li> <li>• Irrigation facilities used solely for agricultural purposes</li> <li>• Job counseling and training centers</li> <li>• Political education facilities</li> <li>• Property owners associations’ facilities such as roads and recreational facilities, except those facilities that could be classified as utilities or emergency facilities</li> <li>• Public housing, other than low income</li> <li>• Recreation facilities</li> <li>• Facilities for religious services or religious education</li> <li>• Parking facilities not in direct support to an eligible facility</li> </ul>

be open to the public. These include eligible irrigation facilities as well as those providing certain essential governmental services to the general public as defined in 44 CFR §206.221(e)(7).

Examples of ineligible PNPs are those restricted to:

- a certain number of people in the community; or
- members that have a financial interest in the facility, such as a condominium association.

To be open to the general public, access to the use of PNP services must not be restricted. Membership requirements or restrictions on services that do not disqualify PNPs for Public Assistance include:

- fees that cover only administrative processing costs;
- fees that can be waived upon demonstration of need; or
- restriction to a group of users where at least one parameter is open ended, such as all youth under age 16.

## **Application Requirements for PNPs**

**Emergency Work.** All PNPs that are eligible for FEMA assistance, as described above and in 44 CFR §206.221(e), apply directly to FEMA through the State for emergency assistance under 44 CFR §206.225.

**Permanent Work.** Eligible PNPs seeking reimbursement from FEMA for permanent repairs and restoration apply for disaster assistance according to the following requirements, depending on whether their facility is deemed to provide “critical” or “non-critical” services by the Stafford Act:

- **Critical services** are defined as those providing power, water, sewer, wastewater treatment, communications, education, and emergency medical, fire protection, and emergency services. PNPs that provide critical services apply to FEMA through the State for permanent repair and restoration assistance. All other PNPs are considered to provide “non-critical” services and must follow the application process described below. PNPs that provide critical services may have damaged facilities that do not provide critical services, e.g., auditoriums. When critical and non-critical services share a single facility, the PNP is not required to apply to the Small Business Administration (SBA) for a repair loan for the facility.

- **Non-critical services** are those that do not qualify as critical service facilities. PNPs with non-critical services must first apply to the SBA for a low-interest loan for repair of disaster damages.

The SBA loan application process for “non-critical” PNP services will generate one of three outcomes:

1. If the PNP is declined for an SBA loan, then the PNP may apply to FEMA for Public Assistance.
2. If the SBA loan fully covers eligible damages from the disaster event, then no assistance from FEMA is available.
3. If the maximum loan for which the facility is eligible does not fully cover damage eligible under the PA Program, then the PNP may apply to FEMA for the difference.

If an applicant applies for an SBA loan, is approved, and opts not to take the loan, the applicant still may be eligible for funding by FEMA for the difference between the SBA loan and eligible costs.

PNPs providing either critical or non-critical services should submit claims to insurance carriers and apply to FEMA for uncovered **emergency assistance** (debris clearance and emergency protective measures). The requirement to apply for an SBA loan only applies to PNPs with non-critical services seeking assistance for permanent repair or restoration of damaged facilities.

PNPs with facilities that provide non-critical services (see Table 1 on page 12) are responsible for taking these actions as soon as possible after a disaster has damaged their facilities:

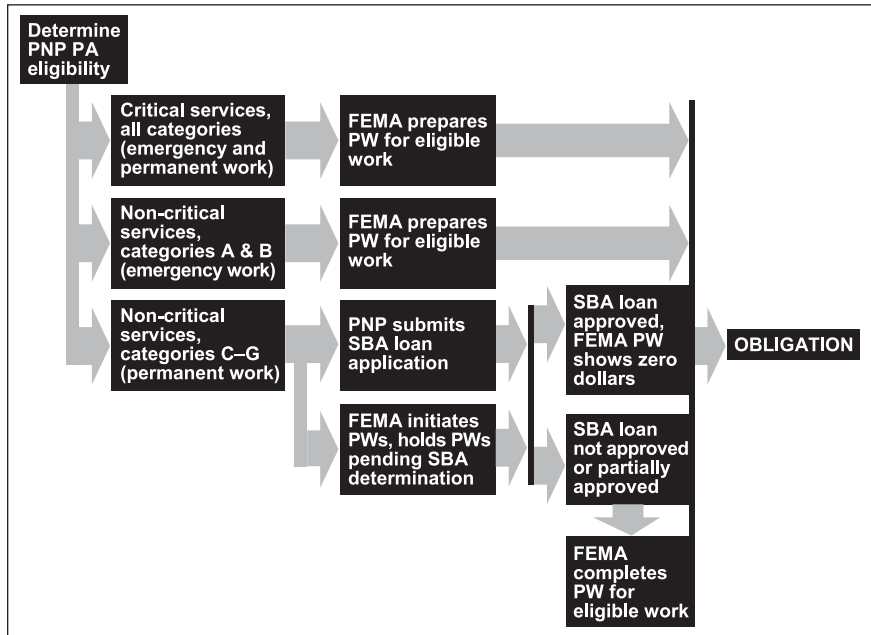
- A. **Apply for FEMA assistance.** It is important that a PNP apply to FEMA immediately after a disaster so that FEMA can inspect the disaster damages and prepare a Project Worksheet (PW). The PW will be held by FEMA until a loan decision is made by the SBA.
- B. **Apply for a disaster loan from the SBA.** If an SBA loan is declined or does not fully cover the damage eligible under the PA Program, the PNP may be eligible for FEMA assistance. In such cases, FEMA may not be able to fairly estimate the damages unless the PNP had applied to FEMA shortly after the disaster occurred (see A above).

When a PNP receives a loan determination from the SBA and the loan has been declined or will not fully cover the damages, the PNP should immediately notify the State and the State should immediately notify FEMA in order to reactivate the PNP’s request for Public Assistance. The

SBA typically provides FEMA a copy of the loan determination, but the PNP must notify FEMA of its intention to seek disaster assistance.

Figure 1 depicts the application process for PNP applicants.

**Figure 1: PNP Application Process**



## PNP Eligible Services

**PNP Education.** Educational institutions are defined in terms of primary, secondary, and higher education schools. For primary and secondary schools, an educational institution is a day or residential school that provides primary and secondary education as determined under State law. This generally means that the school satisfies State requirements for compulsory attendance. For higher education facilities, an educational institution is defined as an institution in any State that:

- admits as students persons having a high school diploma or equivalent;
- is legally authorized to provide education beyond the secondary level;

- awards a bachelor's degree or a two-year degree that is acceptable as full credit towards a bachelor's degree;
- is a public or PNP institution; and
- is accredited by a nationally recognized agency or association (as determined by the Secretary of Education). The PA Group Supervisor should consult with FEMA's Office of Chief Counsel (OCC) for institutions that are not accredited.

A higher education institution is also defined as any school that provides not less than a one-year training program to prepare students for gainful employment in a recognized occupation and that meets the provisions of the criteria set forth in the first, second, fourth and fifth bullets above.

Organizations that offer classes that qualify for credit at an accredited institution but do not meet the above defining requirements are not eligible applicants.

Eligible educational facilities include buildings, housing, classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes. They need not be contiguous. Buildings, structures, or related items used primarily for religious purposes or instruction are not eligible facilities.

**PNP Medical.** A medical facility is any hospital, outpatient facility, rehabilitation facility, or facility for long-term care, as defined below. A medical facility is also any facility similar to those listed below that offers diagnosis or treatment of mental or physical injury or disease. Eligible components include the administrative and support facilities essential to the operation of the medical facility, even if not contiguous.

**Hospitals** include general, tuberculosis, and other types of hospitals and related facilities, such as laboratories, outpatient departments, nursing home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities operated in connection with hospitals. This category also includes education or training facilities for health profession personnel operated as an integral part of a hospital. A medical organization that primarily furnishes home-based care is not considered a hospital under this definition.

**Outpatient facilities** are defined as facilities located in or apart from a hospital for the diagnosis or treatment of patients who are not actually admitted to a hospital. Such a facility may be one operated

in connection with a hospital, or one in which patient care is under the professional supervision of a doctor licensed in the State.

**Rehabilitation facilities** are defined as facilities that are operated for the purpose of assisting the rehabilitation of disabled persons through a program of medical evaluation and services; and for psychological, social, or vocational evaluation and services that are under competent professional supervision. The major portion of these services should be furnished in the facility.

**Facilities for long-term care** are defined as facilities providing inpatient care for convalescent or chronic disease patients who require skilled nursing care and related medical services. Such facilities may be in a hospital, operated in connection with a hospital, or be in a location where services performed are under the professional supervision of a doctor licensed in the State, e.g., a nursing home or hospice.

Medical office buildings that are owned by PNP organizations but contain offices leased to for-profit practices of doctors and to other ineligible services are subject to special eligibility criteria. If the for-profit entities lease more than 50 percent of the building, the building is not eligible for Public Assistance. However, if at least 50 percent of the building is used for medical service activities associated with the PNP organization, FEMA will estimate damages to the entire facility, not just to the portion occupied by the eligible service/ However, such assistance would be pro-rated based on the percentage of space occupied by the PNP organization. Contents within the ineligible space (that are occupied by the for-profit services) would not be eligible for any assistance. See PNP Mixed-Use Facilities on pages 19–20 for further discussion and examples regarding mixed-use facilities. For example:

A medical office building is damaged during a declared event, and the restoration costs are estimated to be \$100,000. If 60 percent of the floor space in the building is used by a PNP organization and the other 40 percent is used by a for-profit practice, the maximum eligible for the project would be \$60,000.

**PNP Custodial Care.** Custodial care facilities are those buildings, structures, or systems, including those essential for administration and support buildings, that are used to provide institutional care for persons who do not require day-to-day medical care, but do require close

supervision and some physical constraints on their daily activities for their self-protection.

**PNP Emergency.** Emergency facilities include buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulances, and rescue, even if not contiguous. Damages to their buildings, vehicles, and other equipment used directly in performing emergency services, and administrative and support facilities essential to the operation of emergency services, are eligible.

**PNP Utility.** A utility includes buildings, structures, or systems, even if not contiguous, of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities. This includes PNP irrigation facilities that provide water for essential services of a governmental nature. Eligible irrigation facilities include those that provide water for fire suppression, generating electricity, and drinking water supply. They do not include facilities that provide water for agricultural purposes. When an irrigation facility element has mixed purposes (e.g., a pump), eligible damages may include the percentage of damages related to eligible purposes, i.e., pro-rated damages.

**PNP Other.** Essential governmental service facilities not falling into one of the categories described above are:

- museums;
- zoos;
- performing arts facilities;
- community arts centers;
- community centers;
- libraries;
- homeless shelters;
- rehabilitation facilities;
- senior citizen centers;
- shelter workshops; and
- health and safety services of a governmental nature.

Their eligible assets need not be contiguous.



Facilities that provide health and safety services of a governmental nature include:

- low-income housing;
- alcohol and drug treatment centers;
- residences and other facilities offering programs for battered spouses;
- animal control facilities directly related to public health and safety when under contract with a State or local government;
- facility offering food programs for the needy;
- day care and before/after school centers for children; and
- day care centers for those individuals with special needs (such as those with Alzheimer’s disease, autism, and muscular dystrophy).

For additional guidance regarding PNP community center and museum eligibility, see FEMA Policy 9521.1, Community Center Eligibility and FEMA Policy 9521.2, Private Nonprofit Museum Eligibility.

### **PNP Mixed-Use Facilities**

Facilities with mixed uses must be primarily used for eligible activities. “Primarily used,” means that over 50 percent of the facility space or over 50 percent of the time is used for eligible activities. FEMA will then consider damages to the entire facility, not just to the portion occupied by the eligible service. However, assistance would be pro-rated based on the percentage of space used for eligible purposes. Contents within the ineligible space would not be eligible for any assistance. (See also the discussion of “Active Use” on pages 26–27.)

For example, community centers that are open to the public and established and primarily used as gathering places for a variety of social, educational enhancement, and community service activities may be eligible. However, facilities established or primarily used for religious, political, athletic, recreational, vocational, or academic training, artistic, conference, or similar activities are not eligible.

The community center must be established by the organization’s charter or by-laws, and used for regularly scheduled activities, rather than simply offering space to a community organization. It may be necessary to obtain materials such as the organizational charter, articles of incorporation, activity logs, and other documents to verify use and eligibility.

A community center includes the building and associated structures and grounds. Each component must be evaluated separately to determine eligibility. For example:

If a community center complex consists of three buildings, two that serve as eligible community centers and one that serves as an administrative building, only two buildings are eligible for Public Assistance, as the administrative building does not provide an eligible activity.

## **PNP Ineligible Services or Facilities**

Examples of ineligible services or facilities are:

- recreational facilities;
- job counseling or job training facilities;
- facilities for advocacy groups not directly providing health services;
- conference facilities;
- political education;
- advocacy or lobbying;
- religious service or education;
- facilities for social events;
- parking facilities not in direct support of an eligible facility;
- roads owned and operated by a Homeowners' Association or gated community; and
- irrigation unless the facility provides water for fire suppression, drinking, or generating electricity.

## **Homeowners' Associations and Gated Communities**

Homeowners' Associations often prohibit access with gates and other security systems. When access is restricted, the services and facilities cannot be considered open to the general public and, therefore, are not eligible for Public Assistance funding except as described below:

- Removal of debris from roadways within the community to create an emergency path of travel is eligible if performed or contracted for by an eligible local or State level government entity with legal authority and applied for by the eligible local or State entity.

- If the Homeowners' Association meets the criteria for an eligible PNP under the PA Program, it may claim costs for the repair of its eligible education, medical, custodial care, emergency, and utility (except irrigation) facilities.

Repairs of roadways, irrigation facilities, and facilities that provide governmental services other than those listed above are not eligible. PNP recreation facilities are ineligible whether the community is gated or not.

Other PNPs that offer a mix of eligible and ineligible facilities are subject to the same provisions as those described above.

## **Community Development Districts**

Community Development Districts (CDDs) are special districts authorized under State law to finance, plan, establish, acquire, construct/reconstruct, extend/enlarge, equip, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions. Applicant eligibility criteria are: establishment under State law; legal responsibility for ownership, maintenance, and operation of an eligible facility; and open access to the general public.

When access is restricted by gates and other security systems, the services and facilities cannot be considered public and are not eligible for Public Assistance funding except as described below:

- Removal of debris from roadways within the community to create an emergency path of travel is eligible if performed or contracted for by an eligible local or State level government entity with legal authority and applied for by the eligible local or State entity. If established for the purpose of road maintenance, the CDD may do the work and apply as an applicant.
- Emergency protective measures for and repair of facilities for which the CDD was created. If it was created for water and sewer operations or for roads, it may claim assistance for only those facilities. Even though the CDD is an eligible applicant, its other facilities are ineligible for emergency and permanent work.

## **Public Entities**

Certain "public entities" also may be eligible applicants. Public entities (e.g., Port Authority of New York and New Jersey) are those organizations that are formed for a public purpose and do not constitute one of the other forms of local government specified in the Stafford Act. To qualify for assistance, these types of applicants must receive direction

and a majority of their funding from the State or one or more political subdivisions of the State. Application for Public Assistance, as with assistance for facilities that serve rural or unincorporated communities (see page 23), must be made by a State or a political subdivision of the State that will ensure the completion of work at the facility.

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## **FACILITY**



A facility is defined as:

- any publicly or PNP-owned building, works, system, or equipment (built or manufactured); or
- certain improved and maintained natural features.

A group of buildings is not a facility.

The improvement of a natural feature should be based on a documented design that changes and improves the natural characteristics of the feature. Examples of such improvements include soil stabilization measures (such as terracing) and channel realignment. The constructed improvement must result in a measurable difference in performance over the unimproved natural feature. It is then the improvement itself that must be maintained for the natural feature to be considered a facility. The maintenance of this improvement must have been done on a regular schedule and to standards to ensure that the improvement performed as designed.

Certain improved and maintained natural features of publicly owned golf courses [e.g., sand traps, drainage, and greens (without grass)] may be considered facilities.

Examples of improvements that do not qualify as eligible facilities include agricultural lands and planted trees and shrubs.

## **Legal Responsibility**

An eligible applicant must be legally responsible for the repair of the damaged facility or the performance of eligible emergency services at the time of the disaster. FEMA may approve a post-disaster transfer of an eligible facility from one eligible applicant to another eligible applicant in extraordinary situations. If an eligible applicant did not have legal responsibility, the facility is ineligible for assistance.

Ownership of a facility is generally sufficient to establish responsibility. If an applicant owns but leases out an eligible facility, repairs to the facility are eligible, unless the lease states that the lessee is responsible for repair of the type of damage sustained or maintaining insurance for repairs. If the applicant is the lessee (tenant), repairs to that facility are not eligible unless the lease specifically states that the lessee is responsible for the repairs. Facilities owned by Federal agencies typically are not eligible for Public Assistance. Some Federal agencies, however, may have turned responsibility for operation and maintenance of facilities over to local agencies so that the local agencies have the legal/financial responsibility for operation and maintenance. These may be eligible facilities. Examples include roads constructed by the U.S. Forest Service and the Bureau of Indian Affairs, and reservoirs and water delivery systems constructed by the U.S. Bureau of Reclamation.

Often, citizens in rural or unincorporated communities will band together for the purpose of maintaining common facilities through the formation of a legal entity. Because such facilities serve the community, they may be eligible for Public Assistance, even though they are not owned by an eligible applicant, if a State or political subdivision of the State submits the request for assistance and assumes responsibility for completion of the work. The damaged facility must be included within the purpose for which the organization was formed. The purpose of the facility must have been for use by the general public and not for private or commercial uses. The facilities must be owned by a legal entity, not just an individual, in order to be eligible.

See also “Legal Responsibility” under discussion of “Work” on pages 30–31.

## **Other Federal Agencies**

For certain types of facilities, other Federal agencies have authority to provide disaster assistance. Public assistance is not available for the permanent repair of such facilities and is limited to emergency work. This is true even when the responsible agency lacks funds. When an applicant

requests Public Assistance for a facility whose repair FEMA considers to be within the authority of another Federal agency, FEMA will ask the specific Federal agency with responsibility to review the request and advise FEMA whether the work would be eligible under that agency's authority. If the work falls outside the statutory authority of that agency, FEMA may consider providing assistance for the work under the Stafford Act.

Since some agencies must perform work or let a contract for the work themselves (and are not authorized to reimburse an applicant), an applicant may find that it cannot be reimbursed for the work it did. Denial of payment by itself is not a basis for requesting Public Assistance from FEMA. However, if there is an emergency need, FEMA may consider assistance for emergency work that has been done or paid for by the applicant. Permanent work is not eligible for Public Assistance in these circumstances.

Public Assistance funding cannot be used for the non-Federal cost share of other Federal agency funding. In addition, when another Federal agency has a minimum threshold for work, FEMA will not fund the amount under the threshold.

Federal agencies that often have authority to provide disaster assistance are discussed below.

**U.S. Army Corps of Engineers (USACE).** The USACE has continuing authority to conduct emergency repair and permanent restoration of damaged flood control works. Flood control works are those facilities constructed for the purpose of eliminating or reducing the threat of flooding. Examples include:

- levees;
- floodwalls;
- flood control channels; and
- dams designed for flood control.

Because permanent restoration of these facilities falls under the authority of the USACE, Public Assistance funding is not available. This restriction applies even if USACE funding is denied. However, Public Assistance funding may be provided for emergency measures to include debris removal and flood fighting.

Emergency repair may be eligible if, at the time of the disaster, the facility is not enrolled in the USACE program and the facility has not previously

received FEMA assistance for emergency repairs. A condition of funding will be that the applicant enrolls the subject facility in the program; if it does not enroll, funding for the repair and restoration of the facility will not be provided in subsequent disasters. If the facility is already enrolled in the USACE program at the time of the disaster, or has received emergency repair assistance from FEMA previously, Public Assistance is not available for emergency repair.

The USACE also has the authority to construct and repair facilities that protect the shorelines of the United States. The USACE repair authority extends only to federally constructed shoreline works. It does not extend to locally owned facilities. Therefore, federally constructed facilities are not eligible for Public Assistance funding, but locally owned shoreline works may be eligible.

See FEMA Policy 9524.3 for discussion of levees and flood control works.

**Department of Agriculture – Natural Resources Conservation Service (NRCS).** Under the Emergency Watershed Protection Program, the NRCS has authority for the repair of flood control works that is similar to that of the USACE. Because of these overlapping authorities, the two agencies have a memorandum of understanding that provides guidance in dividing responsibilities when a disaster occurs. The NRCS authority applies to drainage basins of 400 square miles or less. (The USACE is responsible for flood works within a larger drainage basin.) The NRCS also has authority to remove debris from stream channels, road culverts, and bridges. Cost share requirements apply. This overlap with the FEMA program may result in FEMA's deferring to the NRCS.

**Department of the Interior – Bureau of Indian Affairs (BIA).** The BIA provides resources, such as road maintenance grants, that may help Tribal recovery. See also the Federal Highway Administration discussion below.

**Federal Highway Administration (FHWA).** The FHWA administers the Emergency Relief Program to assist State and local governments with the repair of Federal-Aid roads and bridges damaged during disasters. Funds from this program are used for facilities on routes identified by the FHWA. They include most public roads except those functionally classified as rural or minor collector routes. Rural or minor collection routes are eligible for FEMA assistance.

The Emergency Relief Program is the responsibility of the Secretary of Transportation and is available independently of major disaster and emergency declarations made by the President. Emergency Relief funds

are used for both emergency and permanent work and are granted on the basis of inspections performed by FHWA and State highway department personnel. Eligible Emergency work includes debris removal even when there is no physical damage to the roads.

Because restoration of certain facilities falls under the authority of FHWA, the Stafford Act specifically excludes permanent restoration of them under the PA Program. As a result, Public Assistance for the permanent repair of these facilities is not available, even if the Emergency Relief Program is not available. Therefore, there will be times when no assistance is available for the permanent repair of some facilities.

FEMA may assist with limited emergency repairs and debris clearance on a case-by-case basis and only for those cases in which there is an immediate threat to the public health and safety.

There are certain roads on Indian reservations that have been designated by the Bureau of Indian Affairs as falling under the authority of the FHWA. These roads are subject to the restrictions discussed above. It may be necessary to consult the Bureau of Indian Affairs to determine repair responsibility of damaged roads on reservations.

FHWA is also discussed on page 68 under “Category A – Debris Removal” and page 80 under “Category C – Roads and Bridges.”

**Department of Housing and Urban Development.** When a Public Housing Authority (PHA) is determined to be an eligible applicant, disaster assistance may be available from both FEMA and the Department of Housing and Urban Development (HUD). FEMA will provide assistance for emergency work including debris removal, demolition of unsafe structures, and any actions necessary to reduce an immediate threat to life, property, and public health and safety. In most cases, HUD will provide assistance for permanent restoration costs as authorized by the United States Housing Act of 1937. PHAs that do not qualify for assistance under the Housing Act of 1937 may apply directly to FEMA for permanent restoration work. [See FEMA Policy 9523.7, Public Housing Authorities (PHAs).]

## Active Use

A facility must be in active use at the time of the disaster. Inactive facilities are not eligible. Exceptions to this requirement occur when:

- the facility was only temporarily inoperative for repairs or remodeling;



- the facility was unoccupied for a short time between tenants;
- active use by the applicant was firmly established in an approved budget; or
- the applicant can clearly demonstrate to FEMA that there was intent to begin use within a reasonable amount of time.

This requirement is also applied to a facility that is partially occupied and partially inactive at the time of a disaster. Inactive portions would not be eligible unless the exceptions noted above apply. In all cases, the facility in question must have been eligible for assistance during the time it was in use. When the eligible repairs would benefit a non-active area, the assistance will be pro-rated according to the percentage of the facility that was in active use.

For PNP facilities, over 50 percent of the facility had to be in active use for an eligible purpose at the time of the disaster in order for the facility to be eligible. See the PNP Mixed-Use Facilities section on pages 19–20 for further discussion and examples regarding pro-rating assistance for these circumstances.

## **Alternate Use**

If a facility is being used for purposes other than those for which it was originally designed, the eligible cost of restoration for that facility is limited to:

- restoring the facility to its original design and capacity; or
- restoring the facility to the immediate pre-disaster alternate purpose, whichever costs less.

For example:

If an office building is being used as a storage facility at the time of a disaster, only those repairs that may be needed to restore a storage facility are eligible. Any special lighting or wall and floor finishes that are typical of an office building would not be necessary for a storage facility and, therefore, would not be eligible.

In the case of PNP facilities, the primary purpose for the establishment of the facility is important for the eligibility determination. For example:

A facility established as a church (an ineligible purpose) might be used on occasion as a homeless shelter, while its primary purpose remained as a church. It would be ineligible based on the primary or majority use.

## **Facilities Under Construction or Scheduled for Replacement**

Typically, a facility under construction is the responsibility of the contractor until the owner has accepted the work as complete. Because a contractor is not an eligible applicant, the portion of the facility under the contractor's responsibility is not eligible for Public Assistance. In the event of damage to a facility under construction, FEMA must determine if the applicant is responsible for repairs before granting assistance. Repairs are eligible if the contract under which the work is being performed places responsibility for damage on the applicant during the construction period. Repairs are also eligible if, prior to the disaster, the applicant had accepted the work and had, therefore, assumed responsibility. If the applicant had accepted responsibility for a portion of the site, repairs to only that portion of the site would be eligible.

When a facility or portion of that facility is under contract for repair or replacement using non-Federal funds, damage to the portion of the facility under contract is eligible, but FEMA will subtract the contract amount from the cost of the work. This restriction in funding applies even if the work has not started at the time of the disaster. However, if an applicant had included a project in a budget but had not yet let a contract at the time of the disaster, that project is eligible.

If a facility has been scheduled for replacement using Federal funds and work is scheduled to begin within 12 months of the time the disaster struck, the facility is not eligible for funding. An example of a continuing program of this nature is the FHWA Bridge Replacement and Rehabilitation Program. The program provides for State or locally owned bridges to be replaced with FHWA assistance. The State sets priorities for this program and determines which bridges will be replaced. If a disaster damages or destroys a bridge scheduled for replacement, the State should be able to reschedule so that the damaged bridge can be replaced immediately rather than later in the year.

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## WORK



There are three general types of work that may be eligible, with different criteria for each:

- debris removal;
- emergency protective measures; and
- permanent restoration.

Debris removal and emergency protective measures are considered “emergency work.” Permanent work includes restoring the facility back to its pre-disaster design, function, and capacity, including any codes and standards applicable to the approved work. Emergency and permanent work are discussed in the latter part of this chapter. Three general criteria apply to all types of work and to all applicants. These criteria are discussed below.

**Direct Result.** Work must be required as a direct result of the declared major disaster or emergency. The declaration by the President will designate the event, such as a severe storm, tornado, or flood, for which the declaration is being made. Damage that results from a cause other than the designated event, such as a pre-disaster damaging event, post-disaster damaging event, or work to correct inadequacies that existed prior to the disaster, is not eligible. Damage caused during the performance of eligible work may be eligible.

FEMA establishes an incident period after consultation with the GAR. The incident period is the time span during which the disaster-causing incident occurs. This period varies in length, depending on the type of incident. For example:

The incident period for a flood event could be several weeks because the water has to crest and recede, while the incident period for a tornado would be one day because the damage occurs in a matter of minutes.

Damage that occurs during the incident period, or damage that is the direct result of events that occurred during the incident period, is eligible. Protective measures and other preparation activities performed within a reasonable and justified time in advance of the event also may be eligible. For example, if a flood crest on a major river is forecast a few weeks in advance, sandbagging and construction of temporary levees to protect the community may be eligible if a disaster is later declared.

Protective measures to alleviate or lessen threats caused by the event may be performed after the incident period. Damage that occurs after the close of an incident period that can be tied directly to the declared event also may be eligible. Such damage may occur even a few months after the event and still be considered. For example:

A hillside becomes saturated during a declared rain or flood event, but no movement of or damage to the slope is observed during the incident period. After the incident period closes, the slope fails due to loss of strength caused by the saturated condition, causing damage to adjacent eligible facilities. Resulting damage may be eligible for Public Assistance. In some cases, a geotechnical investigation may be necessary.

**Designated Disaster Area.** Eligible work must be located within a designated disaster area. When a declaration of a major disaster is made for a State, FEMA will designate those counties of the State that are eligible for Public Assistance. Except for unusual situations, counties or independent cities are designated. Declarations for Tribal lands may be considered independent from surrounding communities, such that a Tribal land may receive a declaration even if the adjacent or surrounding county or city does not.

If the damaged facility is located within the designated area but the owner of the facility is from an undesignated area, the damaged facility may be eligible and that owner may apply for assistance. However, if an owner from within the designated area has a damaged facility located outside the designated area, that facility is not eligible, even if damaged by the same event.

The types of assistance available in the designated disaster area may vary among counties. Some counties may be eligible for reimbursement for both emergency and permanent work while others may be eligible to receive funding for emergency work only.

**Legal Responsibility.** As with eligible facilities (see page 23), work must be the legal responsibility of the applicant at the time of the disaster to

be eligible. Ownership of a facility is generally sufficient to establish the responsibility for work to repair the facility. However, if an applicant leases a facility as a tenant, repairs to that facility are not eligible unless the lease states that the lessee is responsible to insure for and/or make minor and/or extraordinary repairs. A copy of the lease agreement should be provided to FEMA to determine responsibility. The lease usually contains general repair and maintenance language; however, responsibility for damage resulting from a disaster may not be established. In the absence of any mention in the lease, the owner of the facility will be assumed to be responsible for the repair. (See also “Legal Responsibility” under discussion of “Facility” on page 23.)

## **Negligence**

Damage caused by negligence on the part of the applicant after the event is not eligible. This issue often arises when an applicant fails to take prudent measures to protect a facility from further damage in the wake of a disaster. For example:

The roof of a library is damaged during a hurricane, but the applicant does not install tarps on the roof to protect the building’s interior for several weeks. Repeated rain showers during that time destroy the exposed books and furnishings. The damage caused by the rains would not be eligible unless the applicant could document and justify why emergency protective measures were not implemented in a timely manner.

Damage caused by an applicant’s actions, if unavoidable, may not necessarily be negligence, especially in cases where the damage occurs during emergency response efforts. For example:

While using heavy equipment to build a temporary berm for emergency flood protection, an applicant damages the roads that provide access to the site. Even though the applicant caused the damage, the repairs to the roads back to their original condition may be eligible as Category B – Emergency Work. For Federal-Aid roads, only emergency repairs would be eligible. For local roads, repairs to pre-disaster conditions would be eligible.

In instances where ground is disturbed due to movement of heavy equipment performing eligible work, such as that described above or when repairing underground utilities within landscaped areas, replacement of damaged trees, shrubs or other ground cover is not eligible. See page 87 for further discussion of “Trees and Ground Cover.”

Also note that damage caused by inadequate design is not necessarily considered negligence. For example:

If an undersized culvert contributes to damage to a road, the repair of the road still may be eligible.

## **Mold**

Extensive disaster-related damage from external sources or from broken water pipes may cause eligible facilities to become inundated or exposed to wet and humid conditions for several days following a disaster. The disruption of electrical power may inhibit the use of water-extraction, pumping, and drying electrical equipment, and the limited availability of private repair and restoration contractors may delay cleanup activities. If this happens, water saturation may cause growth and propagation of mold on structures and interior contents, causing health-related problems and increasing the cost of repairs.

Mold remediation may be eligible under the PA Program, either as an emergency protective measure in the immediate aftermath of a disaster, or as part of the permanent repair work. For mold remediation to be eligible, the mold must not be a result of poor facility maintenance or failure to take protective measures in a reasonable time after the event. The following information guides FEMA's decision of whether the mold growth is a direct result of the disaster or pre-disaster in origin:

- Windows and exterior vents are susceptible to water infiltration if not properly sealed. Evidence of poor seals may indicate pre-disaster leaks, which could have caused mold growth.
- Poor surface water drainage flow around the structure could result in a propensity for water to accumulate around the building. The evidence of standing water against an exterior wall may indicate that the facility had a history of water intrusion, which could have caused the mold growth.
- The presence of rusted rain gutters or drains and vegetative growth in gutters is an indicator of poor building maintenance practices. Poorly maintained drain gutters could cause localized flooding at the base of the structures, water intrusion, and subsequent mold growth that could have existed before the disaster event. Likewise, the absence of rain gutters could have caused the same effects.
- If ceiling tiles have evidence of leakage, water intrusion may have occurred before the disaster event and caused mold growth.

See FEMA Fact Sheet 9580.100, Mold Remediation.

## **Maintenance**

To meet the basic rule of eligibility, an item of work must be required as a direct result of the declared disaster. Normal maintenance items that existed prior to the disaster, such as pothole repair, routine pulling of ditches, and minor gravel replacement; and deferred maintenance, such as replacing rotted timber, and repairing deteriorated asphalt and leaking roofs, are not eligible because they do not meet the criterion of being disaster-related. For example:

If a culvert's annual maintenance report indicates that the culvert was full of debris (tree limbs and sediment) before the disaster, the work to remove the obstructions from the culvert would not be eligible.

For facilities that require routine maintenance to maintain their designed function, such as culverts, roads, bridges and dams, it may be possible to review pre-disaster maintenance or inspection reports to verify the pre-disaster condition and to assess eligible disaster damage.

In instances where damage can be attributed to the disaster instead of lack of maintenance, repairs are eligible. It is the applicant's responsibility to show that the damage is disaster-related. Funding of repairs may be made contingent upon the repair of pre-disaster damage with the applicant's own funds. For example:

FEMA may determine that repairs to a damaged bridge deck are eligible. However, the deck cannot be repaired unless the applicant replaces rotting timbers that support the deck.

## **Codes and Standards**

When a facility must be repaired or replaced, FEMA may pay for upgrades that are necessary to meet specific requirements of reasonable current codes and standards. This situation typically occurs when older facilities must be repaired in accordance with codes and standards that were adopted after the original construction. These codes and standards may include Federal requirements, such as those mandated by EO 12699 (seismic requirements for new buildings) or the Americans with Disabilities Act (ADA), as discussed later in this section. However, this does not mean that Public Assistance grant funds will be provided to bring a facility into full compliance with current codes and standards. For example, FEMA will not fund construction of increased capacity because such work is

beyond that necessary to restore the pre-disaster design capacity of the facility, except as noted for Category E (pages 83–85). Bringing facilities in violation of code or standard (at the time of the disaster) up to code is not an eligible program cost. The determination of which codes and standards are applicable to the work is very important in determining eligible work. Often codes are for new construction and not for repairs. For an upgrade to be eligible, the code or standard requiring the upgrade must meet the five criteria listed below.

1. The code or standard must apply to the repair work or restoration required. If a facility must be replaced, an upgrade would apply throughout the facility. However, if a facility needs repair work only, upgrades would apply to the damaged elements only. For example: FEMA would pay to install a code-required new sprinkler system throughout a multi-story building if that building were being replaced. However, FEMA would not pay for installing such a system if the eligible work involved repair only, unless it was required based on the amount of repair. FEMA would have to determine that the requirement is reasonable for the type and extent of the repair.
2. The code or standard must be appropriate to the pre-disaster use of the facility. For example, if a former classroom facility that was being used by a school district as a warehouse before the disaster is destroyed, standards applicable to the design and construction of classrooms do not apply; only those for warehouses would be eligible.
3. The code or standard must be reasonable, in writing, and formally adopted, and implemented prior to the disaster declaration date or be a legal Federal requirement. The appropriate legislative authority within the applicable jurisdiction must have taken all requisite actions to implement the code or standard. The effective date of the code provision must be before the declaration date. It is the responsibility of FEMA to determine the reasonableness of a code or standard. Federal requirements are subject to the same criteria as local or State standards.
4. The code or standard must apply uniformly to all facilities of the type being repaired within the applicant's jurisdiction. The code or standard cannot allow selective application; it cannot be subject to discretionary enforcement by public officials; it must be applied regardless of the source of funding for the upgrade work; and it cannot be applied selectively based on the availability of funds.



5. The code or standard must have been enforced during the time that it was in effect. FEMA may require documentation showing prior application of the standard.

See also “Category E – Buildings and Equipment” on pages 83–85.

**EO 12699.** EO 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that all eligible construction of new buildings under the PA Program use appropriate seismic design and construction standards and practices. This is true regardless of the cause of the declared disaster and even if the applicant does not have applicable local or State seismic codes.

If a damaged building is eligible for replacement, the costs of meeting required and reasonable seismic codes are also eligible. (See FEMA Policy 9527.1, Seismic Safety – New Construction.) However, for new construction of an alternate or improved project, any additional costs to satisfy appropriate seismic requirements beyond those that would have been required, if any, for the original approved project are not eligible; yet the measures necessary to satisfy these requirements are required as a condition of the grant.

**The Americans with Disabilities Act.** The ADA applies to restoration of damaged facilities under the Stafford Act. The ADA requires that any building or facility that is accessible to the public or any residence or workplace be accessible to and useable by disabled persons.

When FEMA provides assistance to replace a damaged facility, the facility must meet applicable access requirements. FEMA will provide funds to comply with ADA when replacing a facility, whether or not the facility met compliance prior to the disaster. However, a new facility funded as an alternate or improved project is limited to the eligible funding for the original facility even when the new facility has to comply with additional ADA requirements. Applicants notified of an ADA violation prior to the disaster and required to bring the facility into compliance are not eligible to receive FEMA funding to comply with accessibility requirements related to that violation.

For buildings eligible for repair, FEMA will fund the cost of ADA compliance requirements to the damaged elements of the facility. [See FEMA Policy 9525.5, Americans with Disabilities Act (ADA) Access Requirements.] In addition, FEMA may fund ADA compliance requirements for non-damaged elements associated with a path of travel for a primary function area that is damaged. A primary function area is where a major activity occurs for which the facility is intended, such as

the dining area of a cafeteria. For primary function areas, FEMA will fund ADA compliance requirements for providing an accessible travel path and service facilities up to 20 percent of the total cost of repair to the primary function area.

Non-damaged areas of a damaged facility are not required to meet ADA requirements unless they are part of the travel path or service facility to a damaged primary function area, as described above.

### **Repair vs. Replacement (50 Percent Rule)**

FEMA will restore an eligible facility to its pre-disaster design. Restoration is divided into two categories: repair or replacement. [See FEMA Policy 9524.4, Eligibility of Facilities for Replacement (the 50% Rule).] The following calculation, known as the “50 Percent Rule,” is used to determine whether replacement is eligible:

IF  $\frac{\text{Repair Cost}}{\text{Replacement Cost}} < 50\%$  THEN only the repair cost is eligible

IF  $\frac{\text{Repair Cost}}{\text{Replacement Cost}} > 50\%$  THEN the replacement cost is eligible

**Repair Cost** includes only those repairs, including non-emergency mold remediation, associated with the damaged components and the codes and standards that apply to the repair of the damaged components. This cost does not include upgrades of other components triggered by codes and standards, design, demolition of the entire facility, site work, or applicable project management costs, even though such costs may be eligible for Public Assistance. The cost of contents and hazard mitigation measures is not included in the repair cost.

**Replacement Cost** includes the costs for all work necessary to provide a new facility of the same size or design capacity and function as the damaged facility in accordance with current codes and standards. The replacement cost does not include demolition, site work, and applicable project management costs, even though these costs may be eligible for Public Assistance.

Note that the design capacity of the facility, either as originally designed or as modified by later design, governs the extent of eligible work when a facility is being replaced. If a facility was being used in excess of its design capacity, that factor does not increase the eligible capacity of a replacement facility. Note also that the 50 Percent Rule applies to the overall facility. It is not to be used to calculate replacement of the facility’s

individual components, e.g., equipment, a roof, a wall, or mechanical system. Consult CEF guidance when using the CEF to calculate the 50% threshold. Multiple buildings on a campus are analyzed individually.

The following table illustrates eligible cost determinations.

**Table 2: Repair/Replacement**

<b>Conditions</b>		<b>Eligible Costs</b>
1.	The repair cost* does not exceed 50% of the replacement cost** and no upgrades are triggered	Repair of eligible damage only
2.	The repair cost* does not exceed 50% of the replacement cost** and whole building upgrade is triggered and the total of the two items is greater than 50% but less than 100% of replacement cost**	Repair of eligible damage plus upgrade cost.
3.	The repair cost* does not exceed 50% of the replacement cost** and whole building upgrade is triggered and the total of the two items is estimated to be greater than 100% of replacement cost**	Repair of eligible damage plus upgrade cost, but total eligible costs capped at the replacement cost.
4.	The repair cost* exceeds 50% of replacement cost**	The building's full replacement cost (but no more than its replacement cost) is eligible.

**NOTES:**

\* "Repair cost" in these examples includes repair of damaged components only, as described on page 36.

\*\* "Replacement cost" is replacement of the same size or designed capacity and function of the building to all applicable codes, as described on page 36.

In most cases, the criteria outlined in this table are adequate for repair and replacement projects. However, particular attention should be paid to the repair of damaged historic buildings. Such repair could trigger a requirement to upgrade a structure to new construction standards, while at the same time maintaining historic features. The total restoration cost,

in this situation, may exceed replacement cost, as in condition 3 in the table, but the excess over the replacement cost is not eligible.

The regulations contain an exception to the funding limitation described in Table 2 that applies only when a facility is eligible for listing or listed in the National Register of Historic Places. If an applicable standard requires a facility to be restored in a certain manner and disallows other options, such as leaving the facility unrestored, the eligible cost to complete the restoration may exceed the replacement cost. See 44 CFR 206.226(f)(3).

## **Temporary Relocation**

When buildings that house essential services, such as school classrooms, police and fire department facilities, government offices, and certain PNP functions, such as critical health facilities, are damaged extensively enough that they cannot be used until repairs are made, temporary relocation of the essential services may be necessary. Other PNP facilities may be eligible if they are directly related to public health and safety and under contract with State and local government to provide the health and safety functions. Temporary relocation may also be necessary in instances where such buildings are undamaged but inaccessible due to disaster-related conditions in the immediate vicinity. The criticality of the service and safety of the facility are the factors used to determine the need for temporary relocation. Temporary relocation is permitted as an emergency protective measure under Section 403 of the Stafford Act.

The costs associated with temporary relocation are eligible but are subject to cost comparisons of alternate methods of providing facilities. Such costs include the rental or purchase of temporary space and equipment. The decision whether to rent or purchase space and equipment must be based on cost effectiveness. Utilities, maintenance, and operating costs of the temporary facility are not eligible. However, applicants who perform essential services in leased facilities who have had to temporarily relocate to other leased facilities as a result of the disaster may be eligible for a reasonable rental cost differential if the temporary facilities are more costly than the pre-disaster facilities.

The moving costs, as well as necessary alterations at the new location, might be eligible if the continued operation of the facility is necessary to eliminate immediate threats to life or property.

The length of time that rental costs are eligible is based on the time estimated to complete repair work that will bring the damaged facility to pre-disaster design, not including time for completion of improvements. Normally, the period of time for which temporary relocation assistance

may be provided is 6 months, based on the regulatory time limitation for the completion of emergency work. If no additional funds are involved, the GAR may approve a time extension if the GAR is satisfied that extenuating circumstances beyond the control of the applicant prevented the completion of the work within the initial time limit and that the applicant has provided the design proposal, a schematic, and a revised timeline for the permanent project. If additional funds are required, the GAR may recommend to FEMA a time extension based on extenuating circumstances beyond the control of the applicant that prevented the completion of the work within the initial time limit and the provision of the design proposal, a schematic, and a revised timeline for the permanent project. An extension requiring additional funding may not be granted without a design proposal, schematic, and timeline for the permanent work. Extensions beyond a total temporary relocation period of 12 months are extremely rare, but may be approved by the FEMA Regional Administrator if construction began within the 12-month period. (See FEMA Policy 9523.3, Provision of Temporary Relocation Facilities.)

## **Permanent Relocation**

An applicable Federal, State, or local standard, such as a floodplain management regulation, may require that a damaged facility be relocated away from a hazardous area. Such relocations also may be required by FEMA if the facility is subject to repetitive heavy damage because of its location. In either case, FEMA will provide assistance for the relocation project only if it is cost effective and not barred by any other FEMA regulations or policies. Eligible costs of a relocation project include:

- demolition and removal of the old facility;
- land acquisition;
- construction of the new facility, including compliance with environmental requirements; and
- construction of ancillary facilities, such as roads and utilities.

To determine cost effectiveness, benefits are measured in terms of the damage prevented by moving away from the hazardous location. Generally, the project will only be cost effective if the damage is severe enough that the facility qualifies for replacement.

When a relocation to outside a hazard area is approved, no future Public Assistance funding for the repair or replacement of any facility subsequently built at the old site will be approved. An exception is given

for facilities or structures that facilitate an open space use. Examples include minimal facilities for a park, such as benches, tables, restrooms, and minor gravel roads. When such a restriction is placed on a site, the applicant will be notified.

If relocation is not desired, feasible or cost effective, and restoration in the original location is not a practicable alternative because of floodplain, environmental, historic preservation, or other Special Considerations, the applicant may request that the funding be applied to an alternate project. Alternate projects are discussed in more detail on pages 111–112 of this guide.

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## **COST**



Generally, costs that can be directly tied to the performance of eligible work are eligible.

Such costs must be:

- reasonable and necessary to accomplish the work;
- compliant with Federal, State, and local requirements for competitive procurement (including 44 CFR Part 13); and
- reduced by all applicable credits, such as anticipated insurance proceeds and salvage values.

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 decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed. For example:

If the going rental rate for a backhoe is \$25/hour, it would not be reasonable to pay \$50/hour for a backhoe.

In the immediate aftermath of a disaster, shortages in equipment, materials, and labor may affect costs. Costs also may stabilize in the months after the disaster. These variations should be considered when establishing reasonable costs of repair.

Consideration should also be given to whether the cost is of a type generally recognized as ordinary and necessary for the subject facility and type of work and whether the individuals concerned acted with prudence in conducting the work. In addition, normal procedures must not be altered because of the potential for reimbursement from Federal funds. Reasonable costs can be established through:

- the use of historical documentation for similar work;
- average costs for similar work in the area;
- published unit costs from national cost estimating databases; and
- FEMA cost codes, equipment rates, and engineering and design services curves.

FEMA staff make the final determination on the reasonableness of a cost.

In performing work, applicants must adhere to all Federal, State, and local procurement requirements.

An applicant may not receive funding from two sources for the same item of work. The Stafford Act prohibits such a duplication of benefits. (See FEMA Policy 9525.3, Duplication of Benefits.) If FEMA funds are duplicated by another source, the FEMA funds must be returned. If another Federal agency has specific authority to fund certain work, then FEMA generally cannot provide funds for that project. A State disaster assistance program is not considered a duplication of Federal funding.

A duplication of benefits most commonly occurs with insurance settlements. If a damaged facility is insured, FEMA is required to reduce the amount of the grant by any insurance proceeds that the applicant anticipates or receives for the insured facility. If the applicant has not completed negotiations with the insurer at the time the Project Worksheet is developed, FEMA will estimate the anticipated proceeds and this value will be used for the reduction. See Chapter 4 for additional discussion regarding insurance requirements.

Grants and cash donations received from non-Federal sources designated for the same purpose as Public Assistance funds are considered a duplication of benefits. However, such grants and donations, including disaster relief funds provided by the State, may be

applied towards the non-Federal cost share and are not considered a duplication of benefits. Grants and cash donations, including disaster relief funds provided by the State, that are received for unspecified purposes or ineligible work also do not constitute a duplication of benefits and can be applied to the non-Federal cost share.

Applicant “rainy day” funds are not considered a duplication of benefits.

The eligible cost criteria referenced above apply to all direct costs, including labor, materials, equipment, and contracts awarded for the performance of eligible work. This also includes any additional costs for compliance with codes and standards that meet FEMA’s eligibility criteria, as well as any costs necessary to obtain permits. Compliance with environmental and historic preservation laws, regulations, and EOs may constitute eligible costs. (See Chapter 4, Special Considerations.)

## Labor

Force account labor is defined as labor performed by the applicant’s employees, rather than by a contractor. Force account labor costs associated with the conduct of eligible work may be claimed at an hourly rate. Labor rates include actual wages paid plus fringe benefits paid or credited to personnel. Different eligibility criteria apply to labor rates for different kinds of employees and work, as described below.

**Permanent Employees.** For debris removal and emergency protective measures, only overtime labor is eligible, regardless of normal duties or assignments. (See FEMA Policy 9525.7, Labor Costs – Emergency Work.)

For permanent work, both regular time and overtime are eligible. Regular time of permanent employees who are funded from an external source (e.g., by a grant from a Federal agency, statutorily dedicated funds, or rate payers) to work on specific non-disaster tasks is an eligible cost when the employee is performing emergency work. Overtime or compensatory time for “exempt” employees is not eligible, except where written policies allow for it, and cannot be contingent upon Federal funding. The costs of salaries and benefits for individuals sent home or told not to report due to the emergency conditions are not eligible for reimbursement. However, extraordinary costs for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the procedures were provided for in a written policy prior to the disaster.

**Seasonal Employees.** Seasonally employed personnel, when covered under existing budgets and used for a disaster during the normal season



of employment, are considered permanent employees for the purpose of cost eligibility.

**Reassigned Employees.** Many times during a disaster, employees are assigned to perform tasks that are not part of their normal jobs. The labor cost for the reassigned employee is eligible as long as the reassigned employee is performing eligible work.

For emergency work, only overtime is eligible for reassigned employees. For permanent work, both regular and overtime are eligible. An example of a reassigned employee performing eligible work is having an office employee stacking sandbags or a police officer removing debris from a roadway. The pay rate is based on the reassigned employee's normal rate of pay, not the pay level appropriate to the work.

**Backfill Employees.** When a permanent employee is performing eligible disaster-related work, it is sometimes necessary to provide a person to fill their normal position and duties. The following examples provide guidance on determining the eligibility of these backfill employee costs:

- If the backfill employee is an extra hire, the cost of this person represents an extra cost to the applicant. Straight time salary, benefits, and overtime costs are eligible for work performed by the backfill employee.
- If the backfill employee is a regular employee of the applicant, there is no extra cost. Only the overtime cost for work performed by the backfill employee is eligible.
- If the backfill employee is a regular employee who is called in on a weekend or other day off, there may be an extra cost. Straight time, benefits, and overtime costs are eligible for work performed by the backfill employee.
- If the backfill employee is called in from vacation, there is no extra cost because the vacation can be rescheduled. Only overtime costs are eligible for work performed by the backfill employee.

**Temporary Employees.** Temporary employees are extra personnel hired as a direct result of the disaster to perform eligible work. An example of a temporary employee would be a laborer hired to perform repairs to roads damaged during the disaster. Regular and overtime costs are eligible for both emergency and permanent work performed by temporary employees when they are doing eligible work.

**Force Account Mechanics.** Time spent maintaining and repairing applicant-owned equipment is not eligible because this cost is included in equipment rates described on pages 48–49. Repair of disaster damage to equipment may be eligible, as described later in this chapter under Category E.

**Foremen and Supervisors.** Labor for both foremen and supervisors may be eligible for work forces engaged in disaster-related field activities to the extent that the time is associated with eligible work. (See “Project Supervision and Management Costs,” pages 61–65, for further discussion.) However, the salaries of commissioners, mayors, department directors, police and fire chiefs, and other administrators usually are not eligible.

**Contract Supervision.** Reasonable costs of contractors hired to accomplish emergency work are eligible for reimbursement. Regular time salaries of the applicant’s employees overseeing contractors performing emergency work are not eligible. However, regular time salaries of force account labor for overseeing contractors performing permanent work are eligible.

**National Guard Labor and Prisoner Labor.** The Stafford Act contains specific reference to costs of National Guard labor and prisoner labor. Costs of using National Guard personnel to perform eligible work are eligible to the extent that those costs are being paid by the State. Prisoner labor costs are eligible at the rate normally paid to prisoners. Costs of prisoner labor also include transportation to the worksite and extraordinary costs of guards, food, and lodging.

### **General Criteria for Labor Costs**

**Davis-Bacon Act.** The Davis-Bacon Act requires Federal agencies to pay workers under contract to them the “prevailing wage,” defined by the Department of Labor. The provisions of the Davis-Bacon Act **do not** apply to State or local contracts for work completed using Public Assistance funds under the Stafford Act. However, the provisions **do** apply to contracts let by other Federal agencies, such as the USACE, when operating under a Mission Assignment from FEMA. If a State or local government incorporates Davis-Bacon wage rates as part of its normal practice for all contracts, regardless of funding source, those rates are eligible.

**Regular Time and Overtime.** For debris removal and emergency protective measures, only overtime labor is eligible for permanent

employees, regardless of normal duties or assignments. For permanent work, both regular time and overtime are eligible for all employees. Policies for payment of overtime or premium pay must be reasonable and not be contingent on Federal funding. The policy must have set criteria for its activation and not be open to the discretion of management.

**Compensatory Time.** If an applicant has a written policy in place prior to the disaster for providing compensatory time in place of overtime, FEMA reimbursement will be based on that policy. Funding at a reasonable rate is eligible if the written policy requires it.

**Fringe Benefits.** Fringe benefits that are actually paid or credited as part of an established policy are eligible. Because certain items in a benefit package are not dependent on hours worked, such as health insurance, the fringe benefit rate will be different for regular and overtime hours. The overtime fringe benefit rate is usually significantly lower.

The following steps may be used to calculate the percentage of fringe benefits paid on an applicant's employee's salary. Note that items and percentages will vary from one entity to another.

1. The normal year consists of 2080 hours (52 weeks x 5 workdays/week x 8 hours/day). This makes no allowance for holidays and vacations.
2. Determine the employee's basic hourly pay rate (annual salary/2080 hours).
3. Fringe benefit percentage for vacation time: Divide the number of hours of annual vacation time provided to the employee by 2080 (80 hours (assuming 2 weeks)/2080 = 3.85%).
4. Fringe benefit percentage for paid holidays: Divide the number of paid holiday hours by 2080 (64 hours (assuming 8 holidays)/2080 = 3.07%).
5. Retirement pay: Because this measure varies widely, use only the percentage of salary matched by the employer.
6. Social Security and Unemployment Insurance: Both are standard percentages of salary.
7. Insurance: This benefit varies by employee. Divide the amount paid by the applicant by the basic pay rate determined in Step 2.
8. Workman's Compensation: This benefit also varies by employee. Divide the amount paid by the applicant by the basic pay rate

determined in Step 2. Use the rate per \$100 to determine the correct percentage.

Note: Typically, the applicant should not be charging the same rate for regular time and overtime. Those fringe benefits that vary with the number of hours worked may be eligible at the higher rate.

*Sample Rates*

Although some rates may differ greatly between organizations, the table below provides some general guidelines that can be used as a test of reasonableness when reviewing submitted claims. These rates are based on experience in developing fringe rates for several State departments. The rates presented are determined using the gross wage method applicable to the personnel hourly rate method. The net available hours method would result in higher rates.

**Table 3: Paid Fringe Benefits**

<b>Item</b>	<b>Rate</b>
Holiday Leave	4.00% (or less)
Accrued Vacation Leave	7.00% (or less)
Sick Leave	4.00% (or less)
Social Security Matching	6.2% of employee earnings up to \$94,200 (in 2006)
Medicare	1.35%
Unemployment Insurance	0.25% (or less)
Worker's Compensation	3.00% (or less)
Retirement – Regular	17.00% (or less)
Retirement – Special Risk	25.00% (or slightly more)
Health Insurance	12.00% (or less)
Life & Disability Insurance	1.00% (or less)
Administrative Leave	0.50% (or less)
Compensatory Leave	2.00% (or less)

Rates outside of these ranges are possible, but should be justified.

**Figure 2: Applicant's Benefits Calculation Worksheet**

FEDERAL EMERGENCY MANAGEMENT AGENCY APPLICANT'S BENEFITS CALCULATION WORKSHEET		PAGE ____ OF ____	O.M.B. No. 1660-0017 Expires October 31, 2008
APPLICANT		PA ID NO.	
DISASTER		PROJECT NO.	
FRINGE BENEFITS (by %)	REGULAR TIME	OVERTIME	
HOLIDAYS			
VACATION LEAVE			
SICK LEAVE			
SOCIAL SECURITY			
MEDICARE			
UNEMPLOYMENT			
WORKER'S COMP.			
RETIREMENT			
HEALTH BENEFITS			
LIFE INS. BENEFITS			
OTHER			
TOTAL in % of annual salary			
COMMENTS			
I CERTIFY THAT THE INFORMATION ABOVE WAS TRANSCRIBED FROM PAYROLL RECORDS OR OTHER DOCUMENTS WHICH ARE AVAILABLE			
CERTIFIED BY	TITLE	DATE	

FEMA Form 90-128, FEB 06

## Materials

The cost of supplies that were purchased or taken from an applicant's stock and used during the performance of eligible work is eligible. Replacement costs may be determined by contacting area vendors.

## Equipment

Certain ownership and operating costs for force account (that is, applicant-owned) equipment used to perform eligible work are eligible. Costs for use of automobiles and pick-up trucks may be reimbursed on the basis of mileage if less costly than hourly rates. For all other types of equipment, costs are reimbursed using an hourly rate. Reimbursable equipment rates typically include operation (including fuel), insurance, depreciation, and maintenance; however, they do not include the labor of the operator. Stand-by time for equipment is not eligible. However, if an applicant uses equipment intermittently for more than half of the normally scheduled working hours for a given day, use for the entire day may be claimed if adequate documentation is submitted. Equipment that is used for less than half of the normally scheduled working day is reimbursable only for the hours used.

See FEMA Policy 9525.8, Damage to Applicant Owned Equipment, for guidance on recovering costs related to the repair of force account equipment damaged during the performance of eligible disaster work, including transit to the work site.

FEMA recognizes three types of equipment rates. Each is described as follows.

**FEMA Rates.** FEMA has published a schedule of equipment rates that is applicable on a national basis. If a piece of equipment used by an applicant is not on the FEMA schedule, documentation to justify the requested rate must be submitted to FEMA for the DRM's approval. If an entity has established rates for use in its normal day-to-day operations, the criteria listed below under State and local rates apply. If an entity does not have established rates, FEMA rates will be used.

**State Rates.** An applicant may claim reasonable rates that were developed using State guidelines up to \$75 per hour. Rates over \$75 per hour may be approved by the Disaster Recovery Manager (DRM) on a case-by-case basis. A State guideline would be an equipment cost methodology used by a State agency to account for the costs of using its own equipment. Care must be taken to examine the rate schedule before applying it to State or locally owned equipment. Some State

highway departments have a schedule of rates for “force account” work, the meaning of which is generally different from its meaning in the PA Program. State highway usage of the term may mean a rate for contractor’s equipment doing extra work on a project. PA Program usage means a rate for applicant-owned equipment. Therefore, FEMA may request verification that any such rate schedule is actually for applicant-owned equipment.

**Local Rates.** Rates developed by a local government can be used. Where local rates have been developed, reimbursement is based on the local rates or FEMA’s rates, whichever is lower. If the local rate is lower and the applicant certifies that the rates do not reflect all actual costs, the higher FEMA rates may be used. The applicant may be requested to provide documentation of the basis for its rates.

### **Equipment and Supplies Purchased for Disaster Use**

There are many instances where an applicant will not have sufficient equipment and supplies to respond to the disaster in an effective manner. For the purpose of this section, the following definitions apply:

- The term “equipment” means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- The term “supplies” means all tangible personal property other than equipment.

While FEMA may assist the applicant in purchasing the needed equipment and supplies, the applicant is required to compensate FEMA for the Federal share of the cost of individual items of equipment and the aggregate total of supplies with a current fair market value in excess of \$5,000 when the items are no longer needed for the disaster. For equipment and supplies below this threshold, the applicant may sell or otherwise dispose of the items with no compensation to FEMA. (See FEMA Policy 9525.12, Disposition of Equipment, Supplies and Salvaged Materials.)

The fair market value is the value of equipment and supplies determined by selling them in a competitive market or researching advertised prices for similar items on the used market. The current fair market value should be determined at the time the equipment and supplies are no longer needed for disaster operations regardless of when actual disposition takes place.

## Salvage Value

When applicable, salvage value should be deducted from the estimated replacement cost. Disposition of salvaged materials must be at fair market value and the value must be reimbursed to FEMA to reduce the total project cost. For example, debris resulting from disasters, such as timber debris, mulched debris, and scrap metal, may have a market value. Reasonable costs for administering and marketing the sale of the salvageable materials is allowed to be recouped by the applicant from the fair market value. To reduce contract costs, applicant debris removal contracts may provide for the contractors to take possession of salvageable material and benefit from its sale in order to lower bid prices. When the salvage values are taken into account in the bid and award, no salvage value needs to be recouped at the end of the project. (See FEMA Policy 9525.12, Disposition of Equipment, Supplies and Salvaged Materials.)

## Third Party Liability

When a third party causes damage (e.g., an oil spill) or otherwise increases the cost of repair or cleanup, the applicant is required to pursue the third party for recovery. If recovery is not adequate despite the applicant's good faith effort, costs may be funded through a PW. Reasonable costs (including reasonable legal fees) of such recovery may be deducted from the recovery before the deduction is made from the eligible costs.

## Mutual Aid Agreements

In some cases, State or local governments use mutual aid agreements as an emergency preparedness device. A mutual aid agreement is an agreement between jurisdictions or agencies to provide services across boundaries in an emergency or major disaster. Such agreements usually provide for reciprocal services or direct payment for services. FEMA will reimburse mutual aid costs for eligible emergency work, when requested by the applicant (receiving entity) in accordance with FEMA Policy 9523.6, Mutual Aid Agreements for Public Assistance. Key provisions are:

- reimbursement to the providing entity is not contingent on the receipt of Federal funding;
- the assistance is for the performance of eligible work;
- the claimed costs are reasonable;



- the work accomplished, the billing for assistance, and the payment for the assistance can be documented; and
- the claimed costs are in accordance with FEMA's mutual aid policy.

When a pre-event agreement provides for reimbursement, but also provides for an initial period of unpaid assistance, FEMA will pay the eligible costs of assistance after the initial unpaid period. When a pre-event mutual aid agreement provides for reimbursement and there is a consistent record of reimbursement without Federal funds, FEMA reimbursement will follow the provisions of the agreement.

When the parties do not have a pre-event written mutual aid agreement, the Requesting and Providing entities may verbally agree on the type and extent of mutual aid resources to be provided to the current event, and the terms, conditions, and costs of such assistance. Post-event verbal agreements must be documented in writing and executed by an official of each entity with authority to request and provide assistance, and provided to FEMA as a condition of receiving reimbursement.

The Emergency Management Assistance Compact (EMAC) is a form of mutual aid. It establishes procedures whereby a disaster-impacted state can request and receive assistance from other member states quickly and efficiently. EMAC resolves two key issues up front: liability and reimbursement. The requesting State agrees to (1) assume liability for out-of-state workers deployed under EMAC and (2) reimburse assisting states for deployment-related costs. There are two types of work potentially eligible for FEMA reimbursement; grant management work and emergency work. To the extent the specific agreement between states meets the requirements of the FEMA policy on mutual aid agreements and the work meets FEMA eligibility requirements, costs may be eligible for FEMA assistance. Reimbursement for these costs would be subject to the Federal/non-Federal cost share for that disaster.

To be allowable, costs must be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the applicant. The receiving entity is responsible for requesting FEMA assistance and for the non-Federal cost share.

## **Contracts**

Contracts must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. FEMA regulations at 44 CFR Part 13 – *Uniform Administrative Requirements For Grants And Cooperative Agreements To State And*

*Local Governments* provide specific guidance on contracts. FEMA finds four methods of procurement acceptable. Each is described below in general terms.

**Small Purchase Procedures.** Small purchase procurement is an informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.

**Sealed Bids.** Sealed bid procurement is a formal method where bids are publicly advertised and solicited, and the contract is awarded to the bidder whose proposal is the lowest in price (this method is the preferred method for procuring construction contracts).

**Competitive Proposals.** Competitive procurement is a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of solely on price (this method is often used for procuring architectural or engineering professional services).

**Noncompetitive Proposals.** Noncompetitive procurement is a method whereby a proposal is received from only one source. Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

- the item is available only from a single source;
- there is an emergency requirement that will not permit a delay for competition;
- FEMA authorizes a noncompetitive proposal; or
- solicitation from a number of sources has been attempted, and competition is determined to be inadequate.

“Piggyback contracting” is a concept of expanding a previously awarded contract. Piggyback contracting does not meet the requirements of 44 CFR Part 13 because it is non-competitive and may have an inappropriate price structure. This type of contract is not eligible. However, FEMA may separately evaluate and reimburse costs it finds fair and reasonable.

It is important to recognize that an applicant may provide a contract that meets the legal and administrative procurement requirements but includes aspects that would not be eligible for FEMA funding. Each type of contract must be reviewed carefully to assure compliance with the FEMA scope of eligible work.

FEMA provides reimbursement for three types of contracts. They are:

- lump sum contracts for work within a prescribed boundary with a clearly defined scope and a total price;
- unit price contracts for work done on an item-by-item basis with cost determined per unit; and
- cost plus fixed fee contracts, which are either lump sum or unit price contracts with a fixed contractor fee added into the price.

Applicants should avoid using time and materials contracts. FEMA may provide assistance for work completed under such contracts for a limited period (generally not more than 70 hours) for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Monitoring is critical and a competitive process still should be used to include labor and equipment rates. Trimming trees of dangerous hangers may be an appropriate use of this type of contract, but only if an acceptable unit price contract is not feasible. Applicants must carefully monitor and document contractor expenses, and a cost ceiling or “not to exceed” provision must be included in the contract. If a time and materials contract has been used, the applicant should contact the State to ensure proper guidelines are followed. Cost plus a percentage of cost contracts are not eligible. However, FEMA may separately evaluate and reimburse costs it finds fair and reasonable. FEMA may review proposed contracts for compliance with FEMA eligibility rules and reasonableness of costs, but such a review does not constitute approval.

FEMA has developed an on-line debris contractor registry tool to assist State and local governments in identifying and contacting contractor resources. The registry tool can be found on FEMA’s website ([www.fema.gov/business/contractor.shtml](http://www.fema.gov/business/contractor.shtml)). The information provided in the registry is maintained by contractors and their representatives. FEMA does not verify, and takes no responsibility for, the accuracy of any of the information submitted. FEMA does not endorse, approve, or recommend any contractors, including those in the registry. State and local governments should perform all appropriate due diligence prior to entering into a contract. Contracting with any of the entities listed in the registry **does not** assure a State or local government of reimbursement under a Federal grant. State and local governments should follow their competitive procurement procedures when selecting a contractor.

## Loss of Revenue

The loss of revenue is not an eligible cost authorized by the Stafford Act and, therefore, cannot be funded through the PA Program. Loss of revenue may occur:

- when a hospital releases non-critical patients in order to make room for disaster victims;
- when a hospital sustains damage that reduces its pre-disaster capacity;
- when a toll road is opened for evacuation of traffic and the normal toll is not charged;
- when the State waives the normal fee for ferry service to encourage alternate transportation after a disaster event; or
- when a utility system is shut down as the result of a disaster.

Applicants may suffer other costs that are ineligible for FEMA assistance, such as payment of salaries for employees sent home during an emergency.

## Increased Operating Expenses

The costs of operating a facility or providing a service may increase due to or after a disaster. With few exceptions, these costs are not eligible. Some examples of ineligible costs are:

- increased hospital patient care costs;
- increased costs for feeding residents and staff of critical facilities;
- increased costs of administrative operations;
- increased costs for care and feeding of prisoners and people in residential facilities (schools, nursing homes, etc.);
- increased costs of telecommunications (e.g., additional cell phone instruments and fees);
- increased costs for copying, parcel delivery, photography, supplies, fuel, materials, and similar costs;
- food service (other than mass feeding as an emergency protective measure);

- increased cost of obtaining electrical power from an alternate source;
- increased cost of obtaining water from an alternate source; and
- costs of finance charges, e.g., interest on loans and bond costs to finance rebuilding.

However, reasonable short-term additional costs to an applicant that are directly related to accomplishing specific emergency health and safety tasks as part of eligible emergency protective measures may be eligible. If they can be documented and identified with a specific emergency task, some examples of potentially eligible costs are:

- increased utility costs of a permanently mounted generator at a hospital or at a police station;
- increased water-testing and water-treatment supplies in the **immediate** aftermath of a disaster to counter a specific threat;
- increased fuel for increased use of a pumping station;
- increased costs of vector control; and
- increased facility costs (e.g., electricity) for emergency operating centers of eligible applicants.

Examples of Emergency Protective Measures are given on pages 71–74.

## **Surveys for Damage**

The owner of a facility is responsible for determining the extent of damage. Surveys are not eligible work under a PW. Such activities are covered by an applicant's administrative allowance. Examples of ineligible survey costs include:

- general surveys for eligible facilities;
- video inspection of sewer lines;
- bridge inspections to determine the possibility of damage; and
- pier inspections to determine the possibility of damage.

In some instances, damage to an inaccessible structure or structural component may be evident based on other observations, such as sunken ground above a buried pipeline, loss of or increased flow in a pipe, or visible damage to finishes. If such conditions are evident, FEMA may pay for inspections to determine the extent of damage and method of repair.

When disaster-related damage is discovered during a survey or is evident from other observation, inspection of only the damaged section is eligible. That limited cost may be included in the PW for the damages.

After a facility is determined to be damaged, costs for an engineering evaluation to determine the type and extent of repairs necessary to return the facility to its pre-disaster condition is eligible as part of the costs of permanent repair.

## **Donated Resources**

Third party donated resources (volunteer labor, donated equipment, and donated materials) are eligible to offset the non-Federal portion of the cost for emergency work. (See FEMA Policy 9525.2, Donated Resources.) The amount of credit that can be applied to a project is capped at the non-Federal share so that the Federal share will not exceed the applicant's actual out-of-pocket costs. Any excess credit can be applied to other emergency work projects of the same applicant.

Donated resources must apply to actual eligible emergency work, such as debris removal or the filling and placing of sandbags. An example of ineligible donated resources is volunteers helping individuals applying for assistance. The donated services must be documented and must include a record of hours worked, number of workers at the work site, and a description of work.

Volunteer labor will be valued at the same hourly labor rate as a similarly qualified person in the applicant's organization who normally performs similar work. If the applicant does not have employees performing similar work, the rate should be consistent with that for a similarly qualified person ordinarily performing the work in the same labor market.

The value for donated equipment should be determined by using the applicable FEMA equipment rate and multiplying it by the number of hours the piece of equipment was used to perform eligible work.

Donated materials are valued at the current commercial rate. If the materials were donated by a Federal agency, such as sandbags donated by the USACE, the value of the materials cannot be applied as credit.

## **Engineering and Design Services**

The costs of basic engineering and design services normally performed by an architectural-engineering firm on complex construction projects are eligible for reimbursement. Such services include:

- preliminary engineering analysis;
- preliminary design;
- final design; and
- construction inspection.

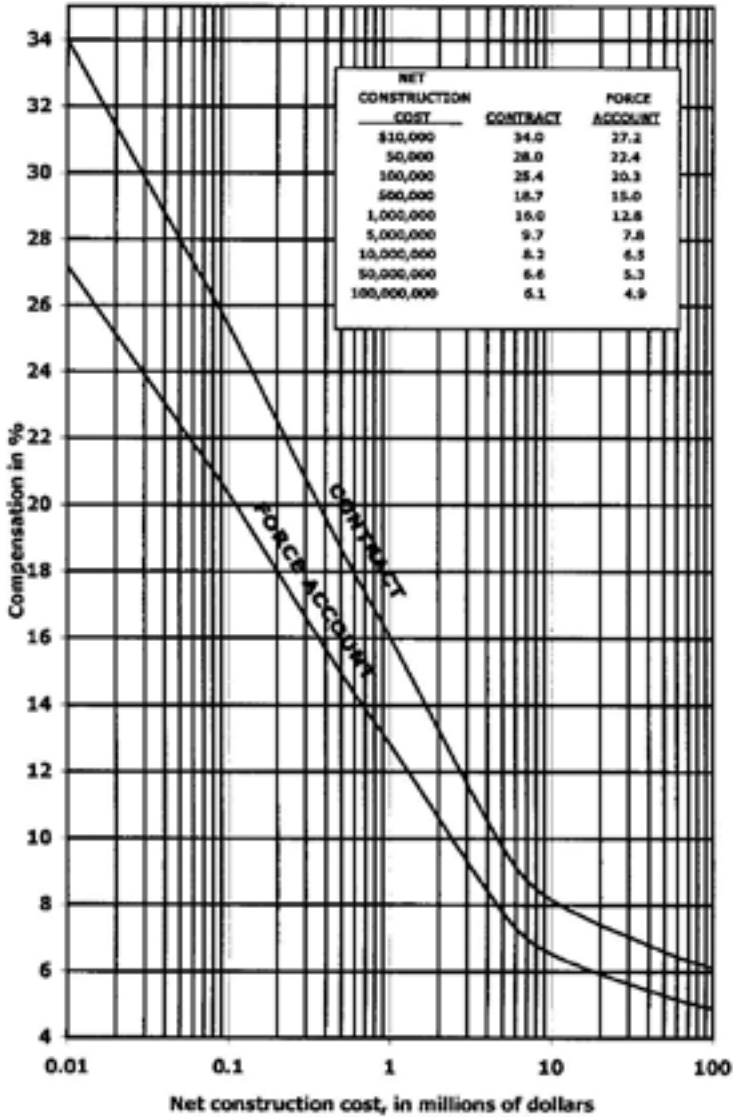
While a final inspection and reconciliation will be used to determine the actual costs for reimbursement of these services, the costs can be estimated during project formulation using a percentage of the construction cost. Percentages are derived from FEMA engineering and design services cost curves. These curves, which were developed for FEMA from data developed by the American Society of Civil Engineers Committee on Professional Practice in 2005, show a correlation between engineering costs and total construction costs. These curves are shown in Figures 3 and 4. To use the curves, estimate construction costs for a project. Find the construction cost on the horizontal axis and, using the appropriate curve for either force account or contract work, read the associated percentage of engineering and design services from the vertical axis. This percentage can be multiplied by the estimated construction cost to determine an appropriate engineering and design cost estimate.

**Curve A** applies to projects of above-average complexity and non-standard design. Examples of such projects include:

- airports with extensive terminal facilities;
- water, wastewater, and industrial waste treatment plants;
- hospitals, schools, and office buildings;
- power plants;
- large dams and complicated small dams;
- highway and railway tunnels;
- pumping stations;
- incinerators; and
- complicated waterfront and marine terminal facilities.

**Figure 3:  
Engineering and Design Services of Above-Average Complexity**

**CURVE A. COMPENSATION FOR BASIC SERVICES EXPRESSED AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF ABOVE-AVERAGE COMPLEXITY AND NON-STANDARD DESIGN**



NOTE: "Contract" and "Force Account" above mean engineering and design services performed by contract or by an applicant's own employees, respectively.



**Curve B** applies to projects of average complexity. Examples of such projects include:

- industrial buildings, warehouses, garages, hangars, and comparable structures;
- bridges and other structures of conventional design;
- simple waterfront facilities;
- roads and streets;
- conventional levees, floodwalls, and retaining walls;
- small dams;
- storm sewers and drains;
- sanitary sewers;
- water distribution lines;
- irrigation works, except pumping plants; and
- airports, except as classified for Curve A.

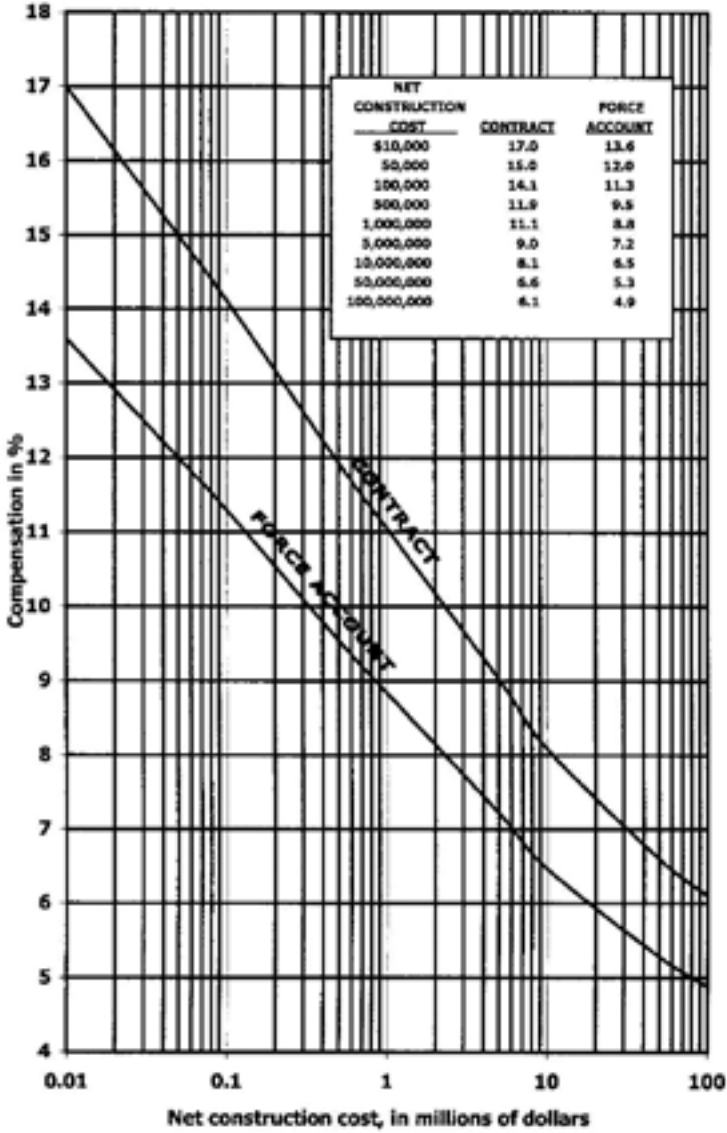
In addition to the basic engineering services, special services may be required for some projects. Such services include engineering surveys, soil investigations, services of a resident engineer, and feasibility studies. Because special services are not required on all projects, they are not included in the percentages on the engineering and design services curves. These services are estimated separately.

If a project requires only basic construction management, a fee not exceeding 3 percent of construction costs may be used for the estimate. Management functions include review of bids, work site inspection visits, checking and approval of material samples, review of shop drawings and change orders, review of contractor's request for payment, and acting as the client's representative. An example of a project requiring only inspection services but no design and engineering would be a building repair project that only included patching and painting damaged interior wall. Another example would be where a contractor is hired to repair local roads back to the pre-disaster condition, using local construction standards.

Estimates for engineering and design services and construction inspection typically are not included in small project estimates or

Figure 4:  
Engineering and Design Services of Average Complexity

**CURVE B, COMPENSATION FOR BASIC SERVICES EXPRESSED AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF AVERAGE COMPLEXITY**



NOTE: "Contract" and "Force Account" above mean engineering and design services performed by contract or by an applicant's own employees, respectively.

emergency work project estimates except for complex projects or projects where special services are required.

Actual costs, not estimated costs, for eligible engineering and design services should be claimed in large project final inspection and reconciliation. Costs that exceed the amounts determined by use of these curves will be reviewed for reasonableness and funded accordingly.

## **Project Supervision and Grant Management Costs**

Applicants have several types of eligible supervisory and management costs available that serve different purposes and need to be identified and claimed separately. (See FEMA Policy 9525.6, Project Supervision and Management Costs of Subgrantees.) Commingling of these various costs and claiming them incorrectly may result in loss of eligible reimbursement. Project management costs provided when using the Cost Estimating Format methodology for estimating project costs (see pages 105–106) must not duplicate other requests for reimbursement.

The following items may be eligible project supervision and management costs:

- A. **Supervision and Management by Force Account.** In general, applicant expenses for administration and management activities not specifically accountable to an eligible work project are ineligible. The regular time salaries of an applicant's permanently employed personnel who supervise or manage emergency work performed by an applicant's employees (or by contractors) are not eligible; only overtime costs are eligible for emergency work. Labor costs of second level supervisors (and above) are ineligible unless the applicant can account for specific time spent on eligible permanent projects. Generally, the labor costs of only first line supervisors of permanent work are eligible.
- B. **Project Management Activities.** Project management is the oversight of an eligible project from the design phase to the completion of work. Eligible project management activities are those activities that the applicant would have performed in the absence of Federal funding, such as:
  - ▶ direct management of projects in the concept and design stages that are being designed by an applicant's in-house staff, or by an architectural/engineering firm retained to analyze and design the repair or replacement of damaged facilities;

- ▶ procurement activities for architectural/engineering services and performance of work;
- ▶ review and approval of the project design regardless of who performs the design work; and
- ▶ management of construction work by contractors.

C. **Master Service Agreements.** Local governments occasionally enter into Service Agreements or Master Service Agreements (MSAs) with private contractors for management or overview of disaster work. The agreements typically involve a broadly defined scope of services, allowing the local government to use the contractor for multiple tasks. An MSA might include various tasking for architectural/engineering services, construction and construction management services, procurement assistance (bid document preparation, bid analysis and review, etc.), and other technical services (environmental and historic consulting etc.). The eligibility of specific costs payable under an MSA depends upon the nature of the work. If a task under the MSA meets FEMA eligibility criteria, complies with 44 CFR Part 13, does not duplicate other work funded by FEMA, and is directly related to a specific, FEMA-approved project, the cost may be incorporated into the PW for the project it is supporting. Any general MSA costs not directly related to the performance of a specific eligible project are not eligible for reimbursement. Some of these costs may be covered by the Administrative Allowance (e.g., preparing the grant application). A separate PW just for MSA activities may not be prepared. Grantees employing similar services may request coverage of these expenses on a State Management PW.

D. **Administrative Allowance.** Federal regulations for grant programs allow the grant recipients to claim reasonable administrative costs, unless the law authorizing a grant program includes specific provisions for these costs. For the PA Program, the Stafford Act stipulates that each grant recipient be provided an allowance to meet the cost of administering the grant. The allowance is calculated differently for applicants and States and covers different costs for each.

**Applicants.** The Administrative Allowance for applicants (subgrantees) covers direct and indirect costs incurred in requesting, obtaining, and administering Public Assistance, i.e., grant management. No other administrative or indirect costs

incurred by an applicant are eligible. Examples of the activities that this allowance is intended to cover include:

- ▶ identifying damage (to include photographs and flyovers of damaged areas);
- ▶ attending the Applicants' Briefing;
- ▶ completing forms necessary to request assistance;
- ▶ preparing PWs for small projects or assisting the Project Specialist (Project Officer) in completing PWs for large projects;
- ▶ establishing files, and providing copies and documentation;
- ▶ assessing damage, collecting cost data, and developing cost estimates;
- ▶ working with the State during project monitoring, final inspection, and audits; and
- ▶ preparing for audits.

The allowance is not intended to cover direct costs of managing specific projects that are completed using Public Assistance funds. These costs are eligible as part of the grant for each project, as long as they can be specifically identified and justified as necessary to do the work. For example:

The wages of a foreman on the site of a repair project would be a direct cost associated with that project and would not be included in an applicant's Administrative Allowance.

At the time of publication of this guide, FEMA was preparing to change the system for calculating the amount of compensation due. Until that new method is finalized, the following method will continue to be used.

The Administrative Allowance for an applicant is calculated as a percentage of all approved eligible costs that the applicant receives for a given disaster. The applicant is not required to submit documentation for its administrative allowance, but records are required to be kept for audit purposes. If there are surplus Administrative Allowance funds, they must be returned to FEMA. Retaining unspent funds and using them for another purpose is not

permitted by Federal regulation. This percentage is calculated using a sliding scale as indicated in Table 4.

**Table 4: Administrative Allowance – Applicants**

Total Amount of PA Project Funds	Allowance
First \$100,000 of net eligible costs	3 percent of net eligible costs
Next \$900,000 of net eligible costs	2 percent of that \$900,000 or less
Next \$4,000,000 of net eligible costs	1 percent of that \$4,000,000 or less
Net eligible costs in excess of \$5,000,000	½ percent of that excess

**States.** The Administrative Allowance for States is provided for the extraordinary costs incurred for **overtime pay, per diem, and travel expenses** for State employees who participate in the administration of Public Assistance grants. It does not cover regular time labor costs, equipment purchases, contractor assistance, or other costs directly associated with grant administration.

Examples of administrative activities covered by the allowance include:

- ▶ field inspections;
- ▶ preparation of damage assessments and cost estimates;
- ▶ conducting Applicants’ Briefings;
- ▶ working with applicants; and
- ▶ project monitoring, processing of appeals, final inspections, and audits.

The Administrative Allowance is calculated as a percentage of the Federal share of all Public Assistance funds (under Sections 403, 406, 407, 502, and 503 of the Stafford Act) actually awarded in the State for a given disaster. The percentage is calculated on the Federal share of eligible Public Assistance costs for the entire disaster using the same sliding scale as that used for applicants. Costs covered under the State Management Administrative Costs (see Table 5) are not included in the base calculation of the Administrative Allowance. The State is not required to submit

documentation for its Administrative Allowance, but records are required to be kept for audit purposes.

At the time of publication of this guide, FEMA was preparing to change the system for calculating the amount of compensation due. Until that new method is finalized, the following method will continue to be used.

**Table 5: Administrative Allowance – Grantee**

<b>Total Amount of PA Grant Funds</b>	<b>Allowance</b>
First \$100,000 of Federal share	3 percent of Federal share
Next \$900,000 of Federal share	2 percent of that \$900,000 or less
Next \$4,000,000 of Federal share	1 percent of that \$4,000,000 or less
Federal share in excess of \$5,000,000	½ percent of that excess

- E. **State Management Administrative Costs.** In addition to reimbursement under the Administrative Allowance, a State Management PW is prepared to cover the regular time of State employees and other grant administration costs associated with performing grant management activities. If it is necessary for a Grantee to employ a contractor to perform this work, reasonable contractor costs, including overtime, travel, and per diem, are eligible. (See FEMA Policy 9525.11, Payment of Contractors for Grant Management Tasks.) FEMA will continue to fund State costs by the current system until FEMA publishes regulations for management costs.
- F. **State Indirect Cost Reimbursement.** Indirect cost reimbursement is contingent on the State submitting a State Indirect Cost Rate Proposal or a Public Assistance Cost Allocation Plan per Attachments D and E of Office of Management and Budget (OMB) Circular A-87. The proposal or plan should be submitted to FEMA, Office of Financial Management, Disaster Finance Branch, Disaster Reports and Analysis Section, for approval.

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## CATEGORIES OF WORK

To facilitate the processing of Public Assistance grants, FEMA has divided disaster-related work into two broad categories, emergency work and permanent work. Emergency and permanent work are further divided into the seven defined categories shown in Table 6.

**Table 6: Categories of Work**

Category	Type of Work
Emergency Work:	A Debris Removal
	B Emergency Protective Measures
Permanent Work:	C Roads and Bridges
	D Water Control Facilities
	E Buildings and Equipment
	F Utilities
	G Parks, Recreational Facilities, and Other Items

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## EMERGENCY WORK

Emergency work is that which must be performed to reduce or eliminate an immediate threat to life, protect public health and safety, and to protect improved property that is threatened in a significant way as a result of the disaster. Specific eligibility criteria for the two emergency work categories, Category A Debris Removal and Category B Emergency Protective Measures, are discussed in detail in the individual category discussions that follow.

Within the referenced criteria, the term “immediate threat” describes imminent danger or the threat of additional damage or destruction from an event that could reasonably be expected to occur within 5 years. It must be kept in mind, however, that the definition of “emergency” or “immediate threat” may differ where the requirements of other laws or Federal agencies are concerned. The following are examples of how this definition applies to various disaster scenarios.

**For a flood**, the immediate threat exists if a 5-year flooding event could cause damage or threaten lives, public health, and safety. This is not a flood that necessarily happens within 5 years, but a flood that has a 20 percent chance of occurring in any given year.



**For a landslide**, an immediate threat may exist if the earth on a slope could slide as the result of a moderate amount of rainfall. A geotechnical study may be necessary to determine if an immediate threat exists.

**For an earthquake**, an immediate threat may exist if moderate ground shaking, such as might be expected during an aftershock, could cause further damage to a structure or threaten the safety of the structure's occupants.

**For a hurricane**, an immediate threat may exist if improved property could be exposed to flooding from a 5-year event. Similarly, if a wind-damaged facility is subject to additional damage by moderate winds, such winds could be considered an immediate threat.

State authorities must document the determination that an immediate health or safety threat is present pursuant to established State or local ordinances, regulations, or other engineering criteria.

“Improved property” means a structure, facility, or item of equipment that was built, constructed, or manufactured. It includes improved and maintained natural features. It does not include land improved for agricultural purposes.

## **Category A – Debris Removal**

Potentially eligible debris removal activities include the clearance of:

- trees and woody debris;
- building components or contents;
- sand, mud, silt, and gravel;
- wreckage produced during conduct of emergency protective measures (e.g., drywall); and
- other disaster-related wreckage.

To be eligible for Public Assistance, debris removal must be in the public interest, which is when removal is necessary to:

- eliminate immediate threats to lives, public health and safety;
- eliminate immediate threats of significant damage to improved public or private property when the measures are cost effective;

- ensure economic recovery of the affected community to the benefit of the community-at-large; or
- mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired using FEMA hazard mitigation program funds to uses compatible with open space, recreation, or wetlands management practices. (See FEMA Policy 9523.4, Demolition of Private and Public Facilities.)

In all cases, the costs associated with these activities must be reasonable.

### **Public Property**

In general, debris on public property that must be removed to allow continued safe operation of governmental functions or to alleviate an immediate threat is eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a natural stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, removal of the disaster-related debris only to the extent necessary to protect against an immediate threat would be eligible. However, not all public property clearance will necessarily be eligible. For example, removal of fallen trees in an unused forested or wilderness area would not be eligible.

Where temporary levees have been constructed as an emergency protective measure, removal of them will be eligible only to protect public health and safety or to protect improved public or private property.

Debris cleared from roads and highways, including the travel lanes and shoulders, roadside ditches and drainage structures, and the maintained right-of-way, may be eligible. When the Emergency Relief Program is activated for an area, FHWA assistance is available for debris removal on Federal-Aid roads and FEMA assistance is not available for these roads. If the Emergency Relief Program is not activated, then FEMA assistance may be available. (See pages 25–26 for further discussion of FHWA programs.)

The removal of debris from parks and recreational areas used by the public is eligible when it affects public health or safety or proper utilization of such facilities. Trees frequently constitute a large part of debris in these areas. Normally, trees requiring removal are flush cut at the ground.

Stump removal is not eligible unless it is determined that the stump itself poses a hazard, as when the tree has been uprooted. When eligible, stump removal will be accomplished by the most economical means. [For additional guidance regarding debris operations and FEMA eligibility criteria, see FEMA Policy 9523.11, Hazardous Stump Extraction and Removal Eligibility; FEMA Policy 9523.12, Debris Operations: Hand-Loaded Trucks and Trailers; the *Debris Management Guide* (FEMA publication 325); FEMA 9580.1, Public Assistance Debris Operations Job Aid; FEMA Fact Sheet 9580.201, Debris Removal Applicant's Contracting Checklist; and FEMA Fact Sheet 9580.202, Debris Removal Authorities of Federal Agencies.]

### **Private Property**

Debris on private property rarely meets the public interest standard because it does not affect the public at large and may not be the legal responsibility of a State or local government. Debris removal from private property is the responsibility of the individual property owner aided by insurance settlements and assistance from volunteer agencies. Many homeowner fire and extended coverage insurance policies have specific coverage for debris removal and for demolition of heavily damaged structures. FEMA assistance is not available to reimburse private property owners for the cost of removing debris from their property; however, an eligible local or State government may pick up and dispose of disaster-related debris placed at the public right-of-way by those private individuals. This type of work must be carefully controlled with regard to extent and duration.

If debris on private business and residential property is so widespread that public health, safety, or the economic recovery of the community is threatened, the actual removal of debris from the private property by an applicant may be eligible. Such debris removal must benefit the general public and not just an individual or a limited group of individuals within the community. The use of the economic recovery criterion is normally restricted to the removal of disaster-related debris from large commercial areas when a significant percentage of the commercial sector of a community is impacted and coordinated debris removal is necessary to expedite restoration of the economic viability of the affected community. It does not normally apply to residential property. In each of these situations, the work must be done, or be contracted for, by an eligible applicant. If the local government and the State are both incapable of arranging for the work to be done, direct Federal assistance may be requested. Direct Federal Assistance is discussed in more detail on pages 76–78 of this guide. FEMA must approve removal of debris from private

property before the work begins for that work to be eligible. Additionally, debris removal from private property will not be approved until the State or local government has agreed in writing before work begins to indemnify FEMA from any claims arising from such removal and has obtained unconditional authorization to remove the debris from the property owner. This indemnification includes Right-of-Entry agreements, release from liability, and signed agreements with property owners that any available insurance proceeds will be pursued and credited back to FEMA. Debris removal from agricultural land is not eligible. See the discussion of Homeowners' Associations and Gated Communities on pages 20–21 for further information on debris on private property.

A governmental resolution after a disaster by an applicant declaring that debris on private property constitutes a threat to public health and safety does not in itself make the debris removal eligible. The applicant should submit its established, specific legal requirements for declaring the existence of a threat to public health and safety to FEMA for review and approval. Conditions that could make the removal of debris from private property eligible for reimbursement include:

- a damaged structure may be a public health and safety hazard if it could be condemned as such pursuant to the provisions of an applicant's ordinance related to condemnation of damaged structures. Such a determination must be made by an individual qualified to do so, such as a certified building inspector; or
- a public health hazard may exist if such a determination is made pursuant to the provision of an applicant's ordinance related to public health. Such a determination must be made by an individual qualified to do so, such as a public health official.

In general, even if private property debris removal is authorized, FEMA will not pay for removal of the following:

- privately owned vehicles, whether or not insured;
- old white goods (refrigerators, washers, dryers, etc.) located on private property awaiting proper disposal before the disaster;
- old tires, batteries, or any equipment/material located on private property awaiting proper disposal before the disaster;
- other equipment or material stored on the property or awaiting disposal before the disaster;
- damaged swimming pools and basements;

- damaged foundations (unless it is part of a mitigation buy-out project); or
- reconstruction debris, private or public, sometimes called construction rubble. This is material resulting from reconstruction activities. Removal is the responsibility of the property owner. Removal of reconstruction debris from an eligible facility may be included in the repair/replacement Project Worksheet for that facility.

## **Category B – Emergency Protective Measures**

Emergency protective measures are those activities undertaken by a community before, during, and following a disaster that are necessary to do one of the following:

- eliminate or reduce an immediate threat to life, public health, or safety; or
- eliminate or reduce an immediate threat of significant damage to improved public or private property through cost-effective measures.

Generally, those prudent actions taken by a community to warn residents, reduce the disaster damage, ensure the continuation of essential public services, and protect lives and public health or safety are eligible for assistance. Such activities should be evaluated to ensure that they meet the criteria of the law. The following list provides examples of activities that may be eligible:

- Warning of risks and hazards.
- Search and rescue, including transportation of disaster victims.
- Emergency medical facilities. Eligible costs include any additional temporary facilities and equipment required to treat disaster victims when existing facilities are overloaded or damaged. Ineligible costs include any costs for emergency medical treatment (including vaccinations), labor costs (physicians, medical personnel, etc.), follow-on treatment, increased operational and administrative costs, and loss of revenue. (See FEMA Policy 9525.4, Medical Care and Evacuations.)
- Emergency evacuations of medical and custodial care facilities. Eligible costs include transportation and extraordinary labor costs for non-medical staff assisting in the evacuations. Ineligible costs

include medical staff and supplies utilized during the evacuations. (See FEMA Policy 9525.4, Medical Care and Evacuations.)

- Facility costs (but not labor costs) for emergency mass care and shelter operations provided by volunteer agencies. Eligible costs generally include supplies, durable medical equipment, security, cleanup, minor repairs, and increased utility costs. Lease costs are not eligible except in the most extraordinary of disaster situations.
- Facility costs (including labor costs allowed under FEMA Policy 9525.7, Labor Costs – Emergency Work) for emergency mass care and shelter operations provided by governmental entities when volunteer agencies are unable to provide emergency mass care and shelter. Eligible costs generally include supplies, durable medical equipment, security, cleanup, minor repairs, and increased utility costs. Lease costs are not eligible costs except in the most extraordinary of disaster situations.
- Expenses of PNPs for providing emergency protective measures for their facilities are eligible if their facilities are otherwise eligible for assistance.
- Security in the disaster area.
- Provision of food, water, ice, and other essential needs at central distribution points for use by the local population.
- Temporary generators for facilities that provide health and safety services.
- Rescue, care, shelter, and essential needs for household pets and service animals if claimed by a State or local government. Service animals will be sheltered with their owners in congregate shelters. (See FEMA Policy 9523.18, Eligible Costs Related to Pet Evacuations and Sheltering.)
- The provisions of rescue, evacuation, movement of supplies and persons, care, shelter, and essential needs for human populations affected by the outbreak and spread of influenza pandemic. Three conditions must be met for a pandemic to start: a) a new influenza virus subtype must emerge for which there is little or no human immunity; b) it must infect humans and cause illness; and c) it must spread easily and sustainably (continue without interruption) among humans.

- Provision of temporary facilities for schools (public and PNP) and essential community services. Examples of temporary facilities include construction of a temporary bridge or detour road to replace an essential crossing facility, temporary hookup of utilities, and essential temporary buildings for schools or government offices. Eligibility criteria for temporary relocation are outlined on pages 38–39. (See FEMA Policy 9523.3, Provision of Temporary Relocation Facilities.)
- Activation of a State or local emergency operations center to coordinate and direct the response to a disaster event. Costs must be associated with a time frame related to circumstances justified by the nature of the emergency or disaster. Often an emergency operations center is used to direct response activities for a period of time, and then its primary activity shifts to managing the Federal assistance.

Because the Stafford Act places limitations on reimbursement for the costs of administering the Federal grant, the applicant must keep track of which duties are being performed by the center's personnel. Applicant pre-disaster pay policies related to overtime, compensatory time, and Fair Labor Standards Act designations are integral to eligibility determinations regarding costs.

- Demolition and removal of damaged public and private buildings and structures that pose an immediate threat to the safety of the general public. The threat must be identified by local officials according to established local ordinances and verified by State and Federal officials. In some instances, securing a damaged building from access is sufficient to alleviate the threat and demolition is not necessary. Buildings that were condemned as a safety hazard before the disaster are not eligible. (See FEMA Policy 9523.4, Demolition of Private and Public Facilities.)
- Removal of health and safety hazards. Such activities may include the following:
  - ▶ disposal of dead animals;
  - ▶ pumping of trapped floodwaters that threaten improved property;
  - ▶ pumping of flooded basements, but only if there is a widespread need affecting numerous homes and businesses in the community;

- ▶ pumping of septic tanks or decontamination of wells, but only if there is a widespread pollution threat; and
  - ▶ vector control of rodents or insects when there is a serious health hazard. A serious health threat exists when a specific threat posed by the increased vector population is identified. Verification of the threat by the Federal Centers for Disease Control or State or local health agencies in accordance with established ordinances is required. [See FEMA Policy 9523.10, Vector Control (Mosquito Abatement).]
- Construction of emergency protective measures to protect lives or improved property to include the following:
    - ▶ temporary levees, berms, dikes, and sandbagging by itself or on top of a levee;
    - ▶ buttressing, bracing, or shoring of a damaged structure to protect against further damage to the structure, or to protect the general public;
    - ▶ emergency repairs to protective facilities (work is limited to that which would provide protection from a 5-year event or would restore the facility to its pre-disaster design, whichever is less); and placement of sand on a beach to serve as protection of improved property from waves and flooding (the same criteria regarding the level of protection apply).
  - Emergency measures to prevent further damage to an eligible facility. Boarding windows or doors, covering the roof, and remediation to stop the spread of mold in the immediate aftermath of the disaster are examples of this work.
  - Restoration of access. If a privately owned access (such as a driveway, road, or bridge) is damaged, funds for restoration of this access may be eligible either under FEMA's Individuals and Households Program or FEMA's PA Program. In cases where homes are inaccessible as a result of the damage, work to establish emergency access may be eligible under PA if an eligible applicant has legal authority to perform the work and provided that the emergency access economically eliminates the need for temporary housing. The PA Program staff should coordinate with the Individuals and Households Program staff to eliminate duplication of effort and funds.



## Other Types of Emergency Work

Specific eligibility criteria may also apply to the provision of emergency communications, public transportation, building inspections, and snow removal. These criteria are defined as follows.

**Emergency Communications.** The communications system in a local community may be damaged by a disaster to the extent that the local officials are unable to carry out their duties of providing essential community services or responding to the disaster. A temporary emergency communications system, such as a mobile radio system or cellular telephones, may be needed. Such a system is meant to supplement the portion of the community's communications that remains operable, not to replace or expand the pre-disaster system. The community is expected to repair the damaged system on an expedited basis so that the assistance can be terminated when there is no longer an emergency need.

The temporary system may be eligible for assistance, but only through Direct Federal Assistance. FEMA, through a Mission Assignment, would use appropriate Federal agencies to perform the eligible work. See pages 76–78 for additional discussion regarding Direct Federal Assistance and Mission Assignments.

**Emergency Public Transportation.** The essential portions of a community's transportation system may be damaged by a disaster to such an extent that the vital functions of community life are disrupted. This situation may involve damage to buses, a subway system, or a bridge between two sections of the city. For some of these damaged facilities, replacement with temporary facilities may provide the solution. In other situations, there may not be a specific damaged facility, but there is still a need to supplement existing transportation.

This condition may result from temporary changes in the location of government facilities or residential areas or a need to access different shopping areas. The supplemental system must be required to ensure access to public places, employment centers, post offices, and schools so that a normal pattern of life may be restored as soon as possible.

The emergency transportation, such as extra buses or trains, additional school buses to transport relocated students, or new bus routes, may be eligible for assistance, but only through Direct Federal Assistance. FEMA, through a Mission Assignment, would use appropriate Federal agencies to perform the eligible work.

The damaged facilities should be restored, or the need for supplemental transportation should be addressed, as soon as possible so that the assistance can be terminated when there is no longer an emergency need.

**Building Inspection.** Safety inspections are eligible if necessary to establish whether a damaged structure poses an immediate threat to life, public health, or safety. Inspections associated with a determination of substantial damage under the National Flood Insurance Program, the determination if a building should be elevated or relocated, a determination of what repairs are needed to make a building habitable, and code enforcement during reconstruction are not eligible, because these inspections go beyond the scope of a safety inspection. (See FEMA Policy 9523.2, Eligibility of Building Inspections in a Post-Disaster Environment.)

**Snow Removal.** Snow removal assistance may be eligible for Public Assistance provided that:

- the snowfall is of record or near record amount using National Oceanic and Atmospheric Administration (NOAA) data;
- the response is beyond the State and local government capabilities; and
- the action is necessary to save lives, protect public health and safety, and protect improved property.

Heavy snowfall over an extended period of time, severe winds and extraordinary drifting, extraordinary ice formations, and the cumulative effect of snow on the ground may be the basis for assistance when the snow depth is a near-record amount.

Snow removal assistance is eligible for a 48-hour period to address the most critical emergency needs. The 48-hour period may begin at a time other than when the storm actually began. Each applicant designates the beginning of its 48-hour period. All snow plowing, salting, sanding, and related emergency work performed during the 48-hour period are eligible. (See FEMA Policy 9523.1, Snow Assistance Policy.)

## **Direct Federal Assistance**

When the impact of a disaster is so severe that neither the State nor local government can adequately respond, either by direct performance or by contract, the State may request that certain emergency work be performed directly by a Federal agency. See 44 CFR §206.208 for a

discussion of types of Direct Federal Assistance. Under the provisions of the regulations, FEMA, through “Mission Assignments,” may use appropriate Federal agencies to perform work or to contract for it to be performed.

The work to be performed must be eligible under the Stafford Act and Federal regulations and is limited to:

- debris removal;
  - ▶ The duration of mission assignments for debris removal will be limited to 60 days from the declaration date. The Federal Coordinating Officer may approve extensions for up to an additional 60 days, if a State or local government demonstrates a continued lack of capability to assume oversight of the debris removal mission. Further extensions will require approval by the Assistant Administrator of the Disaster Assistance Directorate.
- emergency protective measures;
- emergency communications; and
- emergency public transportation.

The assistance is subject to the cost-sharing provisions applicable to the disaster. The State must reimburse FEMA for the appropriate non-Federal share of the cost of the work, including any administrative costs of the performing Federal agency.

A request for direct Federal assistance must be submitted by the State to the DRM either on its own behalf or on behalf of an applicant. The request must include the items listed below.

- A written agreement that the State will:
  - ▶ provide, without cost to the United States, all lands, easements, and rights-of-way necessary to complete the approved work;
  - ▶ hold and save the United States free from damages due to the requested work and indemnify the Federal government against any claims arising from such work;
  - ▶ provide reimbursement to FEMA for the non-Federal share of the cost of the work; and

- ▶ assist the performing Federal department or agency in all support and local jurisdictional matters.
- A statement explaining why the State and local governments are unable to perform or contract for the work.
- If the State is legally unable to agree to the first two items listed under the first bullet above, an agreement from the applicant that it will be responsible for the items. The provision of lands, easements, or rights-of-way without cost to the United States means that any leasing or purchase costs will be borne by non-Federal interests. The costs of preparation for the assistance operations and costs of restoration to pre-operation conditions will be eligible for Federal assistance.

When the President approves 100% funding for debris removal or emergency protective measures, FEMA Policy 9523.9, 100% Funding for Direct Federal Assistance and Grant Assistance, gives guidance on eligibility and duration of this work. Two provisions of the policy that may be applicable to emergency work are:

- The policy provides for up to 100% Federal funding for Direct Federal Assistance when warranted by the needs of the disaster. Such assistance is limited to work completed during the first 72 hours following the Presidential declarations of a major disaster.
- The policy also provides for up to 100% Federal funding for grant assistance (i.e., when the applicant performs the work or contracts it out) when warranted by the needs of the disaster. The period for work to be completed is a 72-hour period selected by the applicant within a window from 12:01 a.m. of the date of a Governor's or city or county official's declaration of emergency through 11:59 p.m. of the seventh full day after the date of the Presidential declaration of a major disaster. The period may be different for Category A and Category B work.

For additional guidance regarding mission assignments performed by the Environmental Protection Agency, see FEMA Policy 9523.8, Mission Assignments for ESF #10.

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## PERMANENT WORK

Permanent work is that which is required to restore a damaged facility, through repair or restoration, to its pre-disaster design, function, and capacity in accordance with applicable codes or standards. Each of these items is defined below.

**Design:** FEMA provides funds to restore a facility to its pre-disaster design or to a design in accordance with an applicable standard. Such a standard must meet the requirements for eligible standards discussed on pages 33–36. Uniform use of the standard in situations when Federal funds are not involved for similar types of facilities is a key factor in the evaluation of a standard. Standards might involve sizing of a replacement culvert pipe or the type of material it is made of. Standards might also have “triggers” that require alteration to other parts of the facility, even undamaged parts. This type of requirement in a standard must be found “reasonable,” another key factor in evaluating a standard. Additionally, the design must be limited to the original design or to the immediate pre-disaster alternate use, whichever costs less. See pages 27 for additional discussion of alternate use facilities.

**Function:** The facility must perform the same function that it was performing before the disaster. For example, a school gymnasium is in need of repair after an earthquake. The school district proposes to convert the space into a two-story office complex. Only the repairs to return the building to its use as a gymnasium are eligible. FEMA cannot provide funding for the conversion to office space, except as an alternate project.

**Capacity:** The restored facility must operate at the capacity available before the disaster. For example, a school designed for 100 students is damaged beyond repair during a hurricane. The eligible replacement facility must be designed for no more than 100 students. If code dictates a larger area per unit of capacity (e.g., square footage per student), FEMA may provide assistance to increase the size of the building. FEMA will not reimburse for the cost to build a larger school required due to a greater service area or over-utilization of space. A larger facility with greater capacity may be built as an improved project (see pages 110–111).

### Category C – Roads and Bridges

Roads, bridges, and associated facilities (e.g., auxiliary structures, lighting, and signage) are eligible for Public Assistance. For roads (paved, gravel, and dirt), eligible items include:

- surfaces;
- bases;
- shoulders;
- ditches;
- drainage structures; and
- low water crossings.

For bridges, eligible items include:

- decking and pavement;
- piers;
- girders;
- abutments;
- slope protection; and
- approaches.

Only repairs of disaster-related damage are eligible. In some cases, it may be possible to review pre-disaster bridge inspection reports to determine if damage to a bridge was present before the disaster. As discussed on pages 25–26, permanent restoration of any facility, whether it is a road, bridge, or related structure, that is part of a Federal-Aid route and falls under the authority of the FHWA, is not eligible for Public Assistance. Other examples of ineligible facilities include roads that service USACE or NRCS levees and dams. Private roads, including homeowners' association roads, are not eligible.

For Category C work, upgrades necessary to meet current standards for road and bridge construction, such as standards for pavement and lane width, may be eligible for Public Assistance. If code requires, and if the applicant has consistently implemented that code, or if there has been no opportunity to implement the code but the applicant agrees to in the future, FEMA will fund changes in the bridge design to include changing it from one lane to two lanes and access modification for a short distance. However, FEMA will not fund construction of additional lanes (for example, from two to four lanes or from four to six lanes) because such work is beyond that necessary to restore the pre-disaster capacity of the facility.

**Landslides.** Specific eligibility criteria also apply to slope failures and washouts that are considered landslides. The term landslide describes a wide variety of processes that result in the downward and outward movement of slope-forming materials including soil, artificial fill, or a combination of these. Stabilization or restoration of failed slopes is only eligible in the situations described below. (See FEMA Policy 9524.2, Policy on Landslides and Slope Failures.)

Emergency work: If a disaster-caused landslide poses an immediate threat to life, public health, and safety, or improved public or private property, emergency protective measures to stabilize slopes may be eligible. However, the work must be the least cost option, must be completed within 6 months of the declaration, and must meet the requirements for work under Section 403 of the Stafford Act and 44 CFR §206.225(a)(3). Examples of eligible emergency protective measures include, but are not limited to:

- temporary drainage measures;
- temporary ground protection to better stabilize the mass (riprap, sheeting);
- partial excavation at the head of a sliding mass to reduce driving force;
- backfilling or buttressing at the toe of a sliding mass (gabions, rock toes, cribwalls, binwalls, soldier pile walls, etc.);
- installation of barriers to redirect the debris flow; and
- temporary relocation of facilities' function, when cost effective and otherwise meeting criteria for temporary relocation.

Such measures must be temporary. Public assistance will be provided to address the area of the immediate threat only, not the stabilization of the entire hillside or long-term stabilization of the limited area. The Regional Administrator may authorize funding for post-disaster inspections and limited geotechnical investigations to determine if the disaster created an unsafe condition that poses an immediate threat to life or property.

Permanent work: If a landslide damages an eligible facility, repairs to that facility are eligible as long as the site is stable; the replacement of a reasonable amount of integral ground necessary to support the facility is also eligible. If the site instability was caused by the disaster, the site is eligible only if the work to stabilize the site is cost effective. However, if the site was unstable before the disaster, the applicant must pay to

stabilize the site before Public Assistance funds are provided to repair the facility. Natural slopes and hillsides do not meet the definition of eligible facilities and are not eligible for permanent work assistance. The Regional Administrator may authorize post-disaster site inspections and geotechnical investigations to determine site stability.

## **Category D – Water Control Facilities**

Water control facilities include:

- dams and reservoirs;
- levees;
- lined and unlined engineered drainage channels;
- canals;
- aqueducts;
- sediment basins;
- shore protective devices;
- irrigation facilities [for PNP irrigation eligibility, see 44 CFR §206.221(e)(3)]; and
- pumping facilities.

As described on pages 24–25, the USACE and NRCS have primary authority for repair of flood control works, whether constructed with Federal or non-Federal funds, as well as authority over federally funded shore protective devices. Permanent repairs to these facilities are not eligible through the PA Program. Other water control facilities may be eligible for FEMA assistance. (See FEMA Policy 9524.3, Policy for Rehabilitation Assistance for Levees and Other Flood Control Works.)

Restoration of the carrying or storage capacity of engineered channels and debris basins may be eligible, but maintenance records or surveys must be produced to show the pre-disaster capacity of these facilities. The pre-disaster level of debris in the channel or basin is of particular importance to determine the amount of newly deposited disaster-related debris. Such a facility must also have had a regular clearance schedule to be considered an actively used and maintained facility.

Restoration of reservoirs to their pre-disaster capacity also may be eligible in accordance with the criteria for debris basins described above. Not all reservoirs are cleaned out on a regular basis, and evidence of pre-



disaster maintenance must be provided to FEMA. In addition, removal of debris that poses an immediate threat of clogging or damaging intake or adjacent structures may be eligible. Only the removal of disaster-related debris is eligible. If all debris is removed, the project would be considered an improved project and costs would be pro-rated. Removal of debris to restore a facility to its pre-disaster capacity is Category A work.

## **Category E – Buildings and Equipment**

Buildings, structural components, interior systems such as electrical or mechanical work, equipment, and contents including furnishings, are eligible for repair or replacement. Public assistance may be provided for the replacement of pre-disaster quantities of consumable supplies and inventory and for the replacement of library books and publications. Damaged or lost files are eligible only for stabilization (e.g., freeze drying or copying); re-establishing files and records from original information is not eligible. Removal of mud, silt, or other accumulated debris is eligible as permanent work if the debris does not pose an immediate threat but its removal, along with any cleaning and painting, is necessary to restore the building. If the work meets the immediate threat criteria, removal of disaster-related debris and treatment of spreading mold (in the immediate aftermath of the disaster) may be eligible as emergency work.

If an insurance policy applies to a building, equipment, contents, etc., FEMA must take that policy into account before providing funds for restoration of the building. The owners of insured buildings must provide FEMA with policy and settlement information as soon as possible after a disaster occurs. Detailed information on insurance is contained in Chapter 4.

FEMA may reimburse for upgrades that are required by certain codes and standards provided the upgrade work is required as a direct result of the disaster. An example might be roof bracing installed following a hurricane. For repairs, upgrades are limited to damaged elements only unless a reasonable code with a trigger requires upgrades to other parts of the facility. If a structure must be replaced, the new facility must comply with all appropriate codes and standards. See pages 33–36 for further information.

FEMA may fund the replacement of a damaged building if the building is completely destroyed or if the severity of damage meets FEMA's 50 Percent Rule for replacement (see pages 36–38). If a damaged building must be replaced, FEMA has the authority to reimburse for a building with the same capacity as the original structure (see page 79). However, if a

written standard for space per occupant has changed since the original structure was built, FEMA may reimburse for construction of a larger building that accommodates the original design capacity. A Federal, State, or local agency or statute must mandate the increase in space in accordance with a written code; the increase cannot be based only on design practices for an industry or profession. FEMA will not fund additional capacity necessary due to increased population or use, even if required by code. (See “Codes and Standards” on pages 33–36 for general eligibility criteria.)

When museums, either publicly owned or owned by a PNP, are involved in disasters, culturally significant collections or objects may be damaged. Collections and objects in a museum, by their very nature, generally are one-of-a-kind and thus cannot be replaced. Therefore, replacement of destroyed collections or objects is not an eligible cost.

FEMA may, however, fund stabilization measures. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster. FEMA’s Preservation Officer, in consultation with the applicant and the State, will use professional judgment to determine if additional treatment beyond stabilization is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function. (See FEMA Policy 9524.6, Collections and Individual Objects.)

When equipment, including vehicles, is not repairable, FEMA will approve the cost of replacement with used items that are approximately the same age, capacity, and condition. FEMA may use “blue book” values or similar price guides to determine the eligible cost for used equipment and vehicles. Replacement of an item with a new item may be approved only if a used item is not available within a reasonable time and distance.

When a piece of applicant-owned equipment is performing eligible disaster work, extraordinary damage to the equipment that is caused by the disaster may be eligible. However, the cost of increased maintenance resulting from excess use is not eligible, because the cost of maintenance is included in FEMA’s equipment rates. Damage that could have been reasonably avoided such as an accident also is not eligible. Reimbursement for the eligible damage is in addition to the applicable FEMA equipment rate being paid for the time the equipment was performing eligible work. (See FEMA Policy 9525.8, Damage to Applicant-Owned Equipment.)

Animals, birds, fish, and insects are treated as contents as long as they can be obtained through legal means from reputable sources

by reasonable methods and at reasonable prices. Reimbursement is authorized only for juvenile specimens unless mature specimens are equivalently priced. (Research time and materials spent on developing the specimens is not eligible under the PA Program.)

## **Category F – Utilities**

Utilities include:

- water treatment plants and delivery systems;
- power generation and distribution facilities, including natural gas systems, wind turbines, generators, substations, and power lines;
- sewage collection systems and treatment plants; and
- communications.

The owner of a facility is responsible for determining the extent of damage; as with any facility, FEMA does not provide funds for general surveys to look for damage, such as video inspection of sewer lines. However, if disaster-related damage is evident, such as by observed loss of ground above a buried pipeline or loss of or increased flow in a pipe, FEMA may pay for inspections to determine the extent of the damage and method of repair. The extent of damage to equipment utilized in the generation or distribution of utilities should be confirmed through testing to determine if damage actually exists and that repair is sufficient or replacement is warranted. An example of this would be a pump in a lift station that has been flooded. The pump should be turned on or inspected and then tested to determine if the pump is damaged and if so, to what extent. Generally, large pieces of equipment such as a pump can be rebuilt rather than replaced. When disaster-related damage is discovered during a general survey, inspection of only the damaged section is eligible. When evaluating the repair of damage at multiple locations in a pipeline or other continuous facility, FEMA may consider the possibility of replacing a whole section if it is cost-effective when compared to repairing individual sites.

While FEMA may provide assistance for restoration of damaged utilities, FEMA does not provide assistance for increased operating expenses resulting from a disaster or for revenue lost if a utility is shut down (see page 54). However, the cost of establishing temporary emergency services in the event of a utility shut-down may be eligible (e.g., providing a temporary sewage facility).

## Category G – Parks, Recreational, and Other

Eligible publicly owned facilities in this category include:

- mass transit facilities such as railways;
- playground equipment;
- swimming pools;
- bath houses;
- tennis courts;
- boat docks;
- piers;
- picnic tables;
- golf courses;
- fish hatcheries; and
- facilities that do not fit Categories C-F.

Other types of facilities, such as roads, buildings and utilities, that are located in parks and recreational areas are also eligible and are subject to the eligibility criteria for Categories C, D, E, and F.

PNP-owned park and recreational facilities are not eligible, nor are the supporting facilities, such as roads, buildings, and utilities.

As stated on page 22 of this guide, natural features are not eligible facilities unless they are improved and maintained. This restriction applies to features located in parks and recreational areas. Specific criteria apply to beaches and to trees and ground cover, as described below.

**Beaches.** Emergency placement of sand on a natural or engineered beach may be eligible when necessary to protect improved property from an immediate threat. Protection may be to a 5-year storm profile or to its pre-storm profile, whichever is less costly.

A beach is considered eligible for permanent repair if it is an improved beach and has been routinely maintained prior to the disaster. A beach is considered to be an “improved beach” if the following criteria apply:

- the beach was constructed by the placement of sand to a designed elevation, width, grain size, and slope; and

- the beach has been maintained in accordance with a maintenance program involving the periodic re-nourishment of sand.

Typically, FEMA requests the following from an applicant before approving assistance for permanent restoration of a beach:

- design documents and specifications, including analysis of grain size;
- “as-built” plans;
- documentation of regular maintenance or nourishment of the beach; and
- pre- and post-storm cross sections of the beach.

Restoration of sand on natural beaches beyond that necessary to provide emergency protection is not eligible.

**Trees and Ground Cover.** The replacement of trees, shrubs, and other ground cover is not eligible. (See FEMA Policy 9524.5, Trees, Shrubs and Other Plantings Associated with Facilities.) This restriction applies to trees and shrubs in recreational areas, such as parks, as well as trees and shrubs associated with public facilities, such as those located in the median strips along roadways and those used as landscaping for public buildings. This restriction also applies to instances where ground is disturbed due to movement of heavy equipment performing eligible work, such as when repairing underground utilities within landscaped areas.

Grass and sod are eligible only when necessary to stabilize slopes and minimize erosion.

This restriction does not affect removal of tree debris or the removal of trees as an emergency protective measure. FEMA will reimburse for the removal of tree debris and the removal of eligible trees, or buttressing if less costly than removal and disposal, as an emergency protective measure if it eliminates an immediate threat to lives, public health and safety, or improved property. However, FEMA will not pay for further costs or reimburse for the replacement of these trees.



# Applying For Public Assistance

Following a disaster declaration by the President, FEMA makes assistance for recovery from the disaster available to eligible applicants. This chapter describes the process through which this assistance becomes available.

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## PROCESS OVERVIEW

The PA Program is implemented through the steps listed below, each of which is described in this chapter.

- a Preliminary Damage Assessment (PDA) is performed and Immediate Needs Funding and the need for Expedited Payments are identified.
- an Applicants' Briefing is held.
- potential applicants submit the *Request for Public Assistance*.
- a PAC Crew Leader (Public Assistance Coordinator) is assigned to each applicant.
- the PAC Crew Leader holds a Kickoff Meeting with the applicant.
- the applicant's specific needs are identified and cost estimates developed through the project formulation process.
- cost estimates for small projects that have been prepared by the applicant are checked through the validation process.
- FEMA approves and processes funding for the applicant's projects.

## Standard Operating Procedures

FEMA has developed a series of Standard Operating Procedures (SOPs) that provide guidance for FEMA, the State and applicants on

the processes discussed in this Chapter. SOPs are available on FEMA's website ([www.fema.gov/government/grant/pa/](http://www.fema.gov/government/grant/pa/)). The following documents are included.

- 9570.2 Public Assistance Coordinator
- 9570.4 Kickoff Meeting
- 9570.5 Project Formulation
- 9570.6 Validation of Small Projects
- 9570.7 Immediate Needs Funding
- 9570.8 Cost Estimating Format for Large Projects
- 9570.9 Historic Review

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## **PRELIMINARY DAMAGE ASSESSMENT, IMMEDIATE NEEDS FUNDING, AND EXPEDITED PAYMENTS**

The **Preliminary Damage Assessment** (PDA) is performed to document the impact and magnitude of the disaster on individuals, families, businesses, and public property and to gather information for disaster management purposes. FEMA, the State, and an applicant representative participate in this effort. The information gathered during the PDA process is used to determine whether Federal assistance should be requested by the Governor and forms the basis for the disaster declaration.

While conducting the PDA, potential urgent needs in the immediate aftermath of the disaster may be identified. If the President declares a disaster and if the State has requested it, FEMA may provide Immediate Needs Funding (INF) to an applicant for emergency work that must be performed immediately and paid for within the first 60 days after the disaster declaration.

**Immediate Needs Funding** (INF) is for emergency work that must be performed immediately and paid for within the first 60 days after the disaster declaration. This form of funding must be requested by the State. Activities eligible for INF typically include:

- debris removal; and
- emergency protective measures.



The funding may be used to cover such costs as overtime payroll, equipment costs, materials purchases, and contracts when these costs are incurred for emergency work. The amount of INF is limited to 50 percent of the PDA estimate of emergency work.

INF is not intended for those emergency work items that involve environmental or historic preservation concerns, work covered by insurance, or items of work that will require longer than 60 days to complete. Some examples of work for which INF is not appropriate are:

- demolition of historic structures or parts of historic structures;
- emergency work efforts covered by an existing insurance policy (such as building demolition or the removal of building debris);
- debris removal and disposal within the Coastal Barrier Resources system; and
- large debris removal/disposal projects or major demolition of destroyed building projects that will require more than 60 days to complete.

PWs will be labeled as “INF.”

**Expedited Payments** are made for applicants who participated in the PDA and who have applied for Public Assistance. FEMA will obligate 50 percent of the Federal share of the estimated cost of work under Categories A and B as estimated during the PDA. Payment for Category A will be within 60 days after the estimate was made and no later than 90 days after the *Request for Public Assistance* was submitted. Expedited payments are not intended for work that involves environmental or historic preservation concerns or work covered by insurance. The payments will need to be reconciled with actual costs. PWs will follow the normal PW process.

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## APPLICANTS' BRIEFING

An Applicants' Briefing is a meeting conducted by a representative of the State for potential Public Assistance applicants. The briefing occurs after an emergency or major disaster has been declared and addresses application procedures, administrative requirements, funding, and program eligibility criteria.

The State representative is responsible for notifying potential applicants (State and local governments and PNPs) of the date, time, and location

of the briefing. The size of the disaster area and the number of possible applicants determine whether more than one briefing is held. FEMA personnel participate in the briefing to clarify issues regarding eligibility, floodplain management, insurance requirements, environmental and historic preservation considerations, hazard mitigation, and Federal procurement standards. To obtain the maximum benefit from the information presented at the briefing, each applicant should send representatives from each of the following:

- management;
- public works; and
- finance.

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## **REQUEST FOR PUBLIC ASSISTANCE**

The *Request for Public Assistance (Request)* is an applicant's official notification to FEMA of the intent to apply for Public Assistance. A copy of this form is shown in Figure 5. The form outlines general information identifying the applicant, including the applicant's name, address, and primary and secondary contacts.

Typically, the *Request* form is submitted at the Applicants' Briefing. If an applicant is unable to submit the *Request* at the briefing, the applicant must submit the form within 30 days of the date of designation of the area (county, parish, etc.) for Public Assistance. An applicant need not wait until all damage is identified before requesting assistance. Federal and State personnel will review each *Request* to ensure applicant eligibility. Once a *Request* has been submitted, the project formulation process can begin.

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## **ASSIGNMENT OF THE PUBLIC ASSISTANCE COORDINATION (PAC) CREW LEADER**

Once the *Request* has been forwarded to FEMA, the PAC Crew Leader is assigned to the applicant. The PAC Crew Leader is a program expert (FEMA or State) who serves as the applicant's customer service representative on PA Program matters and manages the processing of the applicant's projects. The PAC Crew Leader:

Figure 5: Request for Public Assistance

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY REQUEST FOR PUBLIC ASSISTANCE		OMB No. 1665-0017 Expires October 31, 2008	
<b>PAPERWORK BURDEN DISCLOSURE NOTICE</b> Public reporting burden for this form is estimated to average 10 minutes. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U.S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1665-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. <b>NOTE: Do not send your completed questionnaire to this address.</b>			
APPLICANT (Political subdivision or eligible applicant.)			DATE SUBMITTED
COUNTY (Location of Damages. If located in multiple counties, please indicate.)			
APPLICANT PHYSICAL LOCATION			
STREET ADDRESS			
CITY	COUNTY	STATE	ZIP CODE
MAILING ADDRESS (If different from Physical Location)			
STREET ADDRESS			
POST OFFICE BOX	CITY	STATE	ZIP CODE
Primary Contact/Applicant's Authorized Agent		Alternate Contact	
NAME		NAME	
TITLE		TITLE	
BUSINESS PHONE		BUSINESS PHONE	
FAX NUMBER		FAX NUMBER	
HOME PHONE (Optional)		HOME PHONE (Optional)	
CELL PHONE		CELL PHONE	
E-MAIL ADDRESS		E-MAIL ADDRESS	
FACSIMILE & PIN NUMBER		PAGER & PIN NUMBER	
Did you participate in the Federal/State Preliminary Damage Assessment (PDA)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Private Non-Profit Organization? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which of the facilities identified below best describe your organization? _____			
Title 44 CFR, part 206.221(c) defines an eligible private non-profit facility as "... any private non-profit educational, utility, emergency, medical or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations." *Other essential governmental service facility means museum, zoo, community center, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.*			
Private Non-Profit Organizations must attach copies of their Tax Exemption Certificate and Organization Charter or By-Laws. If your organization is a school or educational facility, please attach information on accreditation or certification.			
Official Use Only - FEMA		Other Agencies	

FEMA Form 90-43, FEB 05

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- conducts a kickoff meeting with the applicant to discuss the program and its application to the applicant's specific needs;
  - works with the applicant to develop projects;
  - obtains the appropriate technical assistance, if required, for the applicant's project(s);
  - reviews projects for compliance with applicable laws, regulations, and policies;
  - ensures that any Special Considerations associated with a project are identified and reviewed; and
  - ensures that the applicant's Case Management File is maintained.
- 

## **KICKOFF MEETING**

This meeting differs from the Applicants' Briefing conducted by the State at the onset of disaster operations. While the Applicants' Briefing describes the application process and gives a general overview of the PA Program, the Kickoff Meeting is conducted by the PAC Crew Leader and designed to provide a much more detailed review of the PA Program and the applicant's needs. The meeting is the first step in establishing a partnership among FEMA, the State, and the applicant and is designed to focus on the specific needs of that applicant. The meeting focuses on the eligibility and documentation requirements that are most pertinent to an applicant.

The PAC Crew Leader also discusses Special Considerations, such as insurance, hazard mitigation opportunities, and compliance with environmental and historic preservation laws, including floodplain management issues, that could potentially affect the type and amount of assistance available and the documentation needed. Special Considerations are discussed in Chapter 4. If any Special Considerations issues are anticipated, the appropriate Technical Specialist (Specialist) should be invited to attend the meeting.

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## **PROJECT FORMULATION**

Project formulation is the process of identifying the eligible scope of work and estimating the costs associated with that scope of work for each

of the applicant's projects. This section describes the elements of the project formulation process.

## **Small and Large Projects**

A project is a logical method of performing work required as a result of the declared event. The applicant is responsible for identifying all work that is required as a result of the disaster.

To facilitate project review, approval, and funding, projects are divided into small and large projects based on the monetary threshold established in Section 422 of the Stafford Act and elaborated on in 44 CFR §206.203(c). Small projects are those projects with a total estimated cost below the threshold, and large projects are those projects with a total estimated cost at or above the threshold. The threshold is adjusted each fiscal year to account for inflation and published in the Federal Register. For Federal fiscal year 2007, the threshold is \$59,700. The determination of the threshold that will be used for a disaster is based on the declaration date of the disaster, regardless of when project approval is made or when the work is performed. Projects are categorized as large or small based on the eligible damage cost of the approved PW. Subsequent PW versions prior to closeout affect categorization as large or small. Funding methods for small and large projects differ as explained below.

**Small Projects.** Small project funding is based on estimated costs, if actual costs are not yet available. Payment is made on the basis of the initial approved amount, whether estimated or actual. Even if not all funds are expended on the project, the Federal share amount is not changed. Revisions to the initial PWs may be required if there are omissions or changes in scope; revisions to PWs may result in changes in funding level and/or category. Payment methods are described in more detail on page 109 of this guide.

**Large Projects.** Large project funding is based on documented actual costs. Because of the complexity and nature of most large projects, however, work typically is not complete at the time of FEMA approval. Therefore, most large projects initially are approved based on estimated costs. Funds generally are made available to the applicant on a progress payment basis as work is completed. When all work associated with the project is complete, the State performs a reconciliation of actual costs and transmits the information to FEMA for consideration for final funding adjustments. Payment methods are described in more detail on page 109 of this guide.

## The Project Worksheet

An applicant has 60 days following the first substantive meeting, usually the Kickoff Meeting, with FEMA to identify and report damaged facilities to FEMA. The PW is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project (Figure 6). It is the basis for the grant.

The applicant may choose to prepare PWs for small projects and submit them to the PAC Crew Leader. If the applicant opts to prepare small project PWs, the applicant must submit them to the PAC Crew Leader within 60 days of the Kickoff Meeting to go through the validation process, although FEMA or the State may set an earlier deadline. See pages 106–108 for a further discussion of validation. Applicants are strongly encouraged to submit PWs as soon as possible to expedite the assistance process.

If the applicant requires assistance with the preparation of PWs, the PAC Crew Leader may assign a Project Specialist (Project Officer) or Technical Specialist (Specialist) to provide the applicant with technical assistance.

For large projects, a Project Specialist is responsible for working with the applicant to prepare the PW. The Project Specialist may lead a team that includes a representative of the State and one or more Technical Specialists, depending on the type and complexity of the project.

The applicant is responsible for requesting inspections and changes in PWs at any point in the grant process when changes in the project or its costs are identified. The State and FEMA will evaluate the information and, if significant, take appropriate action.

Figure 6: Project Worksheet

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY <b>PROJECT WORKSHEET</b> <b>PAPERWORK BURDEN DISCLOSURE NOTICE</b>				O.M.B. No. 1660-0017 Expires October 31, 2008		
Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U.S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1660-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. <b>NOTE: Do not send your completed questionnaire to this address.</b>						
DISASTER FEMA-_____-DR-_____-	PROJECT NO.	PA ID NO.	DATE	CATEGORY		
DAMAGED FACILITY			WORK COMPLETE AS OF _____ %			
APPLICANT		COUNTY				
LOCATION			LATITUDE	LONGITUDE		
DAMAGE DESCRIPTION AND DIMENSIONS						
SCOPE OF WORK						
Does the Scope of Work change the pre-disaster conditions at the site? <input type="checkbox"/> Yes <input type="checkbox"/> No Special Considerations issues included? <input type="checkbox"/> Yes <input type="checkbox"/> No      Hazard Mitigation proposal included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is there insurance coverage on this facility? <input type="checkbox"/> Yes <input type="checkbox"/> No						
PROJECT COST						
ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST	
					TOTAL COST ▶	
PREPARED BY		TITLE		SIGNATURE		
APPLICANT REP.		TITLE		SIGNATURE		

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## Combining Work and Creating Projects

The applicant, in coordination with the PAC Crew Leader, may combine work items into projects. In this manner, the projects may be organized around the applicant's needs. A project may consist of one item of work, such as repairs to a single structure, or work that occurs at multiple sites, such as repairs to several washouts along a road. Table 7 describes generally accepted methods of combining projects. It is the responsibility of the PAC Crew Leader to ensure that the resulting project is logical and consistent with other criteria described below.

**Table 7: Combining Work**

<b>Method</b>	<b>Explanation</b>
Type of Facility	an applicant could combine all sewer pump stations or gravel roads together
System	an applicant could combine repair of several breaks in a water distribution system together
Boundaries	an applicant may have divided power lines into sectors or a road department into divisions for ease of operations
Method of Work	one contract could be a project or a group of contracts let to one contractor could be a project

Note that emergency work and permanent work may be combined into one project only when the emergency work is incidental to the permanent work. For example, if storm-generated debris must be removed from a building before the building can be repaired, the project could include both the debris removal and the repair work. If multiple sites are combined into one project with a total estimated cost above the large project threshold, that project will be considered a large project. Categories of permanent work may not be combined. A Project Specialist will be assigned to work with the applicant to complete the PW for that project.

Responsible officials should consider preparing separate PWs if Special Considerations (e.g., insurance, hazard mitigation, and environmental and historic preservation issues) are of concern for individual sites. Compliance requirements of a particular Special Considerations issue for the one site could delay funding for other sites, if grouped on one PW.

FEMA regulations state that individual projects of less than \$1,000 in estimated costs are not eligible. However, it is acceptable to combine sites less than \$1,000 in estimated costs into one PW when the work meets the conditions shown above for combining sites. Separate sites



less than \$1,000 in estimated costs without a reasonable relationship to other sites may not be combined; they are ineligible.

## **Identifying the Damaged Facility**

If a project is a single site, record the name of the facility and its basic function (if necessary), e.g., City Library or Friendship Park. If the project is comprised of multiple sites, and possibly a combination of emergency work and a category of permanent work, the damaged facility title may be more general. For instance: Hill's County Sector A Debris Removal or Chester Elementary School Campus. For these cases, more specific names and location information should be provided for each site within the Damaged Description and Dimensions area of the PW. Detailed maps and sketches may be necessary to identify each location.

## **Project Location**

The exact location of the damaged facility or area where the disaster costs covered by the project were or will be incurred must be identified. This information should be specific enough to enable other field personnel to locate the facility easily if a site visit is necessary. If possible, the precise latitude and longitude of the damaged site should be included. Location examples are:

- Latitude: 25.69387 / Longitude: -80.16359
- 5520 Harrison Ave N.W., Springdale, Minnesota 55309
- 0.20 mile west of intersection of County Rd. 22 and County Rd. L
- Northwest sector bound by King Street, Main Street, and Shady Canal

When a project combines several damage sites, a general location reference should be included in the Location block and more detailed information to identify specific locations for each individual site should be provided in the Damage Description block. For instance, if debris removal were performed within numerous streets to clear emergency evacuation routes, an entry of "county evacuation route" may be provided in the Location block. Specific roadways would then be identified in the Damage Description section and located on accompanying maps.

## Damage Description and Dimensions

When appropriate, a brief description of the facility should introduce this block. For example “Highway 20, a two-lane asphalt surface road,” or “Smith Library, a two-story, steel framed, brick-faced building.” The cause of damage, a description of the damaged elements of the facility, and the dimensions of the damaged elements must be included on the PW.

All damage must be documented. Damage sustained as a direct result of the disaster event should be differentiated from pre-existing or non-disaster related damage. The specific cause of damage must relate to the incident for which the disaster was declared. It is important to completely describe the cause of damage because it can affect eligibility determinations. For instance, consider the two situations described below.

- If an uninsured public building located in the 100-year floodplain is damaged by wind, the total cost of repairs is eligible. However, if the same building is damaged by a flood, the amount of assistance would be reduced by the maximum amount of flood insurance available under the National Flood Insurance Program. Both scenarios could occur in the same disaster.
- Widespread “alligator cracking” of roads generally is not eligible for repair because it indicates damage that was present before the disaster. However, cracking in specific areas due to uplift from soils saturated by floodwaters is eligible for repair.

The damage must be described in terms of the facility, features, or items requiring repair. All damaged elements must be clearly defined in quantitative terms with physical dimensions (such as length, width, depth, and capacity). Without appropriate dimensions of the damaged elements, proper estimates of material quantities cannot be developed.

In some disasters, applicants may perform emergency protective measures work to protect against a threat to improved property before, during, or immediately after the disaster. For such situations, the PW should contain a brief description of the threat and of the threatened improved property.

## Scope of Work

The scope of eligible work necessary to repair the damage must be completely described and correspond directly to the cause of damage. The work should be specified as an action with quantifiable (length, width, depth, capacity) and descriptive (brick, wood, asphalt, timber deck bridge) terms. The scope of work should not be described only as “restore to pre-disaster design” If part of the work is completed prior to project approval, the work that has been completed should be distinguished from the work remaining.

Any other information that is pertinent to the scope of work should be documented, such as:

- eligible codes and standards, providing copies of specific codes and standards, especially if proposed repairs or replacements exceed the pre-disaster design;
- evidence of pre-disaster damage, such as cracks on a steel bridge covered by rust and corrosion;
- pre-disaster inspection reports noting deficiencies;
- ineligible work, maintenance, inactive facilities, responsibilities of Other Federal Agencies, etc.;
- reference to a Hazard Mitigation Proposal if one is included for the project;
- indication that the project is an Improved Project, if applicable. A description of the overall project must be included;
- any special equipment or construction approach, such as very heavy trucks, access roads, staging areas, coffer dams, etc.; and
- a description of the larger action, if the project is part of one, e.g., one building within a complex.

If additional damage to the facility is found after the PW is completed, it is necessary to document that damage, show how the damage is disaster-related, and request a re-inspection by FEMA.

*Examples:*

**Damage Description and Dimensions:**

Floodwaters from Fern Creek overtopped Fernwood Drive, a 26-ft. wide roadway with 3-in. asphalt pavement and 8-in. aggregate base, located in the Village of Bolingbrook. The floodwaters washed out a 150-linear foot (LF) by 26-LF section of the roadway pavement and aggregate base. Additionally, the fill embankment—26-ft. wide (top) x 4-ft. high x 42-ft. wide (bottom)—was washed out for a length of 100 LF beneath the damaged section of roadway. Floodwaters damaged 300 LF of steel guardrail (150 LF on each side) along the entire stretch of the washed out road.

**Scope of Work:**

Replace fill embankment with unclassified fill for 100-LF x 4-ft. (high) x 26-ft. (top width) x 42-ft. (bottom width). Replace 150-LF x 26-ft. x 8-in. base course and 150 LF x 26-ft. x 3-in. asphalt pavement. Remove and replace 300 LF of steel guardrail. Place 100 LF of 1-ft. thick x 2-ft. high riprap along the stream side of the constructed embankment slope in accordance with Village of Bolingbrook Code provision #101A.

**Damage Description and Dimensions:**

Floodwaters and debris damaged several facilities within Riverside Park in the Town of Springville. Six toilets and four sinks in the public restroom became clogged and rendered unusable. Nine 4x8-foot, redwood picnic tables and four heavy metal barbecue grills with 1x2-foot cooking surfaces were washed away. Floodwaters and floating debris demolished 300 LF of 8-ft high chain link fence. 100 CY of sediment and other debris were scattered over the 125,000 SF area of the park.

**Scope of Work:**

Repair (unclog and clean) six public restroom toilets and four sinks using 40 hours of force account labor. Replace nine redwood picnic tables and four barbecue grills. Repair and reinstall 300 LF of existing chain link fence. Remove and dispose of 100 CY of debris.

## Cost Estimate

FEMA may grant funds on the basis of actual costs or on estimates of work to be completed. The three primary methods for determining costs are time and materials, unit cost, and contracts. If work is completed at the time of the site visit, actual costs should be used.

Work to be completed: If the work has not been initiated, the unit cost method should be used whenever possible.

Work complete: If the work was completed by force account labor, actual personnel, materials, and equipment costs are used (time and materials method.) If a contractor performed the work, reasonable actual contract costs are used.

**Time and Materials.** The time and materials method is used to summarize actual costs of force account labor, equipment, and materials. Costs must be documented by payroll information, equipment logs or usage records, and other records, such as invoices, receipts, or work orders prepared by the applicant. This method also may be used for work to be completed, if appropriate.

As stated in Chapter 2, FEMA publishes a national listing of equipment rates. FEMA equipment rates, however, do not include operator costs. The applicant should identify operator labor separately. FEMA equipment rates do not apply to contracted or rental equipment, unless the equipment is rented from another public entity. An applicant's own equipment rates or rates established by the State may be used, provided that they meet the criteria outlined in Chapter 2.

**Unit Cost.** The unit cost method is usually used to develop PWs for work to be completed. Under this method, unit costs are applied to specific elements of the scope of work. Typically unit prices are based on in-place costs, incorporating site preparation, materials, labor, equipment, insurance, overhead, and profit (if by contract) for all activities needed to complete that item of work. For example:

The \$14 per linear foot unit cost to replace concrete curb and gutter includes all costs for setting up and breaking down the forms and buying, pouring, and finishing the concrete. In other words, the \$14 includes the cost of labor, equipment, and materials. Removal of the damaged old material may be included as a separate work item with its own unit price.

There are several sources that may be used in the preparation of estimates based on unit costs. These sources, provided in their order of preference, include:

1. State or local data from previously completed projects;
2. commercial estimating sources; and
3. FEMA cost codes.

**Contracts.** Contract pricing is used to determine the cost of work for which the applicant has used labor, equipment, and material from an outside source. In general, and assuming that the contract was awarded following Federal procurement guidelines, contract costs are used for work already complete. In some cases, contract information may be used to estimate costs for work that is just beginning or still underway. If work has not yet begun on a project, but a contract has been bid or let, the contract price can be used.

*Example:*

<b>Damaged Facility:</b> Utility shed					
<b>Location:</b> 419 Ocean Avenue South, Williams High School Utility Shed					
<b>Damage Description and Dimensions:</b> Wood structure: approximately 75 feet by 75 feet with 15-foot high walls. Painted interior drywall sustained cracking due to the earthquake. Tile flooring was displaced and destroyed. All damaged equipment is covered by the school district's insurance policy.					
<b>Scope of Work:</b> Seal cracking and paint drywall on all four 15-foot high x 75-foot wide walls. Remove and replace the entire 75-foot long x 75-foot wide tile floor.					
<b>Project Cost:</b>					
Item	Code	Narrative	Quantity/ Unit	Unit Price	Cost
1	5187	Seal	4500/SF	\$0.35	\$1,575
2	5082	Paint	4500/SF	\$0.48	\$2,160
3	5060	Tile	5625/SF	\$2.25	\$12,656
<b>Total</b>					<b>\$16,391</b>

## Cost Estimating Format (CEF)

FEMA uses a cost estimating methodology called the Cost Estimating Format (CEF) for Large Projects to better estimate the total cost of large projects. The CEF is a forward-pricing model that allows FEMA to account for all possible costs associated with projects for which the base costs of labor, materials, and equipment meet or exceed the large project threshold. FEMA uses experienced cost estimators as part of the project formulation team for projects on which the CEF is used.

The CEF should only be used on large projects for which the permanent restorative work is 90% or less complete. Projects greater than 90% complete are not required to be estimated using the CEF. In these cases, the Project Specialist should use the actual costs of the eligible work and extend those costs to cover the remaining work.

The CEF relies on the development of a clear definition of the scope of work that is eligible for Public Assistance. Once this scope of work has been developed, the CEF is applied. **Part A** represents the base cost of completing the project; it includes the labor, materials, and equipment necessary to complete each item of the scope of work. Parts B through H contain job-specific factors that are added to the base cost determined in Part A. These factors are described below:

**Part B** includes construction costs not typically itemized in Part A, such as the contractor's supervision costs.

**Part C** reflects construction cost contingencies and addresses budgetary risks associated with project complexity during the design process.

**Part D** accounts for the contractor's home-office overhead, insurance, bonds, and profit.

**Part E** accounts for cost escalation over the life of the project.

**Part F** includes fees for special reviews, plan checks, and permits.

**Part G** is the applicant's reserve for change orders, hidden damages, and differing site conditions after construction starts.

**Part H** accounts for the applicant's cost to manage the design and construction of the project.

The construction-related costs represented by Parts B through H are usually encountered during the course of construction and can normally be expected to occur. However, these construction-related costs may already be a component of the Part A costs. In all cases, the cost

estimator determines the makeup of the unit costs used in Part A, before applying one or more of the Parts B through H factors. Costs considered in Part A cannot be duplicated in Parts B through H factors.

Table 8 depicts the hierarchy of preferred pricing with actual costs for the eligible completed work favored first and R.S. Means cost data favored least. FEMA cost data is normally not used when estimating large project costs by means of the CEF.

**Table 8: Preferred Pricing When Using the CEF**

CEF Part	Types of Costs Used in Part A and Typical Application of Factors			
	Completed Work	Bid Tab	Local Cost Data	R.S. Means Cost Data
B	*	*	*	Y
C	*	*	*	Y
D	*	*	*	Y
E	*	*	Y	Y
F	*	Y	Y	Y
G	*	Y	Y	Y
H	Y	Y	Y	Y

Y = Part or Factor Normally Applied \* = Part or Factor Normally Not Applied

Specific instructional guidance relating to the application of the CEF should be obtained from FEMA's website. (Go to [www.fema.gov/government/grant/pa/resources/](http://www.fema.gov/government/grant/pa/resources/) and select from among the Cost Estimating Format resources.)

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## VALIDATION

The applicant may prepare PWs for small projects without assistance from FEMA or the State. Validation is conducted for those applicants who prepare their own small project PWs. The validation procedures apply only to small projects. Large projects are developed by the Project Specialist, working with the applicant, and are submitted directly to the PAC Crew Leader for review and processing.

The purpose of the small project validation process is to ensure that:

- the applicant has developed complete, accurate scopes of work;



- the work and costs included in the PWs are eligible for Public Assistance; and
- the cost estimates are accurate and reasonable.

Typically, 20 percent of an applicant's small projects are assessed in the validation process. However, if significant discrepancies are found in the sample, a second sample of 20 percent is assessed. If discrepancies are again found in that sample, the applicant will be provided with technical assistance for review of all small projects.

Unless FEMA or the State has set an earlier deadline, an applicant typically has 60 days from the date of the Kickoff Meeting to submit small project PWs. The 20 percent sample only applies to projects submitted within this 60-day deadline. Small project PWs submitted after 60 days are subject to 100 percent validation. For this reason, applicants are encouraged to submit small project PWs as early as possible.

FEMA validates projects for facility, work, cost, and contract eligibility, and Special Considerations. Typically, a site visit is required during the validation process. Funding for all small projects (except those with Special Considerations) that are in the group submitted for validation will be obligated at one time as long as any required corrections are made. Small projects with Special Considerations will be obligated as each one completes the necessary Special Considerations reviews. Refer to the *Public Assistance Applicant Handbook* (FEMA 323) and FEMA Policy 9570.6, Standard Operating Procedures on Validation of Small Projects, for additional discussion regarding the validation process.

**Facility and Work.** FEMA reviews projects to ensure that the damaged facility and work meets all applicable eligibility criteria, as described in Chapter 2. The damage description and scope of work must be accurate and complete. The review ensures that the scope of work is appropriate for the type and dimensions of damage, and that Special Considerations are clearly documented (these considerations are described in Chapter 4).

**Cost.** Costs must be error-free and eligible. Applicants must provide labor, equipment, and materials summaries for use in the review. Items that will be checked include:

- identification of persons whose wages are being included in the cost summary, by date, position, and hours worked;
- separate summaries for overtime and regular time hours with the fringe benefit rates identified for both;

- a summary of operator hours for any equipment being claimed (operator hours must match or exceed equipment hours; note that regular time hours for emergency work, even though ineligible, are needed to justify equipment usage);
- identification of volunteer, prison, or reassigned labor; and
- copies of purchase orders, invoices, inventory records, or stock tickets with material type and quantity included.

**Contract.** FEMA reviews contracts to ensure that they adhere to appropriate procurement regulations, are based on reasonable costs, and pertain to the eligible scope of work. The applicant must provide FEMA with a copy of the contract.

**Special Considerations.** The Technical Specialist who conducts the validation must note possible Special Considerations, such as insurance, hazard mitigation, and compliance with environmental and historic preservation laws, including floodplain management, and report those considerations to the PAC Crew Leader for further review, as necessary. Insurance payments must be resolved prior to applicant closeout.

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## GRANT PROCESSING

FEMA and the State share responsibility for making PA Program funds available to the applicant. FEMA is responsible for determining eligibility, conducting environmental/ historic preservation review, approving projects, and making the Federal share of the approved amount (that is, the grant) available to the State through a process known as obligation. Funds that FEMA has obligated are available to the State via electronic transfer, but reside in a Federal account until the State is ready to award grants to the appropriate applicants. The State cannot request funds more than three business days before the day it disburses them. The State is responsible for providing the State share of the eligible costs and for notifying the applicant that funds are available. The State must use methods and procedures for payment that minimize the time between the transfer of funds to the State and disbursement by the State in accordance with Federal cash management requirements. For applicants requesting Immediate Needs Funding or Expedited Payment, the State should request funds expeditiously to meet the intent of the funding (see pages 90–91).

## Methods of Payment

The method of payment to the applicant is dependent on the type of project.

**Small Projects.** Payment for small projects is made at the time of project approval on the basis of the estimate. The State is required to make payment of the Federal share to the applicant as soon as practicable after FEMA has obligated the funds.

Once all small projects are complete, the State must certify that all work has been completed in accordance with the approved scope of work on the PW, in compliance with FEMA standards and policies, and that all payments due have been made. This certification does not specify the amount spent on the projects, only that the projects were completed. If a small project, including any mitigation work, was not started or was not completed, funds will be de-obligated. If the applicant spends less than the amount approved by FEMA, the Federal share will not be reduced to match actual costs. However, if the applicant incurs costs significantly greater than the total amount approved for **all** small projects, the applicant may appeal for additional funding.

Note that this opportunity applies only to a net cost overrun for all small projects combined, not to an overrun for an individual project. This policy is based on the fact that small projects with cost underruns typically offset those small projects where the applicant experienced cost overruns. Such a request for a net cost overrun is considered a first appeal, as described on pages 112–114 of this guide.

**Large Projects.** Large projects are funded on documented actual costs. Because of the nature of most large projects, work typically is not complete at the time of project approval; therefore, FEMA obligates grants based on an estimated cost.

Grant funds may not be immediately drawn down by the State. Instead, progress payments are made to the applicant as actual costs are documented. Upon completion of a large project, an applicant must submit documentation to the State to account for all incurred costs. The State is responsible for ensuring that all incurred costs are associated with the approved scope of work and for certifying that work has been completed in accordance with FEMA standards and policies. The State then submits documentation of project costs to FEMA for review. FEMA may conduct a final inspection as part of this review. Once the review is complete, FEMA determines whether funds should be obligated or deobligated for the project.

## Funding Options

Grants for most projects are processed in the manner described above. However, an applicant may elect to use a Public Assistance grant for activities that are outside of the originally approved scope of work. Funding options available to the applicant are described below.

**Improved Projects.** When performing permanent restoration work on a damaged facility, an applicant may decide to use the opportunity to make improvements to the facility while still restoring its pre-disaster function and at least its pre-disaster capacity. For example, the applicant may decide to lay asphalt on a gravel road or replace a firehouse that originally had two bays with one that has three. Projects that incorporate such improvements are called improved projects. For the most part, these are projects for which the funding for the improvements cannot be separated from the costs for the original repair work.

An applicant may request an improved project for either a small or large project. The improved facility must have the same function and at least the pre-disaster capacity as that of the pre-disaster facility. Time limits that would be associated with repairing the damaged facility to its pre-disaster design apply to the improved project construction. Funding for such projects is limited to the Federal share of the costs that would be associated with repairing or replacing the damaged facility to its pre-disaster design, or to the actual costs of completing the improved project, whichever is less. If eligible repair or replacement costs exceed the original estimate and costs can be separately documented (i.e., if approved costs can be tracked separately from improvement costs), the applicant may appeal the amount of the grant. Any additional costs for complying with codes and standards or compliance with environmental and historic preservation laws, regulations, and EOs (see Chapter 4) required by the construction of the improvements, but not required by the original eligible scope of work, are not eligible. The balance of the funds is a non-Federal responsibility. Funds to construct the improved project can be combined with a grant from another Federal agency; however, Federal grants cannot be used to meet the State or local cost-share requirement unless the legislation for the other grant allows such use, e.g., the Community Development Block Grant (CDBG) program.

If the original facility is being repaired and improvements are being added, FEMA may provide assistance with hazard mitigation under Section 406 of the Stafford Act. These funds must be applied to the original facility. If the improved project involves a complete new facility on the same site or on a different site, FEMA cannot approve Section 406 Hazard Mitigation

funding that may otherwise have been eligible for the original facility. See pages 124–127 for further discussion of hazard mitigation. (See FEMA Fact Sheet 9580.102, Permanent Relocation.)

The applicant must obtain approval for an improved project from the State **prior to the start of construction**. Further, any improved project that results in a significant change from the pre-disaster configuration (that is, different location, footprint, function, or size) of the facility must also be approved by FEMA prior to construction to ensure completion of the appropriate environmental and/or historic preservation review.

**Alternate Projects.** An applicant may determine that the public welfare would not be best served by restoring a damaged facility or its function. In this event, the applicant may use the PA grant for that facility for other eligible purposes. (See FEMA Policy 9525.13, Alternate Projects.) Funds may also be used on more than one alternate project, and an applicant may request an alternate project in lieu of either a small or large project, but only on permanent restoration projects. Funds for debris removal and emergency protective measures cannot be used for alternate projects. The alternate project must serve the same general area that was being served by the originally funded project. The original facility must be rendered safe and secure, sold, or demolished. If an applicant opts to keep a damaged facility for a later or another use, it will not be eligible for FEMA funding in a subsequent disaster unless it is repaired to meet codes and standards, and mitigation measures that would have been approved are applied.

In general, alternate project funding may be used to repair or expand other selected public facilities, to construct new facilities, to demolish the original structure, to purchase equipment, to cover Section 406(d) (Stafford Act) insurance reductions on a facility eligible under the PA Program, or to fund cost-effective hazard mitigation activities, as long as the purpose is to meet a need for governmental services and functions in the disaster area. Alternate projects for PNP applicants must be for facilities that would be eligible for assistance under Section 406 of the Stafford Act. The proposed alternate project may not be located in the regulatory floodway and flood insurance will be required if it is located in the 100-year floodplain. Funds for alternate projects cannot be used for operating costs or to meet the State or local share requirement on other Public Assistance projects or projects that utilize other Federal grants. 406 Hazard Mitigation funds that may have been approved for the original facility cannot be applied to an alternate project. All requests for alternate projects must be made within 12 months of the Kickoff Meeting and must be approved by FEMA **prior to construction**. FEMA must ensure that the

proposed project represents an appropriate use of funds and complies with applicable environmental and historic preservation laws.

Funds for alternate projects for publicly owned facilities are limited to 90 percent of the approved Federal share of the estimated eligible costs associated with repairing the damaged facility to its pre-disaster design, or to 90 percent of the Federal share of actual costs of completing the alternate project, whichever is less. Funds for alternate projects for PNP applicants are limited to 75 percent of the approved Federal share. The costs of complying with laws, regulations, and EOs on the damaged facility are considered project costs for purposes of calculating the grant. Any additional costs for complying with codes and standards or compliance with environmental and historic preservation laws, regulations, and EOs (see Chapter 4) for the alternate facility are not eligible. Mitigation funding cannot be included in the calculation of the amount of alternate project funding. A sample calculation follows:

\$130,000	eligible damage
<u>- 30,000</u>	insurance reduction
\$100,000	new eligible amount
<u>x .9</u>	to adjust for 10% reduction*
\$ 90,000	new project amount
<u>x .75</u>	Federal cost share
\$67,500	maximum amount of Federal funds applicant may receive. Applicant must spend at least \$90,000 on the approved alternate projects to receive \$67,500 of Federal funds.

\* except for projects of PNP organizations, which are reduced 25%

## Appeals

The appeals process is the opportunity for applicants to request reconsideration of FEMA determinations regarding application for or the provision of assistance. There are two levels of appeal. The first level appeal is to the RA. The second level appeal is to FEMA Headquarters.

Typical appeals involve the following:

- an entity is not an eligible applicant;
- a facility, an item of work, or a project is not eligible for disaster assistance;
- approved costs are less than the applicant believes to be necessary to complete the work;

- a requested time extension was not granted;
- a portion of the cost claimed for the work is not eligible;
- the applicant disagrees with the approved Scope of Work on the PW; or
- the applicant incurs a significant net cost overrun on small projects.

The applicant must file an appeal with the State within 60 days of the applicant's receipt of a notice of the action that is being appealed. The applicant must provide documentation to support the appeal. This documentation should explain why the applicant believes the original determination is wrong and the amount of adjustment being requested. Applicants appealing for a net small project overrun must make application within 60 days of completion of the last small project and must include cost data on all small projects. The State reviews the appeal documentation and request additional information if necessary. The State then prepares a written recommendation on the merits of the appeal and forwards that recommendation to FEMA within 60 days of its receipt of the appeal letter or receipt of additional information that it had requested. The State need not endorse the appeal position but must forward all appeals it receives.

The RA reviews the appeal and within 90 days takes one of two actions:

- render a decision on the appeal and inform the State of the decision; or
- request additional information.

Normally, the applicant has 60 days to provide any additional information, and the RA provides a decision on the appeal within 90 days of receipt of that information. If the appeal is granted, the RA takes appropriate action, such as approving additional funding or sending a Project Specialist to meet with the applicant to determine additional eligible funding.

If an appeal is denied by the RA, the applicant may submit a second appeal following the procedures included in the RA's denial. The applicant must submit the second appeal to the State within 60 days of receiving the RA's denial. The State must forward the appeal with a written recommendation to the RA within 60 days of receiving the applicant's letter. The RA reviews the information provided with the appeal and requests additional information if required. The RA forwards the appeal with the recommendation for action to FEMA Headquarters as soon as practicable.

FEMA Headquarters reviews the appeal and within 90 days renders a decision or requests additional information from the applicant. In an unusual case involving highly technical issues, FEMA may request an independent scientific or technical analysis by a group or person having expertise in the subject matter of the appeal. Upon receipt of requested information from the applicant and any other requested reports, FEMA renders a determination on the appeal within 90 days. Any required actions, such as obligation or deobligation of funds, are taken by the RA. See 44 CFR §206.206 for the process description.

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## **CLOSEOUT**

The PA Program is considered programmatically closed when FEMA assures that all of the grants awarded under the PA Program for a given disaster meet the statutory and regulatory requirements governing the program. To achieve programmatic closure, FEMA ensures that all funds have been obligated. This includes any compliance with environmental and historic preservation requirements and any insurance purchase requirements. In addition, FEMA must resolve any appeals before programmatic closure is complete. With programmatic closure, FEMA has a reasonably well defined understanding of the total amount of Federal funds that will be obligated for the disaster.

Financial reconciliation of the grant, or grant closure, occurs later, when FEMA and the State reach agreement that all applicable administrative actions related to the PA Program are complete and all program funds related to the disaster have been reconciled. At that point, all PA Program projects have been completed, the State has awarded all grant funds and submitted its final expenditure report to FEMA, and FEMA has adjusted the funding level for the program, as appropriate. Once grant closure occurs, no additional actions related to the program may occur other than possible audits. FEMA may conduct an audit of the program during or after grant closure.



# Special Considerations

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## WHAT ARE SPECIAL CONSIDERATIONS?

FEMA uses the term “Special Considerations” to describe issues other than basic program eligibility that affect the scope of work and funding for a project. These issues include:

- insurance;
- hazard mitigation; and
- environmental/historic preservation compliance with Federal laws, regulations, and EOs, such as those that address the environment, floodplains, wetlands, historic preservation, endangered species, and environmental justice.

Each of these issues is described in greater detail in this chapter.

Timely identification and resolution of Special Considerations issues prior to initiation of disaster-related work is critical to the effective delivery of the PA Program. If FEMA, the State, and the applicant fail to identify and address these issues expeditiously, the following consequences can result:

**Loss of Funding.** FEMA may be prevented from approving funds for a project, or may be required to deobligate funds after the initiation of a project.

**Delays.** Approval and obligation of funding may be delayed while Special Considerations issues are resolved. For example, a funding decision may be delayed while FEMA waits for an applicant to submit insurance information.

**Legal Action.** Citizens, advocacy groups, and others can file lawsuits to stop projects funded by FEMA.

**Loss of Opportunity.** Hazard mitigation measures typically are most effective when incorporated in the initial repair or replacement of the damaged facility.

**Negative Publicity.** All of the above create negative publicity for FEMA, the State, and the applicants.

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## THE SPECIAL CONSIDERATIONS PROCESS

Special Considerations are a factor in all phases of the recovery process, from the PDA through the completion of projects. Processing involves:

- collection of data;
- review of the data and coordination with the appropriate agencies; and
- documentation of the process and its results.

FEMA's objective is to resolve Special Considerations issues early and expeditiously. The PDA is the first step in identifying Special Considerations. PDA teams collect Special Considerations information through observation and interviews with the local officials. Once recovery operations are underway, the scoping process begins. This process includes:

- identification of potential issues;
- coordination with other agencies and organizations;
- establishment of procedures for addressing issues; and
- coordination among the PA Program staff to ensure that field personnel are aware of the issues and the procedures for resolving them.

Depending on the issues prevalent for a specific disaster, FEMA may consult with any or all of the following agencies or organizations as part of this scoping process:

- State insurance commissioner's office;
- FEMA Hazard Mitigation Grant Program office (see the discussion of 404 Mitigation on pages 124–125);
- Federal Insurance Administration (FIA);

- The Regional Environmental Officer (REO) at the region and the Environmental Liaison Officer (ELO) or environmental/historic preservation specialists in the JFO;
- State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO);
- State environmental protection, hazard mitigation, and other agencies; and
- USACE, U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and other Federal agencies.

The scoping process should result in some means for resolving issues, such as a clearance letter or memorandum of understanding with the appropriate agencies.

The interface between the PAC Crew Leader (Public Assistance Coordinator) and the applicant is the most critical element of the Special Considerations process. The PAC Crew Leader has the opportunity to interact with the applicant on several occasions, beginning with the Kickoff Meeting. The PAC Crew Leader:

- brings potential issues to the applicant’s attention;
- works with the applicant and specialists to identify issues and obtain information that can lead to resolution;
- alerts Project Specialists (Project Officers) to potential issues;
- identifies projects for which a review is required and assigns the appropriate Technical Specialist (Specialist); and
- ensures that the appropriate review is completed by a Technical Specialist and documented in the applicant’s Case Management File.

It is the applicant’s responsibility to identify the existence of Special Considerations issues for each project. Project Specialists, Technical Specialists, and PAC Crew Leaders working with these projects must ensure that such issues are appropriately documented on the PW. A standard set of questions has been developed to assist in identifying Special Considerations issues. The questions reflect each of the areas of concern and are intended to highlight elements of the applicant’s projects that could trigger a Special Considerations review. The PAC Crew Leader should review these questions, which appear on the Special Considerations Questions form, during the Kickoff Meeting and

Figure 7: Special Considerations Questions

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY SPECIAL CONSIDERATIONS QUESTIONS		O.M.B. No. 1665-0017 Expires October 31, 2008	
APPLICANT		PA ID NO.	DATE
PROJECT NAME	PROJECT NO.	LOCATION	
Form must be filled out - for each project.			
1. Does the damaged facility or item of work have insurance and/or is it an insurable risk? (e.g., buildings, equipment, vehicles, etc.)			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
2. Is the damaged facility located within a floodplain or coastal high hazard area/or does it have an impact on a floodplain or wetland?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
3. Is the damaged facility or item of work located within or adjacent to a Coastal Barrier Resource System Unit or an Otherwise Protected Area?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
4. Will the proposed facility repairs/reconstruction change the pre-disaster condition? (e.g., footprint, materials, location, capacity, use or function)			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
5. Does the applicant have a hazard mitigation proposal or would the applicant like technical assistance for a hazard mitigation proposal?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
6. Is the damaged facility on the National Register of Historic Places or the state historic listing? Is it older than 50 years? Are there other, similar buildings near the site?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
7. Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
8. Are there any hazardous materials at or adjacent to the damaged facility and/or item of work?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	
9. Are there any other environmental or controversial issues associated with the damaged facility and/or item of work?			
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		Comments	

FEMA Form 90-120, FEB 96

PREVIOUS EDITION OBSOLETE

again when PWs are submitted. An explanation must be provided in the comment field if the applicant or PAC Crew Leader answers “yes” or “unsure” to any of these questions. This form is shown in Figure 7.

In accordance with Section 312 of the Stafford Act, the PA Program cannot duplicate benefits from other sources, such as proceeds from an insurance policy. Therefore, FEMA is required to reduce the amount of assistance for eligible work by the amount of any actual or anticipated insurance proceeds available for that work. FEMA also must limit flood disaster assistance for insurable facilities in Special Flood Hazard Areas (described below). Section 406(d) of the Stafford Act requires a reduction in assistance for such facilities if they don’t have flood insurance or if their flood insurance coverage is inadequate (see pages 120–122). Section 311 of the Stafford Act requires an applicant to purchase and maintain insurance for permanent work projects, where that insurance is reasonably available, as a condition for receiving disaster assistance. These criteria are discussed in more detail in the paragraphs that follow.

Items and facilities that typically are insured include:

- buildings;
- contents;
- equipment; and
- vehicles.

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## **INSURANCE**

An applicant may have insurance coverage for other items, facilities, or types of work, such as debris removal, snow removal, temporary facilities, or operating costs. If the applicant’s policies contain provisions for cleanup, debris removal, and demolition, FEMA must deduct insurance proceeds for these activities from eligible costs of PA Program grants. While insurance policies typically do not pay for voluntary hazard mitigation items, they often cover upgrades necessary to comply with current codes and standards.

When an insurance policy covers both insured eligible and insured ineligible damages, such as both property and business income losses, without specifying limits for each type of loss, FEMA will apportion the anticipated recovery to be deducted from eligible costs between the two based on the ratio of insured eligible to insured ineligible damages.

Similarly, if deductible amounts are unspecified between the types of losses, the amount of deductible that will be eligible will be based on the same ratio.

In order to prevent delays or loss of FEMA funding, it is critical that the applicant:

- discuss all insurance coverage with the PAC Crew Leader;
- report all facilities and equipment with prior disaster insurance requirements;
- provide all pertinent insurance information, policies, and statements of loss to FEMA as soon as possible; and
- pursue payment under their insurance policies to maximize potential benefits.

## **General Property Insurance**

FEMA uses the term “general property insurance” to describe all perils except for flood. This could include perils such as fire, wind, rain, and earthquake. Coverage for these perils generally includes buildings, contents, personal property, and other items. Once the amount and availability of coverage have been determined, an appropriate reduction in eligible project costs can be made based on anticipated insurance proceeds. If an applicant has already received an insurance payment at the time of project approval, FEMA will review the settlement to determine if it is in accordance with the policy. FEMA may limit funding if the applicant’s policy provides coverage which should be pursued from the insurer. Legal costs incurred in pursuing insurance settlements may be subtracted from such proceeds before reduction of eligible costs.

## **The National Flood Insurance Program and Flood Insurance**

As stated above, the Stafford Act includes specific provisions for insurance of facilities located in floodplains. Most property insurance does not cover flood damage; instead, a separate flood insurance policy must be purchased to obtain this coverage. In 1968, Congress created the National Flood Insurance Program (NFIP) to address the nationwide lack of affordable flood insurance and to stimulate local programs to reduce the risk of damage caused by floods. Under the NFIP, federally backed flood insurance is available in communities that agree to adopt and enforce floodplain management ordinances to reduce future flood damage.

To support the NFIP, FEMA publishes Flood Insurance Rate Maps (FIRMs). These maps depict Special Flood Hazard Areas, defined as those areas subject to inundation during a 100-year flood (a flood having a 1 percent chance of occurrence in a given year). The maps also show 500-year floodplains (areas subject to inundation by a flood having a 0.2 percent chance of occurrence in a given year), coastal high hazard areas, floodways, Coastal Barrier Resources System units, and Otherwise Protected Areas.

The extent of coverage available varies depending on factors such as exposure to flooding, location, and loss history due to flooding. A list of properties that are insurable under the NFIP is provided in 44 CFR Part 61. Examples of insurable properties include buildings and contents, building additions, and detached garages. (Under the NFIP, flood insurance coverage is provided separately for buildings and contents.) Examples of properties that are not covered by the NFIP include vehicles, pumping stations that do not qualify as buildings, water treatment plants that are primarily below ground, boat docks, swimming pools, and items that are stored but not normally located in basements.

Section 406(d) of the Stafford Act mandates a special reduction in the amount of Public Assistance funding for a facility (facility meaning each separate building or structure insurable under NFIP Coverage A – Buildings) that is:

- insurable under the NFIP;
- located in a Special Flood Hazard Area, as shown on a FIRM; and
- damaged by floodwaters.

For insurable facilities that do not have flood insurance or carry inadequate flood insurance, FEMA will reduce eligible project costs by the lesser of:

- the maximum amount of insurance proceeds that could have been obtained from a standard NFIP flood insurance policy; or
- the value of the facility at the time of the disaster.

After the reduction, FEMA assistance is available for:

- reasonable deductible (limited to minimum available under NFIP), but only for the first disaster and not for subsequent disasters;
- items not covered by the NFIP; and
- damage in excess of limits of a standard NFIP policy.

The regulations at 44 CFR §59.2 state that Federal financial assistance with respect to insurable buildings within an identified Special Flood Hazard Area shall not be provided in a sanctioned or non-participating community. There may be a limited exemption from the Section 406(d) reduction for eligible PNP facilities when a community is sanctioned or not participating in the NFIP. Reduction is not made, but assistance is not allowed unless the community joins the NFIP within 6 months and the PNP obtains insurance.

## **Eligible Costs for Insurable Facilities – All Disasters**

Except in cases involving Stafford Act 406(d) flood insurance reductions or where an insurance purchase requirement has not been maintained (see page 123 of this guide), any eligible work or costs not covered by an insurance policy (that is, the difference between eligible costs and insurance proceeds) may be eligible for PA grant funding if it is the applicant's first claimed FEMA assistance for the specific facility. The eligibility of these items is determined only after a FEMA Specialist reviews the insurance policy, all endorsements, and the schedule of insured property to determine insurance recoveries, as well as actual settlement documents, if available. Generally, eligible uninsured losses may include the following items:

- reasonable deductible in the applicant's first claimed FEMA assistance if the cost accrued to the applicant;
- depreciation; (i.e., differences in FEMA eligible costs and final loss valuations used by insurers); and
- costs in excess of an insurance policy limits, including sublimits for certain hazards (such as flood or earthquake).

Regardless of the extent to which an applicant's costs will be covered by insurance, the PAC Crew Leader must ensure that the entire scope of work for the project is described in the PW. This practice allows for the future adjustment of eligible costs based on such occurrences as a change in the applicant's insurance settlement.

In situations where insurance covers all eligible work, and the only eligible cost is that of the deductible, FEMA reimburses the applicant for this cost even if it is less than the \$1,000 minimum that is otherwise required for the preparation of a PW.

In some cases, the applicant may be required to pursue the proceeds from an insurance policy held by a third party. For example, property insurance for buildings often covers the cost of demolition and debris



removal. If the applicant removes debris from property belonging to a third party as an emergency measure, and the insurance policy for that property covers debris removal, the applicant must attempt to recover the proceeds from that insurance policy. FEMA would then deduct the value of the proceeds from the eligible cost of the work.

## **Insurance Purchase Requirements – All Disasters**

As a condition for receiving Public Assistance for permanent work, an applicant must obtain and maintain insurance to cover that facility for the hazard that caused the damage. Such coverage must, at a minimum, be in the amount of the estimated eligible damages for that structure prior to any reduction. The costs of Section 406 hazard mitigation measures are included in the amount of insurance required. If the requirement to purchase all insurance is not met, FEMA will not provide assistance for damage sustained in the current or a future disaster of the same type. If the applicant does not maintain all required insurance, FEMA will not provide any assistance for that facility in future disasters of the same type. An applicant is exempt from this requirement for:

- projects where the eligible damage (before any reductions) is less than \$5,000; or
- facilities for which, in the determination of the State insurance commissioner, the type and/or extent of insurance being required by FEMA is not reasonable. (This exemption does not apply to facilities insurable under the NFIP because insurance is both available and reasonable.)

The commitment by the applicant to purchase and maintain insurance must be documented and submitted to FEMA before project approval. If a facility has been severely damaged or destroyed, the applicant may be unable to determine the amount of insurance necessary for the restored facility before design and construction commences. In such a situation, the applicant must provide FEMA with as detailed a commitment as possible, and FEMA places a requirement in the PW stating that the applicant must provide documentation regarding the insurance policy that is eventually obtained within a reasonable period of the completion of construction.

FEMA does not require applicants to obtain or maintain insurance on temporary facilities, and the cost of premiums (for temporary as well as for other facilities) is not eligible for reimbursement. However, prudent risk management practices generally encourage appropriate coverage for hazard exposure at a facility. If a temporary facility is damaged in a non-federally declared event, FEMA will not repair or replace it.

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## HAZARD MITIGATION

Hazard mitigation is defined as cost-effective action taken to prevent or reduce the threat of future damage to a facility. The applicant, FEMA, or the State may recommend that hazard mitigation measures be included in a PW. The costs of eligible hazard mitigation actions will be included in the overall funding of a project. [See FEMA Policy 9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act).]

In some cases, FEMA may require mitigation measures as part of an approved project. For example, FEMA may require that a flood-damaged building be elevated to comply with local ordinances established pursuant to the requirements of the NFIP.

### Differences Between Section 404 and Section 406 Hazard Mitigation Measures

The Stafford Act provides for two types of funding for hazard mitigation measures: statewide mitigation programs (authorized under Section 404 of the law) and mitigation for disaster-damaged facilities (authorized under Section 406 of the law). The differences between these provisions are described in the following table:

**Table 9: Mitigation**

<b>404 Hazard Mitigation</b>	<b>406 Hazard Mitigation</b>
Separate program run by the State	Implemented through the PA Program
Applies to structural measures and to non-structural measures (such as planning, property acquisition, drainage projects)	Applies only to structural measures and does not apply to buyouts
Applies throughout the State in most disasters	Must apply to the damaged element of the facility
The formula for calculating the HMGP allocation for States with a standard State mitigation plan is based on 15% of the first \$2 billion of estimated aggregate amounts of disaster assistance. For amounts greater than \$2 billion, a sliding scale is used to make allocation determinations. States with enhanced mitigation plans are eligible for a 20% HMGP formula.	No program-wide limits on funds, but each project must be cost-effective and approved by FEMA

Section 404 hazard mitigation does not fall under the purview of the PA Program. Nevertheless, it is important to understand the differences between the two programs. The following discussion pertains solely to Section 406 hazard mitigation. For more information on Section 404 hazard mitigation, local officials should contact the PAC Crew Leader, appropriate JFO Hazard Mitigation staff, or the State.

## **Section 406 Hazard Mitigation**

For hazard mitigation measures to be approved, the measures must be reviewed by FEMA staff to ensure eligibility, technical feasibility, environmental and historic preservation compliance, and cost effectiveness. [See FEMA Policy 9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act).]

To be eligible, Section 406 hazard mitigation measures:

- Must be appropriate to the disaster damage and must prevent future damage similar to that caused by the declared event.
- Must be applied only to the damaged element(s) of a facility. This criterion is particularly important when conducting repairs to a portion of a system. For example, if floodwaters inundate a sanitary sewer, block manholes with sediment and damage some of the manholes, cost-effective mitigation to prevent blockage of the damaged manholes in future events may be eligible; however, work to improve any undamaged manholes that are part of the system is not eligible. New berms are not eligible as mitigation measures because they do not meet the requirement of being part of the damaged element.
- Cannot increase risks or cause adverse effects to the facility or to other property.
- Must consist of work that is above and beyond the eligible work required to return the damaged facility to its pre-disaster design. Upgrades required to meet current codes and standards, however, are not considered hazard mitigation measures for purposes of the PA Program and have different eligibility criteria.
- Cannot be applied to replacement buildings. Since new construction will be to current codes and standards, which are intended to ensure structural integrity for local conditions, mitigation funding applies only to building repairs, which generally are not covered by codes and standards.

The considerations listed below are used to determine cost effectiveness. In all cases, the total eligible cost of the project, before deducting insurance proceeds, is used for the cost comparison.

- Hazard mitigation measures may amount to up to 15 percent of the total eligible cost of the eligible repair work for the damaged facility.
- Certain mitigation measures may be determined to be cost-effective as long as the mitigation measure does not exceed the cost of the eligible repair work on the project. Examples are provided below.
- For measures that exceed the costs of eligible repair work, the applicant must demonstrate through an acceptable benefit/cost analysis that the measure is cost effective.

If mitigation measures agreed to by the applicant are approved (and thereby required), non-completion jeopardizes the funding of the entire project.

The following list includes examples of Section 406 mitigation measures that have been determined to be cost-effective if they do not exceed the cost of the eligible repair work. As stated above, the applicant, the State, or FEMA may propose such measures, and FEMA may require hazard mitigation measures before agreeing to provide funds for certain projects. See the policy on Hazard Mitigation Funding Under Section 406 (FEMA Policy 9526.1) for a more detailed listing of potential mitigation measures.

- Relocation of facilities from hazardous locations:
  - ▶ Roads and bridges
  - ▶ Utilities
  - ▶ Buildings
- Slope stabilization to protect facilities:
  - ▶ Placement of riprap
  - ▶ Installation of cribbing or retaining walls
  - ▶ Installation of soil retention blankets
- Protection from high winds:
  - ▶ Installation of shutters to protect windows
  - ▶ Installation of hurricane clips

- ▶ Strengthening anchoring and connections of roof-mounted equipment
- Floodproofing of buildings:
  - ▶ Use of flood-resistant materials
  - ▶ Elevation of mechanical equipment and utilities
  - ▶ Elevation of buildings
  - ▶ Dry-floodproofing, if technically feasible
- Flood protection of bridges and culverts:
  - ▶ Installation of cut-off walls or headwalls on culverts
  - ▶ Installation of gabions, riprap, sheet piling, or geotextile fabric
- Seismic protection:
  - ▶ Bracing of overhead pipes and electrical lines
  - ▶ Anchoring non-structural elements such as parapets and veneers
  - ▶ Bracing interior walls and partitions
- Protection of utilities:
  - ▶ Use of disaster-resistant materials for power poles
  - ▶ Anchoring fuel tanks to prevent movement
  - ▶ Elevation of equipment, control panels, and electrical service to prevent flood damage

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## **ENVIRONMENTAL/HISTORIC PRESERVATION COMPLIANCE**

When providing funds under the PA Program, FEMA must consider a range of Federal laws, regulations, and EOs that apply to the use of Federal funds. These laws, regulations, and EOs generally require the funding agency to ensure compliance prior to funding. The size and type of project, and project site and area conditions, generally determine the level of review that must be performed. Some of these laws, regulations, and EOs, and the means through which FEMA ensures that the PA Program complies with them, are discussed below.

Reviews for compliance with these laws must be completed before FEMA approves funding and before work is started since the review may identify steps to be taken or conditions to be met before the project can be implemented. These are noted in the paragraphs below where applicable. More information on FEMA's environmental and historic preservation compliance responsibilities can be found at [www.fema.gov/plan/ehp](http://www.fema.gov/plan/ehp). The REO, the ELO, and environmental and historic preservation specialists are resources that can help, and in some cases are required to help, process these compliance requirements.

## **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) requires every Federal agency to follow a specific planning process to ensure that agency decision-makers have considered, and the general public is fully informed about, the environmental consequences of a proposed Federal action, such as the approval of a grant. This review and consultation process is used to evaluate the impact a project, and any possible alternatives, may have on the environment. The process must be completed prior to obligating funds and beginning work. FEMA's regulations regarding NEPA can be found in 44 CFR Part 10.

NEPA does not require that FEMA limit the impact of projects on the environment; nor does it require FEMA to fund only the alternative that has the least environmental impact. However, it does require that the decision to fund a project be made in an informed manner.

The review process required by NEPA, where applicable, is usually the means through which FEMA addresses other environmental laws and regulations.

**Statutory Exclusions (STATEX).** Section 316 of the Stafford Act provides FEMA with a statutory exclusion from NEPA, which exempts from the NEPA review process certain program activities that restore a facility substantially to its condition prior to the disaster or emergency. The exempted Stafford Act programs are:

- Section 402 (General Federal Assistance);
- Section 403 (Essential Assistance) – protective measures, such as the construction of temporary bridges and other activities necessary to reduce immediate threats to life, property, and public health and safety;

- Section 406 (Repair, Restoration, and Replacement of Damaged Facilities) – repair or restoration projects that restore facilities substantially to their pre-disaster footprint, function, and size;
- Section 502 (Federal Emergency Assistance).

Some actions, although excluded from NEPA review by Section 316, may still have potential environmental impacts that require additional review for compliance with other environmental/historic preservation laws and EOs. The more commonly encountered of these other laws and EOs include: Endangered Species Act, the National Historic Preservation Act, Clean Water Act, Clean Air Act, and EOs on floodplains, wetlands, or environmental justice. Compliance with these laws and EOs is still required whether or not NEPA review is required. For example, although Section 403 debris removal activities are generally statutorily exempt from NEPA review, FEMA still must ensure that those activities comply with such laws as Clean Air Act, Resource Conservation and Recovery Act, and others.

If an action is not statutorily excluded, then it must be determined which of the following levels of review is required for NEPA compliance:

**Categorical Exclusions (CATEX).** Categorical exclusions are types of actions that, through experience, FEMA has found typically will have little or no environmental impact. FEMA’s categorical exclusions are listed in 44 CFR §10.8(d). Examples include upgrades to codes and standards, removal of structures after addressing historic preservation needs, or minor improvements or minor hazard mitigation measures at existing facilities, such as placing riprap at a culvert outlet to control erosion. If there are unresolved extraordinary circumstances that may have a significant adverse environmental impact, such as the potential to affect protected natural or cultural resources, the proposed action cannot be categorically excluded, and an Environmental Assessment is required.

**Environmental Assessments (EA).** An Environmental Assessment is a concise public document that provides the decision maker with sufficient evidence and analysis regarding the significance of the environmental impacts of the proposed action. An EA can include two or more alternatives to aid in decision making and concludes with one of two findings: either a Finding of No Significant Impact or a Notice of Intent to prepare an Environmental Impact Statement.

**Environmental Impact Statements.** An Environmental Impact Statement (EIS) is required when significant environmental impacts are anticipated. It is a detailed analysis and evaluation of all the impacts of the proposed

action and all reasonable alternatives. This document usually provides more detailed and rigorous analyses than the EA and requires formal public involvement. The EIS concludes with a Record of Decision that provides an explanation of the reasons for selecting a particular action.

## **Endangered Species Act**

This legislation prohibits Federal actions that cause takings of species listed as threatened or endangered, or the destruction or adverse modification of the habitat for these species. Endangered species include mammals, fish, birds, reptiles, and amphibians, as well as plants and insects.

If a project has the potential to affect a threatened or endangered species or its habitat, FEMA must consult with the USFWS or the National Marine Fisheries Service (NMFS), or both, before approving funding for that project. While compliance issues may arise with projects involving undisturbed sites (alternate or improved projects), or sites in or by waterways (bridge or dam repairs), they could also arise with relatively minor actions. For example:

If a culvert replacement must be performed on a stream that serves as the habitat of an endangered fish species, the construction could adversely affect the life cycle of that species. The presence of the species would not necessarily prevent the replacement but may necessitate certain constraints, such as doing the work outside of the species' breeding season.

There are over 1,250 species currently listed as threatened or endangered. Therefore, it is important to consult with the USFWS or NMFS early in the disaster recovery to determine which species inhabit the declared disaster area. In some cases, FEMA may establish a programmatic agreement with the USFWS or NMFS at the beginning of the disaster recovery process to address projects in areas known to have threatened or endangered species. Working with an environmental officer or specialist can facilitate formal or informal consultations with these agencies and help identify streamlining agreements that are already in place.

## **National Historic Preservation Act**

The National Historic Preservation Act (NHPA) requires a Federal agency to consider, before approval of funding, the effects of its activities, referred to as "undertakings," on any historic property listed in or eligible for listing in the National Register of Historic Places. The agency funding



the undertaking is required to give the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on that undertaking. Under the NHPA regulations, which can be found in 36 CFR Part 800, PA Program projects are considered undertakings because they are funded in whole or in part by a Federal agency.

Historic properties include districts, buildings, structures, objects, landscapes, archaeological sites, and traditional cultural properties that are listed in or eligible for listing in the National Register of Historic Places, a federally maintained list of recognized historic properties. These properties are not limited to old buildings or well-known historic sites, but include places important in local, State, Tribal, or national history. Facilities as diverse as bridges, roads, water treatment plants, and areas once inhabited by prehistoric populations may be considered historic properties.

The National Register of Historic Places is incomplete. States may have additional properties with historic significance that may be candidates for listing in the National Register of Historic Places.

Many Public Assistance projects have the potential to affect historic properties. These projects include:

- repair and restoration of historic structures;
- demolition or removal of historic structures;
- repair, restoration, and demolition projects in historic districts; and
- improved, alternate, or relocated projects affecting undisturbed areas that may contain archeological sites or have cultural, historic, or prehistoric significance.

FEMA must ensure the following steps are achieved for properties before approval of funding for a PA project:

- identification of historic properties;
- evaluation of the effects of PA projects on historic properties; and
- consultation with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Officer (THPO), the ACHP, and other interested parties, such as a local historic society, and the public.

In some cases, FEMA may establish a programmatic agreement with the ACHP, SHPO, and/or the THPO at the beginning of the disaster recovery process to address projects potentially falling within the scope of the NHPA.

## Clean Water Act

Under Section 404 of the Clean Water Act (CWA), the USACE is responsible for issuing permits for the discharge of dredged materials or fill into the waters of the United States. The applicant must obtain a permit in any situation where dredging or filling is a component of the project. Where a USACE permit is required for a PA project, FEMA places a requirement in the PW stating that the applicant is responsible for obtaining the permit. Also as part of the CWA, the applicant may be required to seek a Section 101 water quality permit from the State agency that administers that program.

Wetlands are considered part of the waters of the United States and are subject to CWA provisions. Some wetlands, such as marshes and riverine wetlands, are easy to recognize. Other sites, such as forested wetlands and agricultural drainage ditches, are more difficult to identify, and some areas that are considered wetlands may not actually be wet for much of the year. Wetlands can be identified by the USACE, USFWS, or Natural Resource Conservation Service.

Some of the facilities and projects that may involve the CWA include:

- bridges, culverts, or outfall structures;
- levees, dikes, and berms;
- irrigation works;
- channel alignment and stream bank erosion control;
- debris removal in streams;
- shore protective measures;
- projects involving the placement of fill, such as relocation of roads and buildings; and
- construction of water and wastewater treatment plants.

## Clean Air Act

The Clean Air Act is administered through State and local agencies. Except for activities in non-attainment areas (i.e., those exceeding national standards and, therefore, requiring more rigorous compliance measures), air quality compliance will often require that fairly standard measures be implemented such as dust abatement, vehicle emissions control, fuels storage and distribution procedures, etc. Those activities with particular air quality concerns include:

- debris disposal through methods such as burning;
- collection and disposal of appliances that contain chlorofluorocarbons;
- collection and disposal of switches and fluorescent tubes that contain mercury;
- demolition of damaged structures, which can release dust or harmful substances, such as asbestos, into the air; and
- large construction projects that require extensive grading and use of heavy equipment.

### **Coastal Barrier Resources Act**

The Coastal Barrier Resources Act (CBRA) and the subsequent Coastal Barrier Improvement Act establish a system of protected coastal areas and Otherwise Protected Areas (OPAs) known as the Coastal Barrier Resources System (CBRS). The areas, called CBRS units, include defined areas along the Atlantic, Gulf of Mexico, and Great Lakes coasts, and Puerto Rico, Florida Keys, Virgin Islands, and secondary barriers within large embayments. These two Acts minimize impacts to their unique natural ecosystems by restricting Federal expenditures and financial assistance that encourage development in certain defined areas of the coastal barriers which are identified on FEMA's FIRMs or on USFWS maintained maps.

Debris removal and emergency protective measures in designated CBRS units may be eligible for Public Assistance provided the actions eliminate an immediate threat to lives, public health and safety, and improved property. While strongly encouraged, advance consultation with the USFWS is not required before approval of emergency measures. Notification is required at the soonest practicable time for approved emergency work.

Before approving funding for permanent work in CBRS areas, however, FEMA must consult with the USFWS to allow the USFWS the opportunity to provide written comments. The following types of publicly owned facilities may be eligible for permanent work funding:

- essential links in a larger system;
- restoration of existing channel improvements;
- repair of existing energy facilities that are functionally dependent on a coastal location;

- special-purpose facilities as defined in 44 CFR §206.347(c)(4); and
- other existing (but not expanded or improved) roads, structures, or facilities that are consistent with the purposes of CBRA.

Certain PNP facilities that meet the restrictions of CBRA and the PA Program may be eligible for assistance. Examples include electric, water, and sewer utilities. [See 44 CFR §206.347(c)(6).]

Improved projects that expand a facility and alternate projects are not eligible in CBRS units except in a few limited cases.

An existing facility is defined as a publicly owned or operated facility on which construction started on or before October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. If a unit was added to CBRS at a later date, that date may be substituted for the October 18, 1982, date. For a complete description of the PA Program's responsibility for CBRA, refer to 44 CFR §206.340 Subpart J.

## **Resource Conservation and Recovery Act**

Although debris removal is statutorily exempted from NEPA, it is nonetheless subject to the Resource Conservation and Recovery Act, which requires safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies. The act, implemented at the State and local levels, applies to disposal of both disaster-generated debris and demolition debris and is of particular concern when hazardous materials may be present.

## **Coastal Zone Management Act**

If a proposed project is located in an area covered by a state's coastal zone management plan, its consistency with the requirements of that plan must be determined before funding can occur.

## **Farmland Protection Policy Act**

If a proposed project causes irreversible conversion of prime, unique, or other special farmland to non-agricultural use, the lost acreage must be evaluated using NRCS procedures.

## **Fish and Wildlife Coordination Act**

If a proposed project will affect water resources, this act requires an evaluation of that action on fish and wildlife. Projects affecting the

stream hydrology or the impoundment of water will most often trigger requirements under this law. Consultation with USFWS and other agencies may be required.

## **Wild and Scenic Rivers Act**

If a proposed project is located on or above a reach of a river designated as wild and scenic, it must be reviewed for compliance with this law.

## **EO 11988 – Floodplain Management and EO 11990 – Protection of Wetlands**

EOs 11988 and 11990 require Federal agencies to minimize or avoid activity that adversely affects floodplains and wetlands. Because many PA projects are located in these areas, FEMA must review proposed projects for compliance with the requirements of these orders. Through this review, FEMA seeks to:

- avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains;
- avoid direct and indirect support of floodplain development wherever there is a practicable alternative; and
- minimize the destruction, loss, or degradation of wetlands.

FEMA's regulations for applying EOs 11988 and 11990 are outlined in 44 CFR Part 9. These regulations describe a specific, 8-step process for conducting floodplain management and wetland reviews before approval of funding. The process includes the following steps:

1. Determine the location and potential of the proposed action to affect or be affected by a wetland or the 100-year floodplain.
2. Notify the public of the proposed action within or affecting a wetland or floodplain.
3. Identify and evaluate practicable alternatives, including alternative sites or actions outside the floodplain or wetland.
4. Identify the potential direct and indirect impacts associated with the proposed action.
5. Minimize potential adverse impacts of the proposed action.

6. Re-evaluate the proposed action and other practical alternatives based on steps 3, 4, and 5.
7. Inform the public of the final decision.
8. Implement the action.

This review process is not required for most projects where eligible damage is less than \$5,000. In addition, the review is not required for Category A and B projects (emergency work), except for projects involving disposal of debris in Special Flood Hazard Areas or wetlands.

For all other projects located within Special Flood Hazard Areas or wetlands, FEMA must perform the 8-step process to determine if it is practicable to avoid restoration in the floodplain or wetland. If avoiding the floodplain or wetland is not practicable, FEMA must identify all effects to the floodplain or wetland as well as to the facility, and seek to minimize the adverse effects through mitigation (such as relocation or redesign).

Consideration of alternative sites is not required for projects over \$5,000 but less than \$25,000 that are located in Special Flood Hazard Areas or wetlands. However, mitigation measures must be considered.

FEMA must perform floodplain management reviews for critical facilities located in any floodplain up to and including the 500-year floodplain. A facility is considered to be critical if flooding of that structure would present an immediate threat to life, public health, and safety. Critical facilities are those that serve as emergency shelters; contain occupants who are not sufficiently mobile to avoid death or injury, such as hospitals; house emergency operation or data storage that may become lost or inoperative; are generating plants and principal points of utility lines; or that produce, use, or store volatile, flammable, explosive, toxic, or water reactive materials. FEMA may require mitigation of the hazard or relocation of a critical facility before agreeing to provide funding for restoration of the facility.

## **EO 12898 – Environmental Justice**

Field personnel should identify any neighborhoods or communities with minority or low-income populations. This order requires Federal agencies to evaluate actions for disproportionately high or adverse effects on minority or low-income populations and to find ways to avoid or minimize these impacts where possible. It does not typically apply to in-kind repair or replacement of facilities under the PA Program. However, it may affect funding for improved, alternate, and relocated projects and certain hazard mitigation measures.

# Project Management

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient closeouts of PA Program grants. See FEMA Instruction 8610.8, Public Assistance (PA) Program Grants Administration Post Award Monitoring and Closeout Processes for additional information.

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## RECORD KEEPING

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the “who, what, when, where, why, and how much,” for each item of disaster recovery work. This information should include the completed PW; completed Special Considerations Questions form; estimated and actual costs; force account labor; force account equipment, materials, and purchases; photographs of damage, work underway, and work completed; insurance information; environmental and/or historic alternatives and hazard mitigation opportunities considered; environmental review documents; receipt and disbursement documents; and records of donated goods and services, if any. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding PW and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before

and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

Grantees must maintain records for a minimum of 3 years from the date of the final Financial Status Report (FSR) or follow their standard record retention policy requirements if that policy dictates record retention beyond the 3-year requirement. Applicants must meet their own record retention requirements if they are longer than the Grantee's. Otherwise, they must follow the Grantee's requirements. If the applicants are required to submit an FSR to the Grantee, the beginning date for record retention is the date of the final FSR. If the FSR is not required, the beginning date for record retention is the final certification of completion of the applicant's last project. Applicants may refer to the *Public Assistance Applicant Handbook*, FEMA 323, for additional information regarding record keeping.

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## TIME LIMITS

Eligible work must be completed within timeframes established by regulation. These deadlines are measured from the declaration date of the major disaster or emergency. The deadlines are established according to the type of work, as shown in the following table:

**Table 10: Completion Deadlines**

Type of Work	Months
Debris Clearance	6
Emergency Work	6
Permanent Work	18

The State has limited authority to grant extensions of the above deadlines on a case-by-case basis in situations of extenuating circumstances. However, the State may not grant extensions that modify the approved scope of work, such as where the project cost is dependent on the



duration. For example, for a leased temporary facility, FEMA defines the eligible funding for this facility based on the duration of use. The State does not have the authority to extend the duration of the lease as this constitutes an increase in the approved scope of work and associated costs. Only FEMA can approve a scope of work modification.

For debris clearance and emergency protective measures, the State may grant up to an additional six months for the completion of the approved scope of work. For permanent restoration work, the State may grant up to an additional 30 months.

Requests by applicants for time extensions should include identification of the project by PW number, the dates and provisions of any previous extensions granted for the particular project, a detailed justification of the need for the extension, and a projected completion date. The justification should be based on extenuating circumstances or unusual project requirements beyond the control of the applicant. FEMA may review the State's actions on time extensions on a periodic basis to ensure compliance with the regulations.

If an applicant requests a time extension beyond the limit of the State's authority, the State must submit the request to the RA for approval. Information to be contained in the request is the same as in a request submitted for State approval. The RA will make a determination as to whether some or all of the requested extension should be granted and will inform the State in writing. The RA has authority to grant extensions appropriate to the situation. The RA may impose requirements upon the State to ensure that the project will be completed within the approved time limit.

FEMA provides assistance only for those costs incurred up to the latest approved completion date for a particular project. However, the project still must be completed for any funding to be eligible for that project.

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## **CHANGES IN SCOPE OF WORK AND COSTS**

During the performance of work on a project, the applicant may discover hidden damage, additional work that is necessary to properly complete the project, or that certain costs are higher than those used to make the original estimate for the PW. Delays in the work schedule also may increase costs. This notification of additional damage or costs must be for a project already identified and approved by FEMA. Changes in the scope

of work may result in additional environmental/ historic preservation compliance reviews and/or new permits.

Assistance for any newly discovered damaged facilities must be requested within 60 days of the first substantive meeting (typically the Kickoff Meeting) with the applicant.

For large projects, when a change in scope or a need for additional funding is discovered, the applicant should notify the State as soon as possible. It should not be assumed that such costs can be reported at the end of the project and that the additional funds will be approved automatically. The request should contain justification for the eligibility of the additional work or costs. If additional damage to the facility is involved, it may be necessary to show how that damage is disaster-related. The State forwards the request to FEMA with a written recommendation. To determine eligibility, FEMA and the State, in cooperation with the local representatives, may conduct a site visit. The timing of the request should be such that the damaged element can be inspected before it is covered up or repaired. FEMA renders a decision and notifies the State either with an amended PW for additional funding or a written denial of the request.

Small projects are handled differently. If there is a gross error or omission in the scope of work of a small project, the applicant should make a request for a change as described above. Cost overruns are not handled on a project-by-project basis; rather, the applicant may request supplemental funding for a net cost overrun on all small projects by submitting an appeal through the State to FEMA. An appeal should be submitted only when the total costs for all small projects significantly exceed the total cost approved for all small projects. The appeal must be submitted within 60 days of the completion of all of that applicant's small projects. The appeal must include documentation of actual costs including reasons for increased cost or scope of work of all of the projects, including projects with underruns as well as those with overruns.

Except when an appeal is to be submitted, cost documentation for small projects does not need to be submitted to FEMA, but should be retained for 3 years after the date of the applicant's final FSR to the Grantee. If there is no FSR, it should be retained for 3 years from the date of the final certification of completion of the applicant's last project.

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## **PROGRESS REPORTS**

Progress reports are critical to ensuring that FEMA and the State have up-to-date information on PA Program grants. Reporting requirements for the PA Program generally concentrate on large projects. Recipients of assistance should check with their State to determine the particular reporting requirements.

The State submits reports quarterly to the RA for projects for which a final payment has not been made. The date of the first report will be determined jointly by the State and the DRM, depending on the circumstances at the time. The progress report will include:

- the status of the project, such as “in design” or “percentage of construction completed”;
- time extensions granted, if any;
- a projected completion date;
- the amount of expenditures and amount of payment for each project; and
- any problems or circumstances that could delay the project or result in noncompliance with the conditions of the FEMA approval.

As final payment is made on each large project, the project may be dropped from the report. Final payment for small projects is made at the time of project approval by FEMA and, therefore, small projects do not need to be reported to FEMA.

Other reporting requirements for small projects may vary depending upon the requirements of each State.

FEMA has no reporting requirements for applicants, but the State is expected to impose some reporting requirements on applicants so that it can prepare quarterly reports. The format in which the applicants submit project reports to the State will be determined by the State.

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## **AUDITS**

Public assistance grant recipients are required to comply with the provisions set forth under the Single Audit Act of 1984 (Public Law 98-502), as amended in 1996. The act requires grant recipients expending \$500,000 or more in Federal funds in a fiscal year ending

after December 31, 2003 to perform a single audit or program-specific audit in accordance with OMB Circular A-133, Audits for States, Local Governments, and Non-Profit Organizations.

Even though a single audit must be performed, grant recipients also are subject to additional audits by the DHS Office of the Inspector General and State auditors. OMB requires grant recipients to maintain financial and program records for 3 years beyond the date of final FSR or follow their and the Grantee's standard record retention policy if that policy requires record retention beyond the 3-year requirement. If an FSR is not required, records must be maintained for 3 years from the date of the final certification of completion of the applicant's last project.

Typically, applicants will be informed of audit requirements during the Applicants' Briefing. Any questions after the briefing regarding the single audit, or audits in general, should be directed to the appropriate State official or the DHS's Office of the Inspector General.

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\* This section of the Stafford Act has been amended by either the Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, 120 Stat. 1355 (2006), signed on October 4, 2006, the Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No 109-308, 120 Stat. 1725 (2006), signed on October 6, 2006, or the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006), signed on October 13, 2006. The changes are effective for emergencies or major disasters declared on or after October 4, 6, or 13, 2006. For events before those dates, please consult an earlier version of the Stafford Act.



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# **Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121- 5207, and Related Authorities**

## **April 2007**

**UNITED STATES CODE**

**Title 42. THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 68. DISASTER RELIEF**

### **TITLE I – FINDINGS, DECLARATIONS AND DEFINITIONS**

#### **Sec. 101. Congressional Findings and Declarations (42 U.S.C. 5121)**

- (a) The Congress hereby finds and declares that –
  - (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and
  - (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.
- (b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by –
  - (1) revising and broadening the scope of existing disaster relief programs;
  - (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
- (6) providing Federal assistance programs for both public and private losses sustained in disasters.

**Sec. 102. Definitions (42 U.S.C. 5122)\***

As used in this Act –

- (1) “Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.
- (2) “Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.
- (3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

- (5) “Governor” means the chief executive of any State.
- (6) “Individual with a Disability”– The term “individual with a disability” means an individual with a disability as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)).
- (7) The term “local government” means –
  - (A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;
  - (B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and
  - (C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.
- (8) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.
- (9) “Public facility” means the following facilities owned by a State or local government:
  - (A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.
  - (B) Any non-Federal-aid street, road, or highway.
  - (C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.
  - (D) Any park.
- (10) Private nonprofit facility –
  - (A) In General – The term “private nonprofit facility” means private nonprofit educational, utility, irrigation, emergency,

medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

- (B) Additional Facilities – In addition to the facilities described in subparagraph (A), the term “private nonprofit facility” includes any private nonprofit facility that provides essential services of a governmental nature to the general public (including museums, zoos, performing arts facilities, community arts centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, and facilities that provide health and safety services of a governmental nature), as defined by the President.

## **TITLE II – DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE**

### **Sec. 201. Federal and State Disaster Preparedness Programs (42 U.S.C. 5131)**

- (a) Utilization of services of other agencies – The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes –
- (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;
  - (2) training and exercises;
  - (3) postdisaster critiques and evaluations;
  - (4) annual review of programs;
  - (5) coordination of Federal, State, and local preparedness programs;
  - (6) application of science and technology;
  - (7) research.
- (b) Technical assistance for the development of plans and programs – The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such

disasters; and for recovery of damages or destroyed public and private facilities.

- (c) Grants to States for development of plans and programs – Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall
  - (1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and
  - (2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.
- (d) Grants for improvement, maintenance, and updating of State plans – The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State.

## **Sec. 202. Disaster Warnings (42 U.S.C. 5132)**

- (a) Readiness of Federal agencies to issue warnings to state and local officials – The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.
- (b) Technical assistance to State and local governments for effective warnings – The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.
- (c) Warnings to governmental authorities and public endangered by disaster – The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the

civil defense communications system established and maintained pursuant to section 5196(c) of this title or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

- (d) Agreements with commercial communications systems for use of facilities – The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

### **Sec. 203. Predisaster Hazard Mitigation (42 U.S.C. 5133)**

- (a) Definition of Small Impoverished Community – In this section, the term “small impoverished community” means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.
- (b) Establishment of Program – The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.
- (c) Approval by President – If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Predisaster Mitigation Fund established under subsection (i) (referred to in this section as the “Fund”), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e).
- (d) State Recommendations –
  - (1) In general –

- (A) Recommendations -The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.
  - (B) Deadline for submission -The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.
  - (C) Criteria – In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g).
- (2) Use –
- (A) In general – Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.
  - (B) Extraordinary circumstances – In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.
- (3) Effect of failure to nominate – If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g), any local governments of the State to receive assistance under this section.
- (e) Uses of Technical and Financial Assistance –
- (1) In general – Technical and financial assistance provided under this section
    - (A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and
    - (B) may be used –
      - (i) to support effective public-private natural disaster hazard mitigation partnerships;



- (ii) to improve the assessment of a community's vulnerability to natural hazards; or
  - (iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community
- (2) Dissemination – A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.
- (f) Allocation of Funds – The amount of financial assistance made available to a State (including amounts made available to local governments of the State) under this section for a fiscal year –
  - (1) shall be not less than the lesser of –
    - (A) \$500,000; or
    - (B) the amount that is equal to 1.0 percent of the total funds appropriated to carry out this section for the fiscal year;
  - (2) shall not exceed 15 percent of the total funds described in paragraph (1)(B); and
  - (3) shall be subject to the criteria specified in subsection (g).
- (g) Criteria for Assistance Awards – In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall take into account –
  - (1) the extent and nature of the hazards to be mitigated;
  - (2) the degree of commitment by the State or local government to reduce damages from future natural disasters;
  - (3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;
  - (4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;
  - (5) the extent to which the technical and financial assistance is consistent with other assistance provided under this Act;

- (6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;
  - (7) if the State or local government has submitted a mitigation plan under section 5165 of this title, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;
  - (8) the opportunity to fund activities that maximize net benefits to society;
  - (9) the extent to which assistance will fund mitigation activities in small impoverished communities; and
  - (10) such other criteria as the President establishes in consultation with State and local governments.
- (h) Federal Share –
- (1) In general – Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.
  - (2) Small impoverished communities – Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.
- (i) National Predisaster Mitigation Fund –
- (1) Establishment – The President may establish in the Treasury of the United States a fund to be known as the “National Predisaster Mitigation Fund,” to be used in carrying out this section.
  - (2) Transfers to fund – There shall be deposited in the Fund –
    - (A) amounts appropriated to carry out this section, which shall remain available until expended; and
    - (B) sums available from gifts, bequests, or donations of services or property received by the President for the purpose of predisaster hazard mitigation.
  - (3) Expenditures from fund – Upon request by the President, the Secretary of the Treasury shall transfer from the Fund to the President such amounts as the President determines are

necessary to provide technical and financial assistance under this section.

- (4) Investment of amounts –
  - (A) In general – The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.
  - (B) Acquisition of obligations – For the purpose of investments under subparagraph (A), obligations may be acquired –
    - (i) on original issue at the issue price; or
    - (ii) by purchase of outstanding obligations at the market price.
  - (C) Sale of obligations – Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.
  - (D) Credits to fund – The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.
  - (E) Transfers of amounts –
    - (i) In general – The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.
    - (ii) Adjustments – Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.
  - (j) Limitation on Total Amount of Financial Assistance – The President shall not provide financial assistance under this section in an amount greater than the amount available in the Fund.
  - (k) Multihazard Advisory Maps –
    - (1) Definition of multihazard advisory map – In this subsection, the term “multihazard advisory map” means a map on which hazard data concerning each type of natural disaster is identified

simultaneously for the purpose of showing areas of hazard overlap.

- (2) Development of maps – In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).
- (3) Use of technology – In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.
- (4) Use of maps –
  - (A) Advisory nature – The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.
  - (B) Availability of maps – The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of –
    - (i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);
    - (ii) supporting the activities described in subsection (e); and
    - (iii) other public uses.
- (l) Report on Federal and State Administration – Not later than Oct. 30, 2000, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.
- (m) Termination of Authority – The authority provided by this section terminates September 30, 2008.

#### **Sec. 204. Interagency Task Force (42 U.S.C. 5134)**

- (a) In General – The President shall establish a Federal interagency task force for the purpose of coordinating the implementation

of predisaster hazard mitigation programs administered by the Federal Government.

- (b) Chairperson – The Director of the Federal Emergency Management Agency shall serve as the chairperson of the task force.
- (c) Membership – The membership of the task force shall include representatives of
  - (1) relevant Federal agencies;
  - (2) State and local government organizations (including Indian tribes); and
  - (3) the American Red Cross.

### **TITLE III – MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION**

#### **Sec. 301. Waiver of Administrative Conditions (42 U.S.C. 5141)**

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

#### **Sec. 302. Coordinating Officers (42 U.S.C. 5143)\***

- (a) Appointment of Federal coordinating officer – Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.
- (b) Functions of Federal coordinating officer – In order to effectuate the purposes of this Act, the Federal coordinating officer, within the affected area, shall
  - (1) make an initial appraisal of the types of relief most urgently needed;
  - (2) establish such field offices as he deems necessary and as are authorized by the President;
  - (3) coordinate the administration of relief, including activities of the State and local governments, the American National Red

Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this Act shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599) and

- (4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.
- (c) State Coordinating officer – When the President determines assistance under this Act is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.
- (d) Where the area affected by a major disaster or emergency includes parts of more than 1 State, the President, at the discretion of the President, may appoint a single Federal coordinating officer for the entire affected area, and may appoint such deputy Federal coordinating officers to assist the Federal coordinating officer as the President determines appropriate.

**Sec. 303. Emergency Support and Response Teams (42 U.S.C. 5144)\***

- (a) Emergency Support Teams – The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this Act. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.
- (b) Emergency Response Teams-

- (1) Establishment – In carrying out subsection (a), the President, acting through the Director of the Federal Emergency Management Agency, shall establish-
  - (A) at a minimum 3 national response teams; and
  - (B) sufficient regional response teams, including Regional Office strike teams under section 507 of the Homeland Security Act of 2002; and
  - (C) other response teams as may be necessary to meet the incident management responsibilities of the Federal Government.
- (2) Target Capability Level – The Director shall ensure that specific target capability levels, as defined pursuant to the guidelines established under section 646(a) of the Post-Katrina Emergency Management Reform Act of 2006, are established for Federal emergency response teams.
- (3) Personnel – The President, acting through the Director, shall ensure that the Federal emergency response teams consist of adequate numbers of properly planned, organized, equipped, trained, and exercised personnel to achieve the established target capability levels. Each emergency response team shall work in coordination with State and local officials and onsite personnel associated with a particular incident.
- (4) Readiness Reporting – The Director shall evaluate team readiness on a regular basis and report team readiness levels in the report required under section 652(a) of the Post-Katrina Emergency Management Reform Act of 2006.

**Sec. 304. Reimbursement of Federal Agencies (42 U.S.C. 5147)**

Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this Act shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

**Sec. 305. Nonliability of Federal Government (42 U.S.C. 5148)**

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a

discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act.

**Sec. 306. Performance of Services (42 U.S.C. 5149)**

- (a) Utilization of services or facilities of State and local governments – In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.
- (b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies – In performing any services under this Act, any Federal agency is authorized
  - (1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, governing appointments in competitive service;
  - (2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and
  - (3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

**Sec. 307. Use of Local Firms and Individuals (42 U.S.C. 5150)\***

- (a) Contracts or Agreements With Private Entities-
  - (1) In General – In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent



feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

- (2) Construction – This section shall not be considered to restrict the use of Department of Defense resources under this Act in the provision of assistance in a major disaster.
  - (3) Specific Geographic Area – In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.
- (b) Implementation-
- (1) Contracts not to entities in area – Any expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, not awarded to an organization, firm, or individual residing or doing business primarily in the area affected by such major disaster shall be justified in writing in the contract file.
  - (2) Transition – Following the declaration of an emergency or major disaster, an agency performing response, relief, and reconstruction activities shall transition work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless the head of such agency determines that it is not feasible or practicable to do so.
  - (3) Formation of Requirements – The head of a Federal agency, as feasible and practicable, shall formulate appropriate requirements to facilitate compliance with this section.
- (c) Prior Contracts – Nothing in this section shall be construed to require any Federal agency to breach or renegotiate any contract in effect before the occurrence of a major disaster or emergency.

**Sec. 308. Nondiscrimination in Disaster Assistance (42 U.S.C. 5151)\***

- (a) Regulations for equitable and impartial relief operations – The President shall issue, and may alter and amend, such regulations

as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.

- (b) Compliance with regulations as prerequisite to participation by other bodies in relief operations – As a condition of participation in the distribution of assistance or supplies under this Act or of receiving assistance under this Act, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

**Sec. 309. Use and Coordination of Relief Organizations (42 U.S.C. 5152)**

- (a) In providing relief and assistance under this Act, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.
- (b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this Act, and such other regulation as the President may require.

**Sec. 310. Priority to Certain Applications for Public Facility and Public Housing Assistance (42 U.S.C. 5153)**

- (a) Priority – In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:
  - (1) The United States Housing Act of 1937 for the provision of low-income housing.
  - (2) Section 702 of the Housing Act of 1954 for assistance in public works planning.
  - (3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974.
  - (4) Section 306 of the Consolidated Farm and Rural Development Act.
  - (5) The Public Works and Economic Development Act of 1965.
  - (6) The Appalachian Regional Development Act of 1965.
  - (7) The Federal Water Pollution Control Act.
- (b) Obligation of certain discretionary funds – In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

**Sec. 311. Insurance (42 U.S.C. 5154)**

- (a) Applicants for replacement of damaged facilities
  - (1) Compliance with certain regulations – An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3149(c)(2) of this title) shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

- (2) Determination – In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.
- (b) Maintenance of insurance – No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3149(c)(2) of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this Act unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.
- (c) State acting as self-insurer – A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 of this title or section 3149(c)(2) of this title) or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a). No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this Act, to the extent that insurance for such property or part thereof would have been reasonably available.

### **Prohibited Flood Disaster Assistance (42 U.S.C. 5154a)**

- (a) General prohibition – Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) Transfer of property –

- (1) Duty to notify -In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to –
  - (A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and
  - (B) maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.
- (2) Failure to notify – If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property –
  - (A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,
  - (B) the property is damaged by a flood disaster, and
  - (C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.
- (3) Property described – For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(c) [Omitted]

- (d) Definition – For purposes of this section, the term “flood disaster area” means an area with respect to which –

- (1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 1961(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or
  - (2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.
- (e) Effective date – This section and the amendments made by this section [adding this section and amending 42 U.S.C. 4012a(a)] shall apply to disasters declared after September 23, 1994.

### **Sec. 312. Duplication of Benefits (42 U.S.C. 5155)**

- (a) General prohibition – The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.
- (b) Special rules –
  - (1) Limitation – This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.
  - (2) Procedures – The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.
  - (3) Effect of partial benefits – Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

- (c) Recovery of duplicative benefits – A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.
- (d) Assistance not income – Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

**Sec. 313. Standard of Review (42 U.S.C. 5156)**

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this Act. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this Act.

**Sec. 314. Penalties (42 U.S.C. 5157)**

- (a) Misuse of funds – Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.
- (b) Civil enforcement – Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

- (c) Referral to Attorney General – The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal prosecution.
- (d) Civil penalty – Any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than \$5,000 for each violation.

**Sec. 315. Availability of Materials (42 U.S.C. 5158)**

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section “construction materials” shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

**Sec. 316. Protection of Environment (42 U.S.C. 5159)**

An action which is taken or assistance which is provided pursuant to section 5170a , 5170b, 5172, 5173, or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title , which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. §4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 [42 U.S.C. §4321 et seq.] to other Federal actions taken under this Act or under any other provisions of law.

**Sec. 317. Recovery of Assistance (42 U.S.C. 5160)**

- (a) Party liable – Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any



other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

- (b) Rendering of care – A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

**Sec. 318. Audits and Investigations (42 U.S.C. 5161)**

- (a) In general – Subject to the provisions of chapter 75 of title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.
- (b) Access to records – For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this Act.
- (c) State and local audits – The President may require audits by State and local governments in connection with assistance under this Act when necessary to assure compliance with this Act or related regulations.

**Sec. 319. Advance of Non-Federal Share (42 U.S.C. 5162)**

- (a) In general – The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this Act in any case in which--
  - (1) the State is unable to assume its financial responsibility under such cost-sharing provisions--
    - (A) with respect to concurrent, multiple major disasters in a jurisdiction, or

- (B) after incurring extraordinary costs as a result of a particular disaster; and
  - (2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this Act.
- (b) Terms of loans and advances –
- (1) In general – Any loan or advance under this section shall be repaid to the United States.
  - (2) Interest – Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.
- (c) Regulations – The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

**Sec. 320. Limitation on Use of Sliding Scale (42 U.S.C. 5163)**

No geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.

**Sec. 321. Rules and Regulations (42 U.S.C. 5164)**

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this Act, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this Act.

**Sec. 322. Mitigation Planning (42 U.S.C. 5165)**

- (a) Requirement of Mitigation Plan – As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e), a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

- (b) Local and Tribal Plans – Each mitigation plan developed by a local or tribal government shall –
  - (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and
  - (2) establish a strategy to implement those actions.
- (c) State Plans – The State process of development of a mitigation plan under this section shall –
  - (1) identify the natural hazards, risks, and vulnerabilities of areas in the State;
  - (2) support development of local mitigation plans;
  - (3) provide for technical assistance to local and tribal governments for mitigation planning; and
  - (4) identify and prioritize mitigation actions that the State will support, as resources become available.
- (d) Funding –
  - (1) In general – Federal contributions under section 5170c of this title may be used to fund the development and updating of mitigation plans under this section.
  - (2) Maximum federal contribution – With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 5170c of this title not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.
- (e) Increased Federal Share for Hazard Mitigation Measures –
  - (1) In general – If, at the time of the declaration of a major disaster, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster, the maximum percentage specified in the last sentence of section 5170c(a) of this title.
  - (2) Factors for consideration -In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established –
    - (A) eligibility criteria for property acquisition and other types of mitigation measures;

- (B) requirements for cost effectiveness that are related to the eligibility criteria;
- (C) a system of priorities that is related to the eligibility criteria; and
- (D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

**Sec. 323. Standards for Public and Private Structures (42 U.S.C. 5165a)**

- (a) In General – As a condition of receipt of a disaster loan or grant under this Act –
  - (1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and
  - (2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.
- (b) Evidence of Compliance – A recipient of a disaster loan or grant under this Act shall provide such evidence of compliance with this section as the President may require by regulation.

*Note: Section 324 becomes effective when FEMA has promulgated a management cost rate regulation. Until then subsection 406(f) of the Stafford Act is used to establish management cost rates.*

**Sec. 324. Management Costs (42 U.S.C. 5165b)**

- (a) Definition of Management Cost – In this section, the term “management cost” includes any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.
- (b) Establishment of Management Cost Rates – Notwithstanding any other provision of law (including any administrative rule or guidance), the President shall by regulation establish management

cost rates, for grantees and subgrantees, that shall be used to determine contributions under this Act for management costs.

- (c) Review – The President shall review the management cost rates established under subsection (b) not later than 3 years after the date of establishment of the rates and periodically thereafter.

**Sec. 325. Public Notice, Comment, and Consultation Requirements (42 U.S.C. 5165c)**

- (a) Public Notice and Comment Concerning New or Modified Policies –
  - (1) In general – The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that –
    - (A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this Act; and
    - (B) could result in a significant reduction of assistance under the program.
  - (2) Application – Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.
- (b) Consultation Concerning Interim Policies –
  - (1) In general – Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this Act, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely –
    - (A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or
    - (B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency.

- (2) No legal right of action – Nothing in this subsection confers a legal right of action on any party.
- (c) Public Access – The President shall promote public access to policies governing the implementation of the public assistance program.

**Sec. 326. Designation of Small State and Rural Advocate\***

- (a) In General – The President shall designate in the Federal Emergency Management Agency a Small State and Rural Advocate.
- (b) Responsibilities – The Small State and Rural Advocate shall be an advocate for the fair treatment of small States and rural communities in the provision of assistance under this Act.
- (c) Duties – The Small State and Rural Advocate shall
  - (1) participate in the disaster declaration process under section 401 and the emergency declaration process under section 501, to ensure that the needs of rural communities are being addressed;
  - (2) assist small population States in the preparation of requests for major disasters or emergency declarations; and
  - (3) conduct such other activities as the Director of the Federal Emergency Management Agency considers appropriate.

**TITLE IV – MAJOR DISASTER ASSISTANCE PROGRAMS**

**Sec. 401. Procedure for Declaration (42 U.S.C. 5170)**

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State’s emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which

State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

**Sec. 402. General Federal Assistance (42 U.S.C. 5170a)\***

In any major disaster, the President may –

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response and recovery efforts, including precautionary evacuations;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;
- (3) provide technical and advisory assistance to affected State and local governments for –
  - (A) the performance of essential community services;
  - (B) issuance of warnings of risks and hazards;
  - (C) public health and safety information, including dissemination of such information;
  - (D) provision of health and safety measures;
  - (E) management, control, and reduction of immediate threats to public health and safety; and
  - (F) recovery activities, including disaster impact assessments and planning;
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and
- (5) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President

- (A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and
- (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

**Sec. 403. Essential Assistance (42 U.S.C. 5170b)\***

- (a) In general – Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:
  - (1) Federal resources, generally – Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.
  - (2) Medicine, durable medical equipment, food, and other consumables – Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, durable medical equipment, food, and other consumable supplies, and other services and assistance to disaster victims.
  - (3) Work and services to save lives and protect property – Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including –
    - (A) debris removal;
    - (B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, durable medical equipment, and other essential needs, including movement of supplies or persons;
    - (C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;



- (D) provision of temporary facilities for schools and other essential community services;
  - (E) demolition of unsafe structures which endanger the public;
  - (F) warning of further risks and hazards;
  - (G) dissemination of public information and assistance regarding health and safety measures;
  - (H) provision of technical advice to State and local governments on disaster management and control;
  - (I) reduction of immediate threats to life, property, and public health and safety; and
  - (J) provision of rescue, care, shelter, and essential needs –
    - (i) to individuals with household pets and service animals; and
    - (ii) to such pets and animals.
- (4) Contributions – Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.
- (b) Federal share – The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.
- (c) Utilization of DOD resources –
- (1) General rule – During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

- (2) Rules applicable to debris removal – Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.
- (3) Expenditures out of disaster relief funds – The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.
- (4) Federal share – The Federal share of assistance under this subsection shall be not less than 75 percent.
- (5) Guidelines – Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988 [enacted Nov. 23, 1988], the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.
- (6) Definitions – For purposes of this section
  - (A) Department of Defense – The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10.
  - (B) Emergency work – The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

#### **Sec. 404. Hazard Mitigation (42 U.S.C. 5170c) \***

- (a) In General – The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title and shall be subject to approval by the President. Subject to section 5165 of this title , the total of contributions under this section for a major disaster shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate

amount of grants to be made (less any associated administrative costs) under this Act with respect to the major disaster.

- (b) Property acquisition and relocation assistance –
  - (1) General authority – In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).
  - (2) Terms and conditions – An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if –
    - (A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a); and
    - (B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that –
      - (i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
      - (ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—
        - (I) a public facility that is open on all sides and functionally related to a designated open space;
        - (II) a rest room; or
        - (III) a structure that the Director approves in writing before the commencement of the construction of the structure; and
      - (iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—
        - (I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and
        - (II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction – Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.

(c) Program Administration by States –

(1) In general – A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) Criteria – The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). The criteria shall include, at a minimum –

(A) the demonstrated ability of the State to manage the grant program under this section;

(B) there being in effect an approved mitigation plan under section 5165 of this title; and

(C) a demonstrated commitment to mitigation activities.

(3) Approval – The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) Withdrawal of approval – If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) Audits – The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

**Sec. 405. Federal Facilities (42 U.S.C. 5171)**

(a) Repair, reconstruction, restoration or replacement of United States facilities – The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that

such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

- (b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities – In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.
- (c) Steps for mitigation of hazards – In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

**Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities (42 U.S.C. 5172)\***

- (a) Contributions –
  - (1) In general -The President may make contributions –
    - (A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and
    - (B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.
  - (2) Associated expenses – For the purposes of this section, associated expenses shall include –
    - (A) the costs of mobilizing and employing the National Guard for performance of eligible work;

- (B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and
  - (C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.
- (3) Conditions for assistance to private nonprofit facilities –
- (A) In general – The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if –
    - (i) the facility provides critical services (as defined by the President) in the event of a major disaster; or
    - (ii) the owner or operator of the facility –
      - (I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and
      - (II) (aa) has been determined to be ineligible for such a loan; or  
(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.
  - (B) Definition of critical services – In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, education, and emergency medical care.
- (4) Notification to Congress – Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify
- (A) the Committee on Environment and Public Works of the Senate;
  - (B) the Committee on Transportation and Infrastructure of the House of Representatives;
  - (C) the Committee on Appropriations of the Senate; and
  - (D) the Committee on Appropriations of the House of Representatives.
- (b) Federal Share –

- (1) Minimum federal share – Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

*Note: Paragraph (2) takes effect after FEMA has promulgated an implementing regulation.*

- (2) Reduced federal share – The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster –
  - (A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and
  - (B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(c) Large In-Lieu Contributions –

(1) For public facilities –

- (A) In general – In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
- (B) Use of funds – Funds contributed to a State or local government under this paragraph may be used –
  - (i) to repair, restore, or expand other selected public facilities;
  - (ii) to construct new facilities; or
  - (iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet

a need for governmental services and functions in the area affected by the major disaster.

- (C) Limitations – Funds made available to a State or local government under this paragraph may not be used for –
  - (i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
  - (ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).
- (2) For private nonprofit facilities –
  - (A) In general – In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
  - (B) Use of funds – Funds contributed to a person under this paragraph may be used –
    - (i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;
    - (ii) to construct new private nonprofit facilities to be owned or operated by the person; or
    - (iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person’s services and functions in the area affected by the major disaster.
  - (C) Limitations – Funds made available to a person under this paragraph may not be used for—
    - (i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
    - (ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the



National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) Flood insurance –

- (1) Reduction of Federal assistance – If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).
- (2) Amount of reduction – The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of –
  - (A) the value of such facility on the date of the flood damage or destruction, or
  - (B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.
- (3) Exception – Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government’s failure to participate in the flood insurance program established by the National Flood Insurance Act.
- (4) Dissemination of information – The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

*Note: This version of subsection (e) remains in effect until the cost estimation procedures established under paragraph (3) of the revised version of subsection 406(e) – see next subsection – take effect.*

(e) Net Eligible Cost –

- (1) General Rule – For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.
- (2) Special Rule – In any case in which the facility being repaired, restored, reconstructed, or replaced, under this section was under construction on the dated of the major disaster, the cost of repairing, restoring, reconstruction, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner’s responsibility and not the contractor’s responsibility.

*Note: This version of subsection 406(e)(1) and (2) becomes effective when the procedures established by paragraph (3) of this subsection take effect. Subsection 406(e)(4) is currently in effect.*

( e ) Eligible Cost –

(1) Determination –

- (A) In general – For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility--
  - (i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and
  - (ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.
- (B) Cost estimation procedures –
  - (i) In general – Subject to paragraph (2), the President shall use the cost estimation procedures established under

paragraph (3) to determine the eligible cost under this subsection.

- (ii) Applicability – The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title.

(2) Modification of eligible cost –

- (A) Actual cost greater than ceiling percentage of estimated cost – In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).
- (B) Actual cost less than estimated cost –
  - (i) Greater than or equal to floor percentage of estimated cost – In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.
  - (ii) Less than floor percentage of estimated cost – In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.
- (C) No effect on appeals process – Nothing in this paragraph affects any right of appeal under section 5189a of this title.

(3) Expert panel –

- (A) Establishment – Not later than 18 months after October 30, 2000, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.
- (B) Duties – The expert panel shall develop recommendations concerning
  - (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and
  - (ii) the ceiling and floor percentages referred to in paragraph (2).
- (C) Regulations – Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish
  - (i) cost estimation procedures described in subparagraph (B)(i); and
  - (ii) the ceiling and floor percentages referred to in paragraph (2).
- (D) Review by President – Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.
- (E) Report to Congress – Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.
- (4) Special rule – In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

*Note: Subsection 406(f) will be repealed when the regulation to implement section 324 has been promulgated.*

- (f) Associated Expenses – For purposes of this section, associated expenses include the following –
- (1) Necessary costs – Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:
    - (A) For an applicant whose net eligible costs equal \$100,000, 3 percent of such net eligible costs.
    - (B) For an applicant whose net eligible cost equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.
    - (C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess or \$1,000,000.
    - (D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such eligible costs in excess of \$5,000,000.
  - (2) Extraordinary Costs – Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expense of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under section 403, 404, 406, 407, 502, and 503 in such State in connection with the major disaster as follows.
    - (A) If such total amount is less than \$100,000, 3 percent of such total amount.
    - (B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.
    - (C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.
    - (D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 per cent of such total amount in excess of \$5,000,000.

- (3) Costs of National Guard – The costs of mobilizing and employing the National Guard for performance of eligible work.
- (4) Costs of Prison Labor – The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.
- (5) Other Labor Costs – Base and overtime wages for an applicant’s employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

**Sec. 407. Debris Removal (42 U.S.C. 5173)\***

- (a) Presidential Authority – The President, whenever he determines it to be in the public interest, is authorized –
  - (1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and
  - (2) to make grants to any State or local government or owner or operator of a private non-profit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.
- (b) Authorization by State or local government; indemnification agreement – No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.
- (c) Rules relating to large lots – The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.
- (d) Federal share – The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(e) Expedited Payments –

- (1) Grant Assistance – In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President’s initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).
- (2) Date of Payment – Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

**Sec. 408. Federal Assistance to Individuals and Households (42 U.S.C. 5174) \***

(a) In General –

- (1) Provision of assistance – In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.
- (2) Relationship to other assistance – Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

(b) Housing Assistance –

- (1) Eligibility – The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster.
- (2) Determination of appropriate types of assistance –

- (A) In general – The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.
  - (B) Multiple types of assistance – One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.
- (c) Types of Housing Assistance –
- (1) Temporary housing –
    - (A) Financial assistance –
      - (i) In general – The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. Such assistance may include the payment of the cost of utilities, excluding telephone service.
      - (ii) Amount – The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or unit installation not provided directly by the President.
    - (B) Direct assistance –
      - (i) In general – The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).
      - (ii) Period of assistance – The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.



- (iii) Collection of rental charges – After the end of the 18-month period referred to in clause (ii), the President may charge fair market rent for each temporary housing unit provided.
- (2) Repairs –
  - (A) In general – The President may provide financial assistance for –
    - (i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and
    - (ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.
  - (B) Relationship to other assistance – A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.
- (3) Replacement –
  - (A) In general – The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.
  - (B) Applicability of flood insurance requirement – With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.
- (4) Permanent or semi-permanent housing construction – The President may provide financial assistance or direct assistance to individuals or households to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations in cases in which
  - (A) no alternative housing resources are available; and
  - (B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.
- (d) Terms and Conditions Relating to Housing Assistance –

(1) Sites –

- (A) In general – Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that –
- (i) is complete with utilities;
  - (ii) meets the physical accessibility requirements for individuals with disabilities; and
  - (iii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.
- (B) Sites provided by the President – A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

(2) Disposal of units –

- (A) Sale to occupants –
- (i) In general – Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.
  - (ii) Sale price – A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.
  - (iii) Deposit of proceeds – Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.
  - (iv) Hazard and flood insurance – A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.
  - (v) Use of GSA services – The President may use the services of the General Services Administration to accomplish a sale under clause (i).
- (B) Other methods of disposal -If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims –

- (i) may be sold to any person; or
  - (ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees –
    - (a) to comply with the nondiscrimination provisions of section 5151 of this title; and
    - (b) to obtain and maintain hazard and flood insurance on the housing unit.
- (e) Financial Assistance To Address Other Needs –
  - (1) Medical, dental, and funeral expenses – The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, and funeral expenses.
  - (2) Personal property, transportation, and other expenses – The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.
- (f) State Role –
  - (1) Financial assistance to address other needs –
    - (A) Grant to state – Subject to subsection (g), a Governor may request a grant from the President to provide financial assistance to individuals and households in the State under subsection (e).
    - (B) Administrative costs – A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing financial assistance to individuals and households in the State under subsection (e).
  - (2) Access to records – In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in

which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(g) Cost Sharing –

- (1) Federal share – Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.
- (2) Financial assistance to address other needs – In the case of financial assistance provided under subsection (e) –
  - (A) the Federal share shall be 75 percent; and
  - (B) the non-Federal share shall be paid from funds made available by the State.

(h) Maximum Amount of Assistance –

- (1) In general – No individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster.
- (2) Adjustment of limit – The limit established under paragraph (1) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
  - (i) Verification Measures – In carrying out this section, the President shall develop a system, including an electronic database, that shall allow the President, or the designee of the President, to
    - (1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;
    - (2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;
    - (3) collect any duplicative payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;

- (4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and
- (5) conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance under this section is denied.
- (j) Rules and Regulations – The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

**Sec. 410. Unemployment Assistance (42 U.S.C. 5177)**

- (a) Benefit assistance – The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or a waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.
- (b) Reemployment assistance
  - (1) State assistance – A State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.
  - (2) Federal assistance – The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

**Sec. 412. Food Coupons and Distribution (42 U.S.C. 5179)**

- (a) Persons eligible; terms and conditions – Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048), 7 U.S.C. 2011 et seq., and to make surplus commodities available pursuant to the provisions of this Act.
- (b) Duration of assistance; factors considered – The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.
- (c) Food Stamp Act provisions unaffected – Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964, 7 U.S.C. 2011 et seq., except as they relate to the availability of food stamps in an area affected by a major disaster.

**Sec. 413. Food Commodities (42 U.S.C. 5180)**

- (a) Emergency mass feeding – The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.
- (b) Funds for purchase of food commodities – The Secretary of Agriculture shall utilize funds appropriated under section 612c of title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

**Sec. 414. Relocation Assistance (42 U.S.C. 5181)**

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, 42 U.S.C. 4601 et seq., shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

**Sec. 415. Legal Services (42 U.S.C. 5182)**

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

**Sec. 416. Crisis Counseling Assistance and Training (42 U.S.C. 5183)**

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

**Sec. 417. Community Disaster Loans (42 U.S.C. 5184) \***

- (a) In General – The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.
- (b) Amount – The amount of any such loan shall be based on need, shall not exceed
  - (1) 25 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000; or
  - (2) if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the

annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000.

(c) Repayment –

(1) Cancellation – Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(2) Condition on continuing eligibility – A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.

(d) Effect on Other Assistance – Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this Act.

**Sec. 418. Emergency Communications (42 U.S.C. 5185)**

The President is authorized during, or in anticipation of an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

**Sec. 419. Emergency Public Transportation (42 U.S.C. 5186)**

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

**Sec. 420. Fire Management Assistance (42 U.S.C. 5187)**

(a) In General – The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.



- (b) Coordination with State and Tribal Departments of Forestry – In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.
- (c) Essential Assistance – In providing assistance under this section, the President may use the authority provided under section 5170b of this title.
- (d) Rules and Regulations – The President shall prescribe such rules and regulations as are necessary to carry out this section.

**Sec. 421. Timber Sale Contracts (42 U.S.C. 5188)**

- (a) Cost-sharing arrangement – Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$ 1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.
- (b) Cancellation of authority – If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.
- (c) Public notice of sale – The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 of title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

- (d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber – The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

**Sec. 422. Simplified Procedures (42 U.S.C. 5189)**

If the Federal estimate of the cost of –

- (1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,
- (2) emergency assistance under section 5170b or 5192 of this title, or
- (3) debris removed under section 5173 of this title, is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

**Sec. 423. Appeals of Assistance Decisions (42 U.S.C. 5189a)**

- (a) Right of appeal – Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.
- (b) Period for decision – A decision regarding an appeal under subsection (a) shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.
- (c) Rules – The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

**Sec. 424. Date of Eligibility; Expenses Incurred Before Date of Disaster (42 U.S.C. 5189b)**

Eligibility for Federal assistance under this title shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this Act.

**Sec. 425. Transportation Assistance to Individuals and Households\***

The President may provide transportation assistance to relocate individuals displaced from their predisaster primary residences as a result of an incident declared under this Act or otherwise transported from their predisaster primary residences under section 403(a)(3) or 502, to and from alternative locations for short or long-term accommodation or to return an individual or household to their predisaster primary residence or alternative location, as determined necessary by the President.

**Sec. 426. Case Management Services\***

The President may provide case management services, including financial assistance, to State or local government agencies or qualified private organizations to provide such services, to victims of major disasters to identify and address unmet needs.

**Sec. 427. Essential Service Providers\***

- (a) Definition – In this section, the term ‘essential service provider’ means an entity that
  - (1) provides –
    - (A) telecommunications service;
    - (B) electrical power;
    - (C) natural gas;
    - (D) water and sewer services; or
    - (E) any other essential service, as determined by the President;
  - (2) is –
    - (A) a municipal entity;
    - (B) a nonprofit entity; or

- (C) a private, for profit entity; and
- (3) is contributing to efforts to respond to an emergency or major disaster.
- (b) Authorization for accessibility – Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not –
  - (1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or
  - (2) impede the restoration or repair of the services described in subsection (a)(1).
- (c) Implementation – In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulation, and policies.

## **TITLE V – EMERGENCY ASSISTANCE PROGRAMS**

### **Sec. 501. Procedure for Declaration (42 U.S.C. 5191)**

- (a) Request and declaration – All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.
- (b) Certain emergencies involving Federal primary responsibility – The President may exercise any authority vested in him by section 502 or section 503 with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or

preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a).

**Sec. 502. Federal Emergency Assistance (42 U.S.C. 5192) \***

- (a) Specified – In any emergency, the President may –
  - (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;
  - (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
  - (3) provide technical and advisory assistance to affected State and local governments for –
    - (A) the performance of essential community services;
    - (B) issuance of warnings of risks or hazards;
    - (C) public health and safety information, including dissemination of such information;
    - (D) provision of health and safety measures; and
    - (E) management, control, and reduction of immediate threats to public health and safety;
  - (4) provide emergency assistance through Federal agencies;
  - (5) remove debris in accordance with the terms and conditions of section 407;
  - (6) provide assistance in accordance with section 408;
  - (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and

- (8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President –
  - (A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and
  - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.
- (b) General – Whenever the Federal assistance provided under subsection (a) with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations.
- (c) Guidelines – The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.

### **Sec. 503. Amount of Assistance (42 U.S.C. 5193)**

- (a) Federal share – The Federal share for assistance provided under this title shall be equal to not less than 75 percent of the eligible costs.
- (b) Limit on amount of assistance–
  - (1) In general – Except as provided in paragraph (2), total assistance provided under this title for a single emergency shall not exceed \$5,000,000.
  - (2) Additional assistance – The limitation described in paragraph (1) may be exceeded when the President determines that –
    - (A) continued emergency assistance is immediately required;

- (B) there is a continuing and immediate risk to lives, property, public health or safety; and
  - (C) necessary assistance will not otherwise be provided on a timely basis.
- (3) Report – Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

## **TITLE VI – EMERGENCY PREPAREDNESS**

### **Sec. 601. Declaration of Policy (42 U.S.C. 5195)**

The purpose of this title is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this title so that a comprehensive emergency preparedness system exists for all hazards.

### **Sec. 602. Definitions (42 U.S.C. 5195a)**

- (a) Definitions – For purposes of this title only:
- (1) Hazard – The term “hazard” means an emergency or disaster resulting from–
    - (A) a natural disaster; or
    - (B) an accidental or man-caused event.
  - (2) Natural disaster – The term “natural disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

- (3) Emergency preparedness – The term “emergency preparedness” means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:
- (A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).
  - (B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).
  - (C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).
- (4) Organizational equipment – The term “organizational equipment” means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.



- (5) Materials – The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.
  - (6) Facilities – The term “facilities”, except as otherwise provided in this title, includes buildings, shelters, utilities, and land.
  - (7) Director – The term “Director” means the Director of the Federal Emergency Management Agency.
  - (8) Neighboring countries – The term “neighboring countries” includes Canada and Mexico.
  - (9) United States and States – The terms “United States “ and “States” includes the several States, the District of Columbia , and territories and possessions of the United States .
  - (10) State – The term “State” includes interstate emergency preparedness authorities established under section 5196(h) of this title.
- (b) Cross Reference – The terms “national defense” and “defense,” as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes [include] emergency preparedness activities conducted pursuant to this title.

**Sec. 603. Administration of Title (42 U.S.C. 5195b)**

This title shall be carried out by the Director of the Federal Emergency Management Agency.

**SUBTITLE A – POWERS AND DUTIES**

**Sec. 611. Detailed Functions or Administration (42 U.S.C. 5196)\***

- (a) In General – In order to carry out the policy described in section 5195 of this title, the Director shall have the authorities provided in this section.
- (b) Federal Emergency Response Plans and Programs – The Director may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Director may request such reports on State plans and

operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

- (c) Delegation of emergency preparedness responsibilities – With the approval of the President, the Director may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.
- (d) Communications and warnings – The Director may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.
- (e) Emergency preparedness measures – The Director may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including –
  - (1) research and studies as to the best methods of treating the effects of hazards;
  - (2) developing shelter designs and materials for protective covering or construction;
  - (3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements; and
  - (4) plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency.
- (f) Training programs –
  - (1) The Director may –
    - (A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;
    - (B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of title 5, and the Standardized Government Travel

Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and

- (C) provide instructors and training aids as necessary.
- (2) The terms prescribed by the Director for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.
- (3) The Director may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.
- (g) Public dissemination of emergency preparedness information – The Director may publicly disseminate appropriate emergency preparedness information by all appropriate means.
- (h) Emergency preparedness compacts –
  - (1) The Director shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by –
    - (A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;
    - (B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and
    - (C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.
  - (2) The Director may –
    - (A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

- (B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;
  - (C) assist and coordinate the activities under such compacts; and
  - (D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.
- (3) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress.
- (4) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.
- (i) Materials and facilities –
- (1) The Director may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.
  - (2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this title before the approval of title by the Attorney General as required by section 255 of title 40 .
  - (3) The Director may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.
  - (4) The Director may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent

monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Director shall prescribe.

(j) Financial contributions –

- (1) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Director shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.
- (2) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.
- (3) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.
- (4) The amounts authorized to be contributed by the Director to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.
- (5) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Director for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Director) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.
- (6) The amounts authorized to be contributed by the Director to each State for such shelters and protective facilities shall be

equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Director may reallocate such amounts to other States under the formula described in paragraph (4). The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

- (7) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Director. The Director shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Director, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Director may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Director determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Director necessary for the use of such facility for emergency preparedness purposes.
- (8) The Director shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.
- (9) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Director under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act, 40 U.S.C. 276a – 276a-5), and every such employee shall receive compensation at a rate not less than one and 1/2 times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as

the case may be. The Director shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 276c of title 40.

- (k) Sale or disposal of certain materials and facilities – The Director may arrange for the sale or disposal of materials and facilities found by the Director to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949 ( 40 U.S.C. 471 et seq.). Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

**Sec. 612. Mutual Aid Pacts Between States and Neighboring Countries (42 U.S.C. 5196a)**

The Director shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

**Sec. 613. Contributions for Personnel and Administrative Expenses (42 U.S.C. 5196b)\***

- (a) General authority – To further assist in carrying out the purposes of this title, the Director may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.
- (b) Plan requirements – A plan submitted under this section shall –

- (1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;
  - (2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;
  - (3) provide for the development of State and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by the Director;
  - (4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;
  - (5) provide that the State shall make such reports in such form and content as the Director may require;
  - (6) make available to duly authorized representatives of the Director and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section; and
  - (7) include a plan for providing information to the public in a coordinated manner.
- (c) Catastrophic Incident Annex –
- (1) Consistency – A catastrophic incident annex submitted under subsection (b)(3) shall be –
    - (A) modeled after the catastrophic incident annex of the National Response Plan; and
    - (B) consistent with the national preparedness goal established under section 643 of the Post-Katrina Emergency Management Reform Act of 2006, the National Incident Management System, the National Response Plan, and other related plans and strategies.
  - (2) Consultation – In developing a catastrophic incident annex submitted under subsection (b)(3), a State shall consult with and seek appropriate comments from local governments, emergency response providers, locally governed multijurisdictional councils of government, and regional planning commissions.



- (d) Terms and conditions – The Director shall establish such other terms and conditions as the Director considers necessary and proper to carry out this section.
- (e) Application of other provisions – In carrying out this section, the provisions of sections 5196(h) and 5197(h) of this title shall apply.
- (f) Allocation of funds – For each fiscal year concerned, the Director shall allocate to each State, in accordance with regulations and the total sum appropriated under this title, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe. The Director may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.
- (g) Standards for State and Local Emergency Preparedness Operational Plans – In approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), the Director shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.
- (h) Submission of plan – If a State fails to submit a plan for approval as required by this section within 60 days after the Director notifies the States of the allocations under this section, the Director may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Director, will best assure the adequate development of the emergency preparedness capability of the United States.
- (i) Annual reports – The Director shall report annually to the Congress all contributions made pursuant to this section.

**Sec. 614. Requirement for State Matching Funds for Construction of Emergency Operating Centers (42 U.S.C. 5196c)**

Notwithstanding any other provision of this title, funds appropriated to carry out this title may not be used for the purpose of constructing emergency operating centers (or similar facilities) in any State unless such State matches in an equal amount the amount made available to such State under this title for such purpose.

**Sec. 615. Use of Funds to Prepare for and Respond to Hazards (42 U.S.C. 5196d)**

Funds made available to the States under this title may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this title for emergency preparedness activities and measures related to hazards.

**Sec. 616. Disaster Related Information Services\***

- (a) In General – Consistent with section 308(a), the Director of the Federal Emergency Management Agency shall –
  - (1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster;
  - (2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by –
    - (A) population groups identified under paragraph (1); and
    - (B) individuals with disabilities or other special needs; and
  - (3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for State and local governments in providing services related to a major disaster or emergency.
- (b) Group Size – For purposes of subsection (a), the Director of the Federal Emergency Management Agency shall define the size of a population group.

## **SUBTITLE B – GENERAL PROVISIONS**

### **Sec. 621. Administrative Authority (42 U.S.C. 5197)**

- (a) In General – For the purpose of carrying out the powers and duties assigned to the Director under this title, the Director may exercise the administrative authorities provided under this section.
- (b) Advisory personnel – The Director may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Director considers to be necessary in carrying out the provisions of this title.
  - (1) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Director.
- (c) Services of other agency personnel and volunteers – The Director may –
  - (1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;
  - (2) establish and use such regional and other offices as may be necessary; and
  - (3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.
- (d) Gifts – Notwithstanding any other provision of law, the Director may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this title.
- (e) Reimbursement – The Director may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this title to the extent funds are available.

- (f) Printing – The Director may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Director considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of title 44.
- (g) Rules and regulations – The Director may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this title and perform any of the powers and duties provided by this title. The Director may perform any of the powers and duties provided by this title through or with the aid of such officials of the Federal Emergency Management Agency as the Director may designate.
- (h) Failure to expend contributions correctly – When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this subchapter for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this subchapter (or from funds otherwise available for the purposes of this subchapter for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.
  - (1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this title for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this title (or from funds otherwise available for the purposes of this title for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.
  - (2) Until so satisfied, the Director shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

- (3) As used in this subsection, the term “person” means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

**Sec. 622. Security Regulations (42 U.S.C. 5197a)**

- (a) Establishment – The Director shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Director considers necessary.
- (b) Limitation on Employee access to information – No employee of the Federal Emergency Management Agency shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Director.
- (c) National Security Positions – No employee of the Federal Emergency Management Agency shall occupy any position determined by the Director to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Director of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Director of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Director of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Director of the Federal Emergency Management Agency may refer the matter to the Federal Bureau of Investigation

for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Director of the Federal Emergency Management Agency for action.

- (d) Employee Oaths – Each Federal employee of the Federal Emergency Management Agency acting under the authority of this title, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title, shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:
- (e) “I \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of \_\_\_\_\_ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”

After appointment and qualification for office, the Director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the Director in writing, shall be qualified to administer any such oath within such State under such regulations as the Director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of title 18.

### **Sec. 623. Use of Existing Facilities (42 U.S.C. 5197b)**

In performing duties under this title, the Director –

- (1) shall cooperate with the various departments and agencies of the Federal Government;
- (2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and
- (3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this title.

**Sec. 624. Annual Report to Congress (42 U.S.C. 5197c)**

The Director shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this title, accompanied by such recommendations as the Director considers appropriate.

**Sec. 625. Applicability of Subchapter (42 U.S.C. 5197d)**

The provisions of this title shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

**Sec. 626. Authorization of Appropriation and Transfers of Funds (42 U.S.C. 5197e)**

- (a) Authorization of appropriations – There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.
- (b) Transfer Authority – Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this title. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

**Sec. 627. Relation to Atomic Energy Act of 1954. (42 U.S.C. 5197f)**

Nothing in this title shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

**Sec. 628. Federal Bureau of Investigation. (42 U.S.C. 5197g)**

Nothing in this title shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

**TITLE VII – MISCELLANEOUS**

**Sec. 701. Rules and Regulations (42 U.S.C. 5201)**

- (a) Rules and regulations
  - (1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency or agencies as he may designate.
  - (2) Deadline for payment of assistance – Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this Act to a State shall be completed within 60 days after the date of approval of such assistance.
- (b) In furtherance of the purposes of this Act, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.



## **Sec. 705. Disaster Grant Closeout Procedures (42 U.S.C. 5205)**

### **(a) Statute of Limitations –**

- (1) In general –** Except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency.
- (2) Fraud exception –** The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

### **(b) Rebuttal of Presumption of Record Maintenance –**

- (1) In general –** In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.
- (2) Affirmative evidence –** The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.
- (3) Inability to produce documentation –** The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report shall not constitute evidence to rebut the presumption described in paragraph (1).
- (4) Right of access –** The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

### **(c) Binding Nature of Grant Requirements –** A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if –

- (1) the payment was authorized by an approved agreement specifying the costs;**

- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished.

**Sec. 706. Firearms Policies (42 U.S.C. 5207)\***

- (a) Prohibition on Confiscation of Firearms – No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee or other person, while acting in support of relief from a major disaster or emergency, may –
  - (1) temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Federal, State, or local law, other than for forfeiture in compliance with Federal law or as evidence in a criminal investigation;
  - (2) require registration of any firearm for which registration is not required by Federal, State, or local law;
  - (3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by an person where such possession is not otherwise prohibited by Federal, State, or local law; or
  - (4) prohibit the carrying of firearms under Federal, State, or local law, solely because such person is operating under the direction, control, or supervision of a Federal agency in support of relief from the major disaster or emergency.
- (b) Limitation – Nothing in this section shall be construed to prohibit any person in subsection (a) from requiring the temporary surrender of a firearm as a condition for entry into any mode of transportation used for rescue or evacuation during a major disaster or emergency, provided that such temporarily surrendered firearm is returned at the completion of such rescue or evacuation.
- (c) Private Rights of Action –
  - (1) In General – Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to

the deprivation of any of the rights, privileges, or immunities secured by this section.

- (2) Remedies – In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.
- (3) Attorney Fees – In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.

## **MISCELLANEOUS STATUTORY PROVISIONS THAT RELATE TO THE STAFFORD ACT**

### **Excess Disaster Assistance Payments as Budgetary Emergency Requirements (42 U.S.C. 5203)**

Hereafter, beginning in fiscal year 1993, and in each year thereafter, notwithstanding any other provision of law, all amounts appropriated for disaster assistance payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that are in excess of either the historical annual average obligation of \$320,000,000, or the amount submitted in the President’s initial budget request, whichever is lower, shall be considered as “emergency requirements” pursuant to section 901(b)(2)(D) of title 2, and such amounts shall hereafter be so designated.

### **Insular Areas Disaster Survival and Recovery; Definitions (42 U.S.C. 5204)**

As used in sections 5204 to 5204c of this title –

- (1) the term “insular area” means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, and the Virgin Islands;
- (2) the term “disaster” means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and
- (3) the term “Secretary” means the Secretary of the Interior.

*Note: See the note preceding 48 U.S.C. § 1681 terminating the Trust Territory of the Pacific Islands which effectively removes the Federated States of Micronesia and the Marshall Islands from the definition of “insular area.”*

**Authorization of Appropriations for Insular Areas (Disaster Recovery)  
(42 U.S.C. 5204a)**

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to –

- (1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to February 24, 1992; and
- (2) enhance the survivability of essential public facilities in the event of disasters in the insular areas, except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 5170b and 5172 of this title for such disaster. Such sums shall remain available until expended.

**Technical Assistance for Insular Areas (Disaster Recovery) (42  
U.S.C. 5204b)**

- (a) Upon the declaration by the President of a disaster in an insular area, the President, acting through the Director of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.
- (b) One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the

House Committee on Natural Resources a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

**Hazard Mitigation for Insular Areas (Limitation on Amount of Contributions, Local Match) (42 U.S.C. 5204c)**

The total of contributions under the last sentence of section 5170c of this title for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 5170c, 5172, 5173, 5174 and 5178 of this title for any disaster: Provided, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 5172 of this title for any disaster.

*Note: This provision is superseded by Section 404 of the Stafford Act.*

**Buy American (Requirements) (42 U.S.C. 5206)**

- (a) Compliance With Buy American Act – No funds authorized to be appropriated under this Act [Disaster Mitigation Act of 2000, Pub. L. No.106-390] or any amendment made by this Act [Disaster Mitigation Act of 2000, Pub. L. No.106-390] may be expended by an entity unless the entity, in expending the funds, complies with the Buy American Act (41 U.S.C. 10a et seq.).
- (b) Debarment of Persons Convicted of Fraudulent Use of “Made in America” Labels –
  - (1) In general – If the Director of the Federal Emergency Management Agency determines that a person has been convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that is not made in America, the Director shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
  - (2) Definition of debar – In this subsection, the term “debar” has the meaning given the term in section 2393(c) of title 10, United States Code.

**DEPARTMENT OF HOMELAND SECURITY  
APPROPRIATIONS ACT, 2007, PUB. L. NO. 109-295, 120  
STAT. 1355 (2006), SIGNED ON OCTOBER 4, 2006.**

**Sec. 508.**

None of the funds in this Act may be used to make a grant allocation, discretionary grant award, discretionary contract award, or to issue a letter of intent totaling in excess of \$1,000,000, or to announce publicly the intention to make such an award, unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and the House of Representatives at least three full business days in advance: Provided, That no notification shall involve funds that are not available for obligation: Provided further, That the Office of Grants and Training shall brief the Committees on Appropriations of the Senate and the House of Representatives five full business days in advance of announcing publicly the intention of making an award of formula-based grants; law enforcement terrorism prevention grants; or high-threat, high-density urban areas grants.

**Sec. 536.**

The Department of Homeland Security shall, in approving standards for State and local emergency preparedness operational plans under section 613(b)(3) of the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5196b(b)(3)), account for the needs of individuals with household pets and service animals before, during, and following a major disaster or emergency: Provided, That Federal agencies may provide assistance as described in section 403(a) of the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5170b(a)) to carry out plans described in the previous proviso.

**Sec. 547.**

None of the funds made available in this Act may be used to award any contract for major disaster or emergency assistance activities under the Robert T. Stafford Disaster Relief and Emergency Assistance Act except in accordance with section 307 of such Act (42 U.S.C. 5150).

**Sec. 612.**

(c) References- Any reference to the Director of the Federal Emergency Management Agency, in any law, rule, regulation, certificate, directive, instruction, or other official paper shall be considered to refer and apply to the Administrator of the Federal Emergency Management Agency.

(f) Interim Actions-

- (1) IN GENERAL- During the period beginning on the date of enactment of this Act and ending on March 31, 2007, the Secretary, the Under Secretary for Preparedness, and the Director of the Federal Emergency Management Agency shall take such actions as are necessary to provide for the orderly implementation of any amendment under this subtitle that takes effect on March 31, 2007.
- (2) REFERENCES- Any reference to the Administrator of the Federal Emergency Management Agency in this title or an amendment by this title shall be considered to refer and apply to the Director of the Federal Emergency Management Agency until March 31, 2007.

**Sec. 640a. Disclosure of Certain Information to Law Enforcement Agencies**

In the event of circumstances requiring an evacuation, sheltering, or mass relocation, the Administrator may disclose information in any individual assistance database of the Agency in accordance with section 552a(b) of title 5, United States Code (commonly referred to as the “Privacy Act”), to any law enforcement agency of the Federal Government or a State, local, or tribal government in order to identify illegal conduct or address public safety or security issues, including compliance with sex offender notification laws.

**Sec. 653. Federal Preparedness**

- (c) Mission Assignments – To expedite the provision of assistance under the National Response Plan, the President shall ensure that the Administrator, in coordination with Federal agencies with responsibilities under the National Response Plan, develops prescribed mission assignments, including logistics, communications, mass care, health services, and public safety.

**Sec. 689b. Reunification**

- (a) Definitions – In this section:
  - (1) Child Locator Center – The term “Child Locator Center” means the National Emergency Child Locator Center established under subsection (b).

- (2) Declared Event – The term “declared event” means a major disaster or emergency.
- (3) Displaced Adult – The term “displaced adult” means an individual 21 years of age or older who is displaced from the habitual residence of that individual as a result of a declared event.
- (4) Displaced Child – The term “displaced child” means an individual under 21 years of age who is displaced from the habitual residence of that individual as a result of a declared event.

(b) National Emergency Child Locator Center –

- (1) In general – Not later than 180 days after the date of enactment of this Act, the Administrator, in coordination with the Attorney General of the United States, shall establish within the National Center for Missing and Exploited Children the National Emergency Child Locator Center. In Establishing the National Emergency Child Locator Center, the Administrator shall establish procedures to make all relevant information available to the National Emergency Child Locator Center in a timely manner to facilitate the expeditious identification and reunification of children with their families.
- (2) Purposes – The purposes of the Child Locator Center are to
  - (A) enable individuals to provide to the Child Locator Center the name of and other identifying information about a displaced child or a displaced adult who may have information about the location of a displaced child;
  - (B) enable individuals to receive information about other sources of information about displaced children and displaced adults; and
  - (C) assist law enforcement in locating displaced children.
- (3) Responsibilities and Duties – The responsibilities and duties of the Child Locator Center are to –
  - (A) establish a toll-free telephone number to receive reports of displaced children and information about displaced adults that may assist in locating displaced children;



- (B) create a website to provide information about displaced children;
  - (C) deploy its staff to the location of a declared event to gather information about displaced children;
  - (D) assist in the reunification of displaced children with their families;
  - (E) provide information to the public about additional resources for disaster assistance;
  - (F) work in partnership with Federal, State, and local law enforcement agencies;
  - (G) provide technical assistance in locating displaced children;
  - (H) share information on displaced children and displaced adults with governmental agencies and nongovernmental organizations providing disaster assistance;
  - (I) use its resources to gather information about displaced children;
  - (J) refer reports of displaced adults to
    - (i) an entity designated by the Attorney General to provide technical assistance in locating displaced adults; and
    - (ii) the National Emergency Family Registry and Locator System as defined under section 689c(a);
  - (K) enter into cooperative agreements with Federal and State agencies and other organizations such as the American Red Cross as necessary to implement the mission of the Child Locator Center; and
  - (L) develop an emergency response plan to prepare for the activation of the Child Locator Center.
- (c) Conforming Amendments – Section 403(1) of the Missing Children’s Assistance Act (42 U.S.C. 5772(1)) is amended –
- (1) in subparagraph (A), by striking “or” at the end;
  - (2) in subparagraph (B), by adding “or” after the semicolon; and
  - (3) by inserting after subparagraph (B) the following:
 

“(C) the individual is an individual under 21 years of age who is displaced from the habitual residence of that individual as a

result of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).”

- (d) Report – Not later than 270 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate and the Committee on Transportation and Infrastructure and the Committee on the Judiciary of the House of Representatives a report describing in detail the status of the Child Locator Center, including funding issues and any difficulties or issues in establishing the Center or completing the cooperative agreements described in subsection (b)(3)(K).

### **Sec. 689c. National Emergency Family Registry and Locator System**

- (a) Definitions – In this section –
  - (1) the term “displaced individual” means an individual displaced by an emergency or major disaster; and
  - (2) the term “National Emergency Family Registry and Locator System” means the National Emergency Family Registry and Locator System established under subsection (b).
- (b) Establishment – Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a National Emergency Family Registry and Locator System to help reunify families separated after an emergency or major disaster.
- (c) Operation of System – The National Emergency Family Registry and Locator System shall –
  - (1) allow a displaced adult (including medical patients) to voluntarily register (and allow an adult that is the parent or guardian of a displaced child to register such child), by submitting personal information to be entered into a database (such as the name, current location of residence, and any other relevant information that could be used by others seeking to locate that individual);
  - (2) ensure that information submitted under paragraph (1) is accessible to those individuals named by a displaced individual and to those law enforcement officials;
  - (3) be accessible through the Internet and through a toll-free number, to receive reports of displaced individuals; and

- (4) include a means of referring displaced children to the National Emergency Child Locator Center established under section 689b.
- (d) Publication of Information – Not later than 210 days after the date of enactment of this Act, the Administrator shall establish a mechanism to inform the public about the National Emergency Family Registry and Locator System and its potential usefulness for assisting to reunite displaced individuals with their families.
- (e) Coordination – Not later than 90 days after the date of enactment of this Act, the Administrator shall enter a memorandum of understanding with the Department of Justice, the National Center for Missing and Exploited Children, the Department of Health and Human Services, and the American Red Cross and other relevant private organizations that will enhance the sharing of information to facilitate reuniting displaced individuals (including medical patients) with families.
- (f) Report – Not later than 270 days after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report describing in detail the status of the National Emergency Family Registry and Locator System, including any difficulties or issues in establishing the System, including funding issues.

### **Sec. 689i. Individuals and Households Pilot Program**

- (a) Pilot Program –
  - (1) In general – The President, acting through the Administrator, in coordination with State, local, and tribal governments, shall establish and conduct a pilot program. The pilot program shall be designed to make better use of existing rental housing, located in areas covered by a major disaster declaration, in order to provide timely and cost-effective temporary housing assistance to individuals and households eligible for assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) where alternative housing options are less available or cost-effective.
  - (2) Administration –
    - (A) In General – For the purposes of the pilot program under this section, the Administrator may –

- (i) enter into lease agreements with owners of multi-family rental property located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174);
  - (ii) make improvements to properties under such lease agreements;
  - (iii) use the pilot program where the program is cost effective in that the cost to the Government for the lease agreements is in proportion to the savings to the Government by not providing alternative housing; and
  - (iv) limit repairs to those required to ensure that the housing units shall meet Federal housing quality standards.
- (B) Improvements to leased properties – Under the terms of any lease agreement for a property described under subparagraph (A)(ii), the value of the contribution of the Agency to such improvements –
  - (i) shall be deducted from the value of the lease agreement; and
  - (ii) may not exceed the value of the lease agreement.
- (3) Consultation – In administering the pilot program under this section, the Administrator may consult with State, local, and tribal governments.
- (4) Report –
  - (A) In General – Not later than March 31, 2009, the Administrator shall submit to the appropriate committees of Congress a report regarding the effectiveness of the pilot program.
  - (B) Contents – The Administrator shall include in the report –
    - (i) an assessment of the effectiveness of the pilot program under this section, including an assessment of cost-savings to the Federal Government and any benefits to individuals and households eligible for assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) under the pilot program;
    - (ii) findings and conclusions of the Administrator with respect to the pilot program;

- (iii) an assessment of additional authorities needed to aid the Agency in its mission of providing disaster housing assistance to individuals and households eligible for assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174), either under the pilot program under this section or other potential housing programs; and
  - (iv) any recommendations of the Administrator for additional authority to continue or make permanent the pilot program.
- (b) Pilot Program Project Approval – The Administrator shall not approve a project under the pilot program after December 31, 2008.

### **Sec. 689j. Public Assistance Pilot Program**

- (a) Pilot Program –
  - (1) In General – The President, acting through the Administrator, and in coordination with State and local governments, shall establish and conduct a pilot program to –
    - (A) reduce the costs of the Federal Government of providing assistance to States and local governments under sections 403(a)(3)(A), 406, and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 1570b(a)(3), 5172, 5172);
    - (B) increase flexibility in the administration of sections 403(a)(3)(A), 406, and 407 of that Act; and
    - (C) expedite the provision of assistance to States and local governments provided under sections 403(a)(3)(A), 406, and 407 of that Act.
  - (2) Participation – Only States and local governments that elect to participate in the pilot program may participate in the pilot program for a particular project.
  - (3) Innovative Administration –
    - (A) In General – For purposes of the pilot program, the Administrator shall establish new procedures to administer assistance provided under the sections referred to in paragraph (1).

- (B) New Procedures – The new procedures established under subparagraph (A) may include 1 or more of the following:
- (i) Notwithstanding section 406(c)(1)(A) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 1571(c)(1)(A)), providing an option for a State or local government to elect to receive an in-lieu contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State or local government and of management expenses.
  - (ii) Making grants on the basis of estimates agreed to by the local government (or where no local government is involved, by the State government) and the Administrator to provide financial incentives and disincentives for the local government (or where no local government is involved, for the State government) for the timely or cost effective completion of projects under section 403(a)(3)(A), 406, and 407 of that Act.
  - (iii) Increasing the Federal share for removal of debris and wreckage for States and local governments that have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster.
  - (iv) Using a sliding scale for the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal.
  - (v) Using a financial incentive to recycle debris.
  - (vi) Reimbursing base wages for employees and extra hires of a State or local government involved in or administering debris and wreckage removal.
- (4) Waiver – The Administrator may waive such regulations or rules applicable to the provisions of assistance under the sections referred to in paragraph (1) as the Administrator determines are necessary to carry out the pilot program under this section.
- (b) Report –
- (1) In General – Not later than March 31, 2009, the Administrator shall submit to the appropriate committees of Congress a report regarding the effectiveness of the pilot program under this section.

- (2) Contents – The report submitted under paragraph (1) shall include –
  - (A) An assessment by the Administrator of any administrative or financial benefits of the pilot program;
  - (B) An assessment by the Administrator of the effect, including any savings in time and cost, of the pilot program;
  - (C) Any identified legal or other obstacles to increasing the amount of debris recycled after a major disaster;
  - (D) Any other findings and conclusions of the Administrator with respect to the pilot program; and
  - (E) Any recommendations of the Administrator for additional authority to continue or make permanent the pilot program.
- (c) Deadline for Initiation of Implementation – The Administrator shall initiate implementation of the pilot program under this section not later than 90 days after the date of enactment of the Act.
- (d) Pilot Program Project Duration – The Administrator may not approve a project under the pilot program under this section after December 31, 2008.

**Sec. 689k. Disposal of Unused Temporary Housing Units**

- (a) In General – Notwithstanding section 408(d)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(d)(2)(B)), if the Administrator authorizes the disposal of an unused temporary housing unit that is owned by the Agency on the date of enactment of this Act and is not used to house individuals or households under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) after that date, such unit shall be disposed of under subchapter III of chapter 5 of subtitle I of title 40, United States Code.
- (b) Tribal Governments – Housing units described in subsection (a) shall be disposed of in coordination with the Department of the Interior or other appropriate agencies in order to transfer such units to tribal governments if appropriate.

**EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT  
FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND  
HURRICANE RECOVERY, 2006, PUB. L. NO. 109-234, 120  
STAT. 418 (2006), SIGNED ON JUNE 15, 2006.**

**Sec. 2401.**

The Federal Emergency Management Agency may provide funds to a State or local government or, as necessary, assume an existing agreement from such unit of government, to pay for utility costs resulting from the provision of temporary housing units to evacuees from Hurricane Katrina and other hurricanes of the 2005 season if the State or local government has previously arranged to pay for such utilities on behalf of the evacuees for the term of any leases, not to exceed 12 months, contracted by or prior to February 7, 2006: Provided, That the Federal share of the costs eligible to be paid shall be 100 percent.

**Sec. 2403.**

Notwithstanding any other provision of law, the Secretary of Homeland Security shall consider eligible under the Federal Emergency Management Agency Individual Assistance Program the costs sufficient for alternative housing pilot programs in the areas hardest hit by Hurricane Katrina and other hurricanes of the 2005 season.

**DEPARTMENT OF HOMELAND SECURITY  
APPROPRIATIONS ACT, 2006, PUB. L. NO. 109-90, 119  
STAT. 2064 (2005), SIGNED ON OCTOBER 18, 2005.**

**Sec. 508.**

None of the funds in this Act may be used to make a grant allocation, discretionary grant award, discretionary contract award, or to issue a letter of intent totaling in excess of \$1,000,000, or to announce publicly the intention to make such an award, unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and the House of Representatives at least 3 full business days in advance:

*Provided*, That no notification shall involve funds that are not available for obligation.



**TITLE V – (NATIONAL EMERGENCY MANAGEMENT)  
OF THE HOMELAND SECURITY ACT OF 2002  
6 U.S.C. 311 ET SEQ.**

***(As amended by the Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295)***

**Sec. 501. Definitions**

In this title—

- (1) the term ‘Administrator’ means the Administrator of the Agency;
- (2) the term ‘Agency’ means the Federal Emergency Management Agency;
- (3) the term ‘catastrophic incident’ means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;
- (4) the term ‘Federal coordinating officer’ means a Federal coordinating officer as described in section 302 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5143);
- (5) the term ‘interoperable’ has the meaning given the term ‘interoperable communications’ under section 7303(g)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)(1));
- (6) the term ‘National Incident Management System’ means a system to enable effective, efficient, and collaborative incident management;
- (7) the term ‘National Response Plan’ means the National Response Plan or any successor plan prepared under section 502(a)(6);
- (8) the term ‘Regional Administrator’ means a Regional Administrator appointed under section 507;
- (9) the term ‘Regional Office’ means a Regional Office established under section 507;

- (10) the term ‘surge capacity’ means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident; and
- (11) the term ‘tribal government’ means the government of any entity described in section 2(10)(B).

### **Sec. 502. Definition**

In this subchapter, the term “Nuclear Incident Response Team” means a resource that includes—

- (1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/ Training Site (REAC/TS), radiological assistance functions, and related functions; and
- (2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

### **Sec. 503. Federal Emergency Management Agency**

- (a) In General— There is in the Department the Federal Emergency Management Agency, headed by an Administrator.
- (b) Mission—
  - (1) PRIMARY MISSION— The primary mission of the Agency is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.
  - (2) SPECIFIC ACTIVITIES— In support of the primary mission of the Agency, the Administrator shall—
    - (A) lead the Nation’s efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of

natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

- (B) partner with State, local, and tribal governments and emergency response providers, with other Federal agencies, with the private sector, and with nongovernmental organizations to build a national system of emergency management that can effectively and efficiently utilize the full measure of the Nation's resources to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;
- (C) develop a Federal response capability that, when necessary and appropriate, can act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other man-made disaster;
- (D) integrate the Agency's emergency preparedness, protection, response, recovery, and mitigation responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other man-made disaster;
- (E) develop and maintain robust Regional Offices that will work with State, local, and tribal governments, emergency response providers, and other appropriate entities to identify and address regional priorities;
- (F) under the leadership of the Secretary, coordinate with the Commandant of the Coast Guard, the Director of Customs and Border Protection, the Director of Immigration and Customs Enforcement, the National Operations Center, and other agencies and offices in the Department to take full advantage of the substantial range of resources in the Department;
- (G) provide funding, training, exercises, technical assistance, planning, and other assistance to build tribal, local, State, regional, and national capabilities (including communications capabilities), necessary to respond to a natural disaster, act of terrorism, or other man-made disaster; and
- (H) develop and coordinate the implementation of a risk-based, all-hazards strategy for preparedness that builds those common capabilities necessary to respond to natural

disasters, acts of terrorism, and other man-made disasters while also building the unique capabilities necessary to respond to specific types of incidents that pose the greatest risk to our Nation.

(c) Administrator—

- (1) IN GENERAL— The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) QUALIFICATIONS— The Administrator shall be appointed from among individuals who have—
  - (A) a demonstrated ability in and knowledge of emergency management and homeland security; and
  - (B) not less than 5 years of executive leadership and management experience in the public or private sector.
- (3) REPORTING— The Administrator shall report to the Secretary, without being required to report through any other official of the Department.
- (4) PRINCIPAL ADVISOR ON EMERGENCY MANAGEMENT—
  - (A) IN GENERAL— The Administrator is the principal advisor to the President, the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States.
  - (B) ADVICE AND RECOMMENDATIONS—
    - (i) IN GENERAL— In presenting advice with respect to any matter to the President, the Homeland Security Council, or the Secretary, the Administrator shall, as the Administrator considers appropriate, inform the President, the Homeland Security Council, or the Secretary, as the case may be, of the range of emergency preparedness, protection, response, recovery, and mitigation options with respect to that matter.
    - (ii) ADVICE ON REQUEST— The Administrator, as the principal advisor on emergency management, shall provide advice to the President, the Homeland Security Council, or the Secretary on a particular matter when the President, the Homeland Security Council, or the Secretary requests such advice.

(iii) RECOMMENDATIONS TO CONGRESS— After informing the Secretary, the Administrator may make such recommendations to Congress relating to emergency management as the Administrator considers appropriate.

(5) CABINET STATUS—

(A) IN GENERAL— The President may designate the Administrator to serve as a member of the Cabinet in the event of natural disasters, acts of terrorism, or other man-made disasters.

(B) RETENTION OF AUTHORITY— Nothing in this paragraph shall be construed as affecting the authority of the Secretary under this Act.

**Sec. 504. Authority and Responsibilities**

(a) In General The Administrator shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this subchapter)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government’s response to terrorist attacks and major disasters, including—

(A) managing such response;

- (B) directing the Domestic Emergency Support Team, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this subchapter) the Nuclear Incident Response Team;
  - (C) overseeing the Metropolitan Medical Response System; and
  - (D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;
- (4) aiding the recovery from terrorist attacks and major disasters;
  - (5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;
  - (6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan;
  - (7) helping ensure the acquisition of operable and interoperable communications capabilities by Federal, State, local, and tribal governments and emergency response providers;
  - (8) assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and carrying out all functions and authorities given to the Administrator under that Act;
  - (9) carrying out the mission of the Agency to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—
    - (A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;
    - (B) preparedness, by planning, training, and building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
    - (C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential

victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and

- (D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;
- (10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;
- (11) helping to ensure the effectiveness of emergency response providers in responding to a natural disaster, act of terrorism, or other man-made disaster;
- (12) supervising grant programs administered by the Agency;
- (13) administering and ensuring the implementation of the National Response Plan, including coordinating and ensuring the readiness of each emergency support function under the National Response Plan;
- (14) coordinating with the National Advisory Council established under section 508;
- (15) preparing and implementing the plans and programs of the Federal Government for—
  - (A) continuity of operations;
  - (B) continuity of government; and
  - (C) continuity of plans;
- (16) minimizing, to the extent practicable, overlapping planning and reporting requirements applicable to State, local, and tribal governments and the private sector;
- (17) maintaining and operating within the Agency the National Response Coordination Center or its successor;
- (18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents;
- (19) assisting the President in carrying out the functions under the national preparedness goal and the national preparedness

system and carrying out all functions and authorities of the Administrator under the national preparedness System;

(20) carrying out all authorities of the Federal Emergency Management Agency and the Directorate of Preparedness of the Department as transferred under section 505; and

(21) otherwise carrying out the mission of the Agency as described in section 503(b).

(b) All-Hazards Approach— In carrying out the responsibilities under this section, the Administrator shall coordinate the implementation of a risk-based, all-hazards strategy that builds those common capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, and other man-made disasters, while also building the unique capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against the risks of specific types of incidents that pose the greatest risk to the Nation.

### **Sec. 505. Functions Transferred**

(a) In General— Except as provided in subsection (b), there are transferred to the Agency the following:

(1) All functions of the Federal Emergency Management Agency, including existing responsibilities for emergency alert systems and continuity of operations and continuity of government plans and programs as constituted on June 1, 2006, including all of its personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Federal Emergency Management relating thereto.

(2) The Directorate of Preparedness, as constituted on June 1, 2006, including all of its functions, personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Preparedness relating thereto.

(b) Exceptions— The following within the Preparedness Directorate shall not be transferred:

(1) The Office of Infrastructure Protection.

(2) The National Communications System.

(3) The National Cybersecurity Division.



- (4) The Office of the Chief Medical Officer.
- (5) The functions, personnel, assets, components, authorities, and liabilities of each component described under paragraphs (1) through (4).

### **Sec. 506. Preserving the Federal Emergency Management Agency**

- (a) Distinct Entity— The Agency shall be maintained as a distinct entity within the Department.
- (b) Reorganization— Section 872 shall not apply to the Agency, including any function or organizational unit of the Agency.
- (c) Prohibition on Changes to Missions—
  - (1) IN GENERAL— The Secretary may not substantially or significantly reduce the authorities, responsibilities, or functions of the Agency or the capability of the Agency to perform those missions, authorities, responsibilities, except as otherwise specifically provided in an Act enacted after the date of enactment of the Post-Katrina Emergency Management Reform Act of 2006.
  - (2) CERTAIN TRANSFERS PROHIBITED— No asset, function, or mission of the Agency may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the capability of the Agency to perform its missions.
- (d) Reprogramming and Transfer of Funds— In reprogramming or transferring funds, the Secretary shall comply with any applicable provisions of any Act making appropriations for the Department for fiscal year 2007, or any succeeding fiscal year, relating to the reprogramming or transfer of funds.

### **Sec. 507. Regional Offices**

- (a) In General— There are in the Agency 10 regional offices, as identified by the Administrator.
- (b) Management of Regional Offices—
  - (1) REGIONAL ADMINISTRATOR— Each Regional Office shall be headed by a Regional Administrator who shall be appointed by the Administrator, after consulting with State, local, and tribal government officials in the region. Each Regional Administrator

shall report directly to the Administrator and be in the Senior Executive Service.

(2) QUALIFICATIONS—

- (A) IN GENERAL— Each Regional Administrator shall be appointed from among individuals who have a demonstrated ability in and knowledge of emergency management and homeland security.
- (B) CONSIDERATIONS— In selecting a Regional Administrator for a Regional Office, the Administrator shall consider the familiarity of an individual with the geographical area and demographic characteristics of the population served by such Regional Office.

(c) Responsibilities—

- (1) IN GENERAL— The Regional Administrator shall work in partnership with State, local, and tribal governments, emergency managers, emergency response providers, medical providers, the private sector, nongovernmental organizations, multijurisdictional councils of governments, and regional planning commissions and organizations in the geographical area served by the Regional Office to carry out the responsibilities of a Regional Administrator under this section.
- (2) RESPONSIBILITIES— The responsibilities of a Regional Administrator include—
  - (A) ensuring effective, coordinated, and integrated regional preparedness, protection, response, recovery, and mitigation activities and programs for natural disasters, acts of terrorism, and other man-made disasters (including planning, training, exercises, and professional development);
  - (B) assisting in the development of regional capabilities needed for a national catastrophic response system;
  - (C) coordinating the establishment of effective regional operable and interoperable emergency communications capabilities;
  - (D) staffing and overseeing 1 or more strike teams within the region under subsection (f), to serve as the focal point of the Federal Government's initial response efforts for natural disasters, acts of terrorism, and other man-made disasters within that region, and otherwise building Federal response

capabilities to respond to natural disasters, acts of terrorism, and other man-made disasters within that region;

- (E) designating an individual responsible for the development of strategic and operational regional plans in support of the National Response Plan;
- (F) fostering the development of mutual aid and other cooperative agreements;
- (G) identifying critical gaps in regional capabilities to respond to populations with special needs;
- (H) maintaining and operating a Regional Response Coordination Center or its successor; and
- (I) performing such other duties relating to such responsibilities as the Administrator may require.

(3) TRAINING AND EXERCISE REQUIREMENTS—

- (A) TRAINING— The Administrator shall require each Regional Administrator to undergo specific training periodically to complement the qualifications of the Regional Administrator. Such training, as appropriate, shall include training with respect to the National Incident Management System, the National Response Plan, and such other subjects as determined by the Administrator.
- (B) EXERCISES— The Administrator shall require each Regional Administrator to participate as appropriate in regional and national exercises.

(d) Area Offices—

- (1) IN GENERAL— There is an Area Office for the Pacific and an Area Office for the Caribbean, as components in the appropriate Regional Offices.
- (2) ALASKA— The Administrator shall establish an Area Office in Alaska, as a component in the appropriate Regional Office.

(e) Regional Advisory Council—

- (1) ESTABLISHMENT— Each Regional Administrator shall establish a Regional Advisory Council.

- (2) NOMINATIONS— A State, local, or tribal government located within the geographic area served by the Regional Office may nominate officials, including Adjutants General and emergency managers, to serve as members of the Regional Advisory Council for that region.
- (3) RESPONSIBILITIES— Each Regional Advisory Council shall —
  - (A) advise the Regional Administrator on emergency management issues specific to that region;
  - (B) identify any geographic, demographic, or other characteristics peculiar to any State, local, or tribal government within the region that might make preparedness, protection, response, recovery, or mitigation more complicated or difficult; and
  - (C) advise the Regional Administrator of any weaknesses or deficiencies in preparedness, protection, response, recovery, and mitigation for any State, local, and tribal government within the region of which the Regional Advisory Council is aware.

(f) Regional Office Strike Teams—

- (1) IN GENERAL— In coordination with other relevant Federal agencies, each Regional Administrator shall oversee multi-agency strike teams authorized under section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5144) that shall consist of
  - (A) a designated Federal coordinating officer;
  - (B) personnel trained in incident management;
  - (C) public affairs, response and recovery, and communications support personnel;
  - (D) a defense coordinating officer;
  - (E) liaisons to other Federal agencies;
  - (F) such other personnel as the Administrator or Regional Administrator determines appropriate; and
  - (G) individuals from the agencies with primary responsibility for each of the emergency support functions in the National Response Plan.

- (2) OTHER DUTIES— The duties of an individual assigned to a Regional Office strike team from another relevant agency when such individual is not functioning as a member of the strike team shall be consistent with the emergency preparedness activities of the agency that employs such individual.
- (3) LOCATION OF MEMBERS— The members of each Regional Office strike team, including representatives from agencies other than the Department, shall be based primarily within the region that corresponds to that strike team.
- (4) COORDINATION— Each Regional Office strike team shall coordinate the training and exercises of that strike team with the State, local, and tribal governments and private sector and nongovernmental entities which the strike team shall support when a natural disaster, act of terrorism, or other man-made disaster occurs.
- (5) PREPAREDNESS— Each Regional Office strike team shall be trained as a unit on a regular basis and equipped and staffed to be well prepared to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.
- (6) AUTHORITIES— If the Administrator determines that statutory authority is inadequate for the preparedness and deployment of individuals in strike teams under this subsection, the Administrator shall report to Congress regarding the additional statutory authorities that the Administrator determines are necessary.

### **Sec. 508. National Advisory Council**

- (a) Establishment— Not later than 60 days after the date of enactment of the Post-Katrina Emergency Management Reform Act of 2006, the Secretary shall establish an advisory body under section 871(a) to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters, to be known as the National Advisory Council.
- (b) Responsibilities— The National Advisory Council shall advise the Administrator on all aspects of emergency management. The National Advisory Council shall incorporate State, local, and tribal government and private sector input in the development and revision of the national preparedness goal, the national

preparedness system, the National Incident Management System, the National Response Plan, and other related plans and strategies.

(c) Membership—

- (1) IN GENERAL— The members of the National Advisory Council shall be appointed by the Administrator, and shall, to the extent practicable, represent a geographic (including urban and rural) and substantive cross section of officials, emergency managers, and emergency response providers from State, local, and tribal governments, the private sector, and nongovernmental organizations, including as appropriate
  - (A) members selected from the emergency management field and emergency response providers, including fire service, law enforcement, hazardous materials response, emergency medical services, and emergency management personnel, or organizations representing such individuals;
  - (B) health scientists, emergency and inpatient medical providers, and public health professionals;
  - (C) experts from Federal, State, local, and tribal governments, and the private sector, representing standards-setting and accrediting organizations, including representatives from the voluntary consensus codes and standards development community, particularly those with expertise in the emergency preparedness and response field;
  - (D) State, local, and tribal government officials with expertise in preparedness, protection, response, recovery, and mitigation, including Adjutants General;
  - (E) elected State, local, and tribal government executives;
  - (F) experts in public and private sector infrastructure protection, cybersecurity, and communications;
  - (G) representatives of individuals with disabilities and other populations with special needs; and
  - (H) such other individuals as the Administrator determines to be appropriate.
- (2) COORDINATION WITH THE DEPARTMENTS OF HEALTH AND HUMAN SERVICES AND TRANSPORTATION— In the selection

of members of the National Advisory Council who are health or emergency medical services professionals, the Administrator shall work with the Secretary of Health and Human Services and the Secretary of Transportation.

- (3) EX OFFICIO MEMBERS— The Administrator shall designate 1 or more officers of the Federal Government to serve as ex officio members of the National Advisory Council.
- (4) TERMS OF OFFICE—
  - (A) IN GENERAL— Except as provided in subparagraph (B), the term of office of each member of the National Advisory Council shall be 3 years.
  - (B) INITIAL APPOINTMENTS— Of the members initially appointed to the National Advisory Council
    - (i) one-third shall be appointed for a term of 1 year; and
    - (ii) one-third shall be appointed for a term of 2 years.
- (d) Applicability of Federal Advisory Committee Act—
  - (1) IN GENERAL— Notwithstanding section 871(a) and subject to paragraph (2), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the National Advisory Council.
  - (2) TERMINATION— Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Advisory Council.

### **Sec. 509. National Integration Center**

- (a) In General— There is established in the Agency a National Integration Center.
- (b) Responsibilities—
  - (1) IN GENERAL— The Administrator, through the National Integration Center, and in consultation with other Federal departments and agencies and the National Advisory Council, shall ensure ongoing management and maintenance of the National Incident Management System, the National Response Plan, and any successor to such system or plan.

- (2) SPECIFIC RESPONSIBILITIES— The National Integration Center shall periodically review, and revise as appropriate, the National Incident Management System and the National Response Plan, including—
- (A) establishing, in consultation with the Director of the Corporation for National and Community Service, a process to better use volunteers and donations;
  - (B) improving the use of Federal, State, local, and tribal resources and ensuring the effective use of emergency response providers at emergency scenes; and
  - (C) revising the Catastrophic Incident Annex, finalizing and releasing the Catastrophic Incident Supplement to the National Response Plan, and ensuring that both effectively address response requirements in the event of a catastrophic incident.

(c) Incident Management—

(1) IN GENERAL—

- (A) NATIONAL RESPONSE PLAN— The Secretary, acting through the Administrator, shall ensure that the National Response Plan provides for a clear chain of command to lead and coordinate the Federal response to any natural disaster, act of terrorism, or other man-made disaster.
- (B) ADMINISTRATOR— The chain of the command specified in the National Response Plan shall
  - (i) provide for a role for the Administrator consistent with the role of the Administrator as the principal emergency management advisor to the President, the Homeland Security Council, and the Secretary under section 503(c)(4) and the responsibility of the Administrator under the Post-Katrina Emergency Management Reform Act of 2006, and the amendments made by that Act, relating to natural disasters, acts of terrorism, and other man-made disasters; and
  - (ii) provide for a role for the Federal Coordinating Officer consistent with the responsibilities under section 302(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5143(b)).



- (2) PRINCIPAL FEDERAL OFFICIAL— The Principal Federal Official (or the successor thereto) shall not—
  - (A) direct or replace the incident command structure established at the incident; or
  - (B) have directive authority over the Senior Federal Law Enforcement Official, Federal Coordinating Officer, or other Federal and State officials.

### **Sec. 510. Credentialing and Typing**

The Administrator shall enter into a memorandum of understanding with the administrators of the Emergency Management Assistance Compact, State, local, and tribal governments, and organizations that represent emergency response providers, to collaborate on developing standards for deployment capabilities, including credentialing of personnel and typing of resources likely needed to respond to natural disasters, acts of terrorism, and other man-made disasters.

### **Sec. 511. The National Infrastructure Simulation and Analysis Center**

- (a) Definition— In this section, the term ‘National Infrastructure Simulation and Analysis Center’ means the National Infrastructure Simulation and Analysis Center established under section 1016(d) of the USA PATRIOT Act (42 U.S.C. 5195c(d)).
- (b) Authority—
  - (1) IN GENERAL— There is in the Department the National Infrastructure Simulation and Analysis Center which shall serve as a source of national expertise to address critical infrastructure protection and continuity through support for activities related to
    - (A) counterterrorism, threat assessment, and risk mitigation; and
    - (B) a natural disaster, act of terrorism, or other man-made disaster.
  - (2) INFRASTRUCTURE MODELING—
    - (A) PARTICULAR SUPPORT— The support provided under paragraph (1) shall include modeling, simulation, and analysis of the systems and assets comprising critical

infrastructure, in order to enhance preparedness, protection, response, recovery, and mitigation activities.

- (B) RELATIONSHIP WITH OTHER AGENCIES— Each Federal agency and department with critical infrastructure responsibilities under Homeland Security Presidential Directive 7, or any successor to such directive, shall establish a formal relationship, including an agreement regarding information sharing, between the elements of such agency or department and the National Infrastructure Simulation and Analysis Center, through the Department.
- (C) PURPOSE—
  - (i) IN GENERAL— The purpose of the relationship under subparagraph (B) shall be to permit each Federal agency and department described in subparagraph (B) to take full advantage of the capabilities of the National Infrastructure Simulation and Analysis Center (particularly vulnerability and consequence analysis), consistent with its work load capacity and priorities, for real-time response to reported and projected natural disasters, acts of terrorism, and other man-made disasters.
  - (ii) RECIPIENT OF CERTAIN SUPPORT— Modeling, simulation, and analysis provided under this subsection shall be provided to relevant Federal agencies and departments, including Federal agencies and departments with critical infrastructure responsibilities under Homeland Security Presidential Directive 7, or any successor to such directive.

## **Sec. 512. Evacuation Plans and Exercises**

- (a) In General— Notwithstanding any other provision of law, and subject to subsection (d), grants made to States or local or tribal governments by the Department through the State Homeland Security Grant Program or the Urban Area Security Initiative may be used to—
  - (1) establish programs for the development and maintenance of mass evacuation plans under subsection (b) in the event of a natural disaster, act of terrorism, or other man-made disaster;

- (2) prepare for the execution of such plans, including the development of evacuation routes and the purchase and stockpiling of necessary supplies and shelters; and
  - (3) conduct exercises of such plans.
- (b) Plan Development— In developing the mass evacuation plans authorized under subsection (a), each State, local, or tribal government shall, to the maximum extent practicable—
- (1) establish incident command and decision making processes;
  - (2) ensure that State, local, and tribal government plans, including evacuation routes, are coordinated and integrated;
  - (3) identify primary and alternative evacuation routes and methods to increase evacuation capabilities along such routes such as conversion of two-way traffic to one-way evacuation routes;
  - (4) identify evacuation transportation modes and capabilities, including the use of mass and public transit capabilities, and coordinating and integrating evacuation plans for all populations including for those individuals located in hospitals, nursing homes, and other institutional living facilities;
  - (5) develop procedures for informing the public of evacuation plans before and during an evacuation, including individuals—
    - (A) with disabilities or other special needs;
    - (B) with limited English proficiency; or
    - (C) who might otherwise have difficulty in obtaining such information; and
  - (6) identify shelter locations and capabilities.
- (c) Assistance—
- (1) IN GENERAL— The Administrator may establish any guidelines, standards, or requirements determined appropriate to administer this section and to ensure effective mass evacuation planning for State, local, and tribal areas.
  - (2) REQUESTED ASSISTANCE— The Administrator shall make assistance available upon request of a State, local, or tribal government to assist hospitals, nursing homes, and other institutions that house individuals with special needs to

establish, maintain, and exercise mass evacuation plans that are coordinated and integrated into the plans developed by that State, local, or tribal government under this section.

- (d) Multipurpose Funds— Nothing in this section may be construed to preclude a State, local, or tribal government from using grant funds in a manner that enhances preparedness for a natural or man-made disaster unrelated to an act of terrorism, if such use assists such government in building capabilities for terrorism preparedness.

### **Sec. 513. Disability Coordinator**

- (a) In General— After consultation with organizations representing individuals with disabilities, the National Council on Disabilities, and the Interagency Coordinating Council on Preparedness and Individuals with Disabilities, established under Executive Order No. 13347 (6 U.S.C. 312 note), the Administrator shall appoint a Disability Coordinator. The Disability Coordinator shall report directly to the Administrator, in order to ensure that the needs of individuals with disabilities are being properly addressed in emergency preparedness and disaster relief.
- (b) Responsibilities— The Disability Coordinator shall be responsible for—
  - (1) providing guidance and coordination on matters related to individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;
  - (2) interacting with the staff of the Agency, the National Council on Disabilities, the Interagency Coordinating Council on Preparedness and Individuals with Disabilities established under Executive Order No. 13347 (6 U.S.C. 312 note), other agencies of the Federal Government, and State, local, and tribal government authorities regarding the needs of individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;
  - (3) consulting with organizations that represent the interests and rights of individuals with disabilities about the needs of individuals with disabilities in emergency planning requirements

and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;

- (4) ensuring the coordination and dissemination of best practices and model evacuation plans for individuals with disabilities;
- (5) ensuring the development of training materials and a curriculum for training of emergency response providers, State, local, and tribal government officials, and others on the needs of individuals with disabilities;
- (6) promoting the accessibility of telephone hotlines and websites regarding emergency preparedness, evacuations, and disaster relief;
- (7) working to ensure that video programming distributors, including broadcasters, cable operators, and satellite television services, make emergency information accessible to individuals with hearing and vision disabilities;
- (8) ensuring the availability of accessible transportation options for individuals with disabilities in the event of an evacuation;
- (9) providing guidance and implementing policies to ensure that the rights and wishes of individuals with disabilities regarding post-evacuation residency and relocation are respected;
- (10) ensuring that meeting the needs of individuals with disabilities are included in the components of the national preparedness system established under section 644 of the Post-Katrina Emergency Management Reform Act of 2006; and
- (11) any other duties as assigned by the Administrator.

#### **Sec. 514. Department and Agency Officials**

- (a) Deputy Administrators— The President may appoint, by and with the advice and consent of the Senate, not more than 4 Deputy Administrators to assist the Administrator in carrying out this title.
- (b) Cybersecurity and Communications— There is in the Department an Assistant Secretary for Cybersecurity and Communications.
- (c) United States Fire Administration— The Administrator of the United States Fire Administration shall have a rank equivalent to an assistant secretary of the Department.

## **Sec. 515. National Operations Center**

- (a) Definition— In this section, the term `situational awareness' means information gathered from a variety of sources that, when communicated to emergency managers and decision makers, can form the basis for incident management decision making.
- (b) Establishment— The National Operations Center is the principal operations center for the Department and shall—
  - (1) provide situational awareness and a common operating picture for the entire Federal Government, and for State, local, and tribal governments as appropriate, in the event of a natural disaster, act of terrorism, or other man-made disaster; and
  - (2) ensure that critical terrorism and disaster-related information reaches government decision-makers.

## **Sec. 516. Chief Medical Officer**

- (a) In General— There is in the Department a Chief Medical Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.
- (b) Qualifications— The individual appointed as Chief Medical Officer shall possess a demonstrated ability in and knowledge of medicine and public health.
- (c) Responsibilities— The Chief Medical Officer shall have the primary responsibility within the Department for medical issues related to natural disasters, acts of terrorism, and other man-made disasters, including—
  - (1) serving as the principal advisor to the Secretary and the Administrator on medical and public health issues;
  - (2) coordinating the biodefense activities of the Department;
  - (3) ensuring internal and external coordination of all medical preparedness and response activities of the Department, including training, exercises, and equipment support;
  - (4) serving as the Department's primary point of contact with the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Transportation, the Department of Veterans Affairs, and other

Federal departments or agencies, on medical and public health issues;

- (5) serving as the Department's primary point of contact for State, local, and tribal governments, the medical community, and others within and outside the Department, with respect to medical and public health matters;
- (6) discharging, in coordination with the Under Secretary for Science and Technology, the responsibilities of the Department related to Project Bioshield; and
- (7) performing such other duties relating to such responsibilities as the Secretary may require.

### **Sec. 517. Nuclear incident response**

(a) In general

At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) Rule of construction

Nothing in this subchapter shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this subchapter) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

### **Sec. 518. Conduct of certain public health-related activities**

(a) In general

With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness

goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) Evaluation of progress

In carrying out subsection (a) of this section, the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

**Sec. 519. Use of national private sector networks in emergency response**

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

**Sec. 520. Use of commercially available technology, goods, and services**

It is the sense of Congress that—

- (1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and
- (2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

**Sec. 521. Procurement of security countermeasures for Strategic National Stockpile**

(a) Authorization of appropriations

For the procurement of security countermeasures under section 247d-6b (c) of title 42 (referred to in this section as the "security countermeasures program"), there is authorized to be appropriated up to \$5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to



exceed \$3,418,000,000 may be obligated during the fiscal years 2004 through 2008, of which not to exceed \$890,000,000 may be obligated during fiscal year 2004.

(b) Special reserve fund

For purposes of the security countermeasures program, the term “special reserve fund” means the “Biodefense Countermeasures” appropriations account or any other appropriation made under subsection (a) of this section.

(c) Availability

Amounts appropriated under subsection (a) of this section become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

(d) Related authorizations of appropriations

(1) Threat assessment capabilities

For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Directorate for Information Analysis and Infrastructure Protection, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear agents, the means by which such agents could be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 403–4 of title 50.

(2) Intelligence sharing infrastructure

For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or

permanent) sufficient to permit the Secretary to receive, not later than 180 days after July 21, 2004, all classified information and products to which the Under Secretary for Information Analysis and Infrastructure Protection is entitled under part A of subchapter II of this chapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.

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## **SUBPART C—EMERGENCY ASSISTANCE**

**Source: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.**

### **§ 206.61 Purpose.**

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

### **§ 206.62 Available assistance.**

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

- a. Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- b. Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- c. Provide technical and advisory assistance to affected State and local governments for:
  1. The performance of essential community services;
  2. Issuance of warnings of risks or hazards;
  3. Public health and safety information, including dissemination of such information;
  4. Provision of health and safety measures; and
  5. Management, control, and reduction of immediate threats to public health and safety;
- d. Provide emergency assistance under the Stafford Act through Federal agencies;
- e. Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;
- f. Provide assistance in accordance with section 408 of the Stafford Act.; and

- g. Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

[55 FR 2296, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

**§ 206.63 Provision of assistance.**

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

**§ 206.64 Coordination of assistance.**

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

**§ 206.65 Cost sharing.**

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

**§ 206.66 Limitation on expenditures.**

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Associate Director that:

- a. Continued emergency assistance is immediately required;
- b. There is a continuing and immediate risk to lives, property, public health and safety; and
- c. Necessary assistance will not otherwise be provided on a timely basis.

**§ 206.67 Requirement when limitation is exceeded.**

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

**§§ 206.68-206.100 [Reserved]**

**SUBPART G—PUBLIC ASSISTANCE PROJECT ADMINISTRATION**

**Source: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.**

**§ 206.200 General.**

- a. Purpose. This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.
- b. What policies apply to FEMA public assistance grants?
  1. The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect the Grantee and the subgrantee to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.
  2. The regulations entitled “Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments,” published at 44 CFR part 13, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. We expect the Grantee to:
    - i. Inform subgrantees about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;
    - ii. Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including the State contribution required in the FEMA-State Agreement; and
    - iii. Pay the State contribution consistent with State laws.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999]

**§ 206.201 Definitions used in this subpart.**

- a. Applicant means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State’s grant.



- b. Emergency work means that work which 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. Facility means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
- d. Grant means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.
- e. Grantee means the government to which a grant is awarded which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in § 206.202, the State is the grantee.
- f. Hazard mitigation means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.
- g. Permanent work means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.
- h. Predisaster design means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.
- i. A project is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90–91).
  - 1. We must approve a scope of eligible work and an itemized cost estimate before funding a project.
  - 2. A project may include eligible work at several sites.
- j. Project approval means the process in which the Regional Director, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the Grantee.

- k. Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.
- l. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999]

### **§ 206.202 Application procedures.**

- a. General. This section describes the policies and procedures that we use to States. Under this section the State is the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13, 14, and 206, and your own policies and procedures.
- b. Grantee. You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:
  - 1. Providing technical advice and assistance to eligible subgrantees;
  - 2. Providing State support for project identification activities to include small and large project formulation and the validation of small projects;
  - 3. Ensuring that all potential applicants are aware of available public assistance; and
  - 4. Submitting documents necessary for the award of grants.
- c. Request for Public Assistance (Request). The Grantee must send a completed Request (FEMA Form 90–49) to the Regional Director for each applicant who requests public assistance. You must send Requests to the Regional Director within 30 days after designation of the area where the damage occurred.
- d. Project Worksheets.
  - 1. An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.
    - i. We or the applicant, assisted by the State as appropriate, will prepare a Project Worksheet (FEMA Form 90–91) for

each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work.

- ii. The applicant will have 60 days following its first substantive meeting with us to identify and to report damage to us.
2. When the estimated cost of work on a project is less than \$1,000, that work is not eligible and we will not approve a Project Worksheet for the project. Periodically we will review this minimum approval amount for a Project Worksheet and, if needed, will adjust the amount by regulation.
- e. Grant approval.
1. Before we obligate any funds to the State, the Grantee must complete and send to the Regional Director a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Director will obligate funds to the Grantee based on the approved Project Worksheets. The Grantee will then approve subgrants based on the Project Worksheets approved for each applicant.
  2. When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to the Grantee.
- f. Exceptions. The following are exceptions to the procedures and time limitations outlined in paragraphs (c), (d), and (e) of this section.
1. Grant applications. An Indian tribe or authorized tribal organization may submit a SF 424 directly to the RD when the Act authorizes assistance and a State is legally unable to assume the responsibilities that these regulations prescribe.
  2. Time limitations. The RD may extend the time limitations shown in paragraphs (c) and (d) of this section when the Grantees justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the grantee's or subgrantee's control.

[64 FR 55160, Oct. 12, 1999]

**§ 206.203 Federal grant assistance.**

- a. General. This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.
- b. Cost sharing. All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.
- c. Project funding.
  - 1. Large projects. When the approved estimate of eligible costs for an individual project is \$35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
  - 2. Small projects. When the approved estimate of costs for an individual project is less than \$35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.
- d. Funding options.
  - 1. Improved projects. If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.
  - 2. Alternate projects. In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the RD approve an alternate project.
    - i. The alternate project option may be taken only on permanent restorative work.
    - ii. Federal funding for such alternate projects will be 75 percent of the Federal share of the approved Federal estimate of eligible costs.
    - iii. If soil instability at the alternate project site makes the repair, restoration or replacement of a State or local government-

owned or –controlled facility infeasible, the Federal funding for such an alternate project will be 90 percent of the Federal share of the approved Federal estimate of eligible costs.

- iv. Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonfederal share of any project, nor for any operating expense.
- v. Prior to the start of construction of any alternate project the Grantee shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

[55 FR 2304, Jan. 23, 1990, as amended at 66 FR 22444, May 4, 2001]

**§ 206.204 Project performance.**

- a. General. This section describes the policies and procedures applicable during the performance of eligible work.
- b. Advances of funds. Advances of funds will be made in accordance with 44 CFR 13.21, Payment.
- c. Time limitations for completion of Work.
  - 1. Deadlines. The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

<b>Completion Deadlines</b>	
Type of work	Months
Debris clearance	6
Emergency work	6
Permanent work	18

2. Exceptions.
  - i. The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.
  - ii. Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.
- d. Requests for time extensions. Requests for time extensions beyond the Grantee's authority shall be submitted by the Grantee to the RD and shall include the following:
  1. The dates and provisions of all previous time extensions on the project; and
  2. A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The Grantee shall be notified of the RD's determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.
- e. Cost Overruns.
  1. During the execution of approved work a subgrantee may find that the actual project costs exceed the approved Project Worksheet estimates. Such cost overruns normally fall into the following three categories:
    - i. Variations in unit prices;
    - ii. Change in the scope of eligible work; or
    - iii. Delays in timely starts or completion of eligible work.
  2. The subgrantee must evaluate each cost overrun and, when justified, submit a request for additional funding through the

Grantee to the RD for a final determination. All requests for the RD's approval will contain sufficient documentation to support the eligibility of all claimed work and costs. The Grantee must include a written recommendation when forwarding the request. The RD will notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with § 206.206, within 60 days following the completion of all its small projects.

- f. Progress reports. Progress reports will be submitted by the Grantee to the RD quarterly. The RD and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the grantee and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

#### **§ 206.205 Payment of claims.**

- a. Small Projects. Final payment of the Federal share of these projects will be made to the Grantee upon approval of the Project Worksheet. The Grantee will make payment of the Federal share to the subgrantee as soon as practicable after Federal approval of funding. Before the closeout of the disaster contract, the Grantee must certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.
- b. Large projects.
  1. The Grantee shall make an accounting to the RD of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was

completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.

2. The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the RD determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

### **§ 206.206 Appeals.**

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

- a. **Format and Content.** The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.
- b. **Levels of Appeal.**
  1. The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.
  2. The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.
- c. **Time Limits.**



1. Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.
  2. The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.
  3. Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.
- d. Technical Advice. In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.
- e. Transition.
1. This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.
  2. Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

3. The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

**§ 206.207 Administrative and audit requirements.**

- a. General. Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.
- b. State administrative plan.
  1. The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:
    - i. The designation of the State agency or agencies which will have the responsibility for program administration.
    - ii. The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.
    - iii. Procedures for:
      - A. Notifying potential applicants of the availability of the program;
      - B. Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;
      - C. Assisting FEMA in determining applicant eligibility;
      - D. Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;
      - E. Participating with FEMA in the establishment of hazard mitigation and insurance requirements;
      - F. Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;
      - G. Compliance with the administrative requirements of 44 CFR parts 13 and 206;
      - H. Compliance with the audit requirements of 44 CFR part 14;
      - I. Processing requests for advances of funds and reimbursement; and
      - J. Determining staffing and budgeting requirements necessary for proper program management.

2. The Grantee may request the RD to provide technical assistance in the preparation of such administrative plan.
3. In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.
4. The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

c. Audit.

1. Nonfederal audit. For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR part 14 or OMB Circular A-110 as appropriate.
2. Federal audit. In accordance with 44 CFR part 14, appendix A, para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

**§ 206.208 Direct Federal assistance.**

- a. General. When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403 or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.
- b. Requests for assistance. All requests for direct Federal assistance shall be submitted by the Grantee to the RD and shall include:
  1. A written agreement that the State will:
    - i. Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

- ii. Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;
    - iii. Provide reimbursement to FEMA for the nonFederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and
    - iv. Assist the performing Federal agency in all support and local jurisdictional matters.
  2. A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.
  3. A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.
- c. Implementation.
  1. If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the RD.
  2. If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.
- d. Time limitation. The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.
- e. Project management.
  1. The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable

Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

2. Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

**§§ 206.209-206.219 [Reserved]**

**SUBPART H—PUBLIC ASSISTANCE ELIGIBILITY**

**Source: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.**

**§ 206.220 General.**

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

[67 FR 8854, Feb. 26, 2002]

**§ 206.221 Definitions.**

a. Educational institution means:

1. Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

2. Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
  3. Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.
- b. Force account means an applicant's own labor forces and equipment.
  - c. Immediate threat means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.
  - d. Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.
  - e. Private nonprofit facility means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:
    1. Educational facilities means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.
    2. Utility means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.
    3. Irrigation facility means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.
    4. Emergency facility means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.
    5. Medical facility means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms

are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

6. Custodial care facility means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.
  7. Other essential governmental service facility means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.
- f. Private nonprofit organization means any nongovernmental agency or entity that currently has:
1. An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or
  2. Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.
- g. Public entity means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.
- h. Public facility means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.
- i. Standards means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

### **§ 206.222 Applicant eligibility.**

The following entities are eligible to apply for assistance under the State public assistance grant:

- a. State and local governments.
- b. Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 205.221(e).
- c. Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

### **§ 206.223 General work eligibility.**

- a. General. To be eligible for financial assistance, an item of work must:
  1. Be required as the result of the major disaster event,
  2. Be located within a designated disaster area, except that sheltering and evacuation activities may be located outside the designated disaster area, and
  3. Be the legal responsibility of an eligible applicant.
- b. Private nonprofit facilities. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see § 206.221(f)].
- c. Public entities. Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.
- d. Facilities serving a rural community or unincorporated town or village. To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.
- e. Negligence. No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA



in all efforts necessary to recover the cost of such assistance from the negligent party.

[55 FR 2307, Jan. 23, 1990, as amended at 71 FR 40027, July 14, 2006]

**§ 206.224 Debris removal.**

- a. Public interest. Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:
  1. Eliminate immediate threats to life, public health, and safety; or
  2. Eliminate immediate threats of significant damage to improved public or private property; or
  3. Ensure economic recovery of the affected community to the benefit of the community-at-large; or
  4. Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Associate Director for Readiness, Response and Recovery extends this period.
- b. Debris removal from private property. When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.
- c. Assistance to individuals and private organizations. No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

**§ 206.225 Emergency work.**

a. General.

1. Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.
2. In determining whether emergency work is required, the Regional Director may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.
3. In order to be eligible, emergency protective measures must:
  - i. Eliminate or lessen immediate threats to live, public health or safety; or
  - ii. Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

b. Emergency access. An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

c. Emergency communications. Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

d. Emergency public transportation. Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to

resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

### **§ 206.226 Restoration of damaged facilities.**

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

- a. Assistance under other Federal agency (OFA) programs.
  1. Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.
  2. An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.
  3. The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.
- b. Mitigation planning. In order to receive assistance under this section, as of November 1, 2004 (subject to 44 CFR 201.4(a)(2)), the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.
- c. Private nonprofit facilities. Eligible private nonprofit facilities may receive funding under the following conditions:
  1. The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)), sewer services, wastewater

- treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or
2. The private nonprofit organization not falling within the criteria of § 206.226(b)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and
    - i. The Small Business Administration has declined the organization's application; or
    - ii. Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.
  - d. Standards. For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:
    1. Apply to the type of repair or restoration required; (Standards may be different for new construction and repair work)
    2. Be appropriate to the predisaster use of the facility;
    3.
      - i. Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.
      - ii. This paragraph (b) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.
    4. Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and
    5. For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.
  - e. Hazard mitigation. In approving grant assistance for restoration of facilities, the Regional Director may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

f. Repair vs. replacement.

1. A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.
2. If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.
3. An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

g. Relocation.

1. The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:
  - i. The facility is and will be subject to repetitive heavy damage;
  - ii. The approval is not barred by other provisions of title 44 CFR; and
  - iii. The overall project, including all costs, is cost effective.
2. When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.
3. When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.
4. When relocation is required by the Regional Director, and, instead of relocation, the applicant requests approval of an alternate

project [see § 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

5. If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.
- h. Equipment and furnishings. If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.
- i. Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.
- j. Beaches.
  1. Replacement of sand on an unimproved natural beach is not eligible.
  2. Improved beaches. Work on an improved beach may be eligible under the following conditions:
    - i. The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and
    - ii. A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.
- k. Restrictions.
  1. Alternative use facilities. If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.
  2. Inactive facilities. Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly

established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998; 66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004]

#### **§ 206.227 Snow assistance.**

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

#### **§ 206.228 Allowable costs.**

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

##### **a. Eligible direct costs.**

1. Applicant-owned equipment. Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:
  - i. Rates established under State guidelines. In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.
  - ii. Rates established under local guidelines. Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established

rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

- iii. No established rates. The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

## 2. Statutory Administrative Costs.

- i. Grantee. Under section 406(f)(2) of the Stafford Act, we will pay you, the State, an allowance to cover the extraordinary costs that you incur to formulate Project Worksheets for small and large projects, to validate small projects, to prepare final inspection reports, project applications, final audits, and to make related field inspections by State employees. Eligible costs include overtime pay and per diem and travel expenses, but do not include regular time for your State employees. The allowance to the State will be based on the following percentages of the total amount of Federal assistance that we provide for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:
  - A. For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.
  - B. For the next \$900,000, two percent of such assistance.
  - C. For the next \$4,000,000, one percent of such assistance.
  - D. For assistance over \$5,000,000, one-half percent of such assistance.
- ii. Subgrantee. Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):
  - A. For the first \$100,000 of net eligible costs, three percent of such costs;
  - B. For the next \$900,000, two percent of such costs;
  - C. For the next \$4,000,000, one percent of such costs;



D. For those costs over \$5,000,000, one-half percent of such costs.

3. State Management Administrative Costs.

- i. Grantee. Except for the items listed in paragraph (a)(2)(i) of this section, other administrative costs shall be paid in accordance with 44 CFR 13.22.
- ii. Subgrantee. No other administrative costs of a subgrantee are eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

4. Force Account Labor Costs. The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Act, 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.

b. Eligible indirect costs.

1. Grantee. Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87.
2. Subgrantee. No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999]

**§§ 206.229-206.249 [Reserved]**

**SUBPART I—PUBLIC ASSISTANCE INSURANCE REQUIREMENTS**

**Source: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.**

**§ 206.250 General.**

- a. Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93–234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section 406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.
- b. Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the Grantee.
- c. Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.
- d. The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with § 206.252.
- e. The insurance requirements of this subpart should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

**§ 206.251 Definitions.**

- a. Assistance means any form of a Federal grant under section 406 of the Stafford Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.
- b. Building means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.

- c. Community means any State or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaskan Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
- d. National Flood Insurance Program (NFIP) means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- e. Special flood hazard area means an area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30 VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area", as defined in 44 CFR part 59.
- f. Standard Flood Insurance Policy means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

**§ 206.252 Insurance requirements for facilities damaged by flood.**

- a. Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Director, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.
- b. The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.
- c. Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Regional Director of any entitlement to an insurance settlement or recovery. The Regional Director shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.

- d. The grantee or subgrantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Director shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

**§ 206.253 Insurance requirements for facilities damaged by disasters other than flood.**

- a. Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.
- b. 1. Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.
2. Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.
- c. The Regional Director shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of

insurance required to protect against future loss to a disaster-damaged facility, the Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

- d. The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Director may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.
- e. The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.
- f. No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

**§§ 206.254-206.339 [Reserved]**

**SUBPART J—COASTAL BARRIER RESOURCES ACT**

**Source: 55 FR 2311, Jan. 23, 1990, unless otherwise noted.**

**§ 206.340 Purpose of subpart.**

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

**§ 206.341 Policy.**

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal

revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

### **§ 206.342 Definitions.**

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

- a. Consultation means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.
- b. Essential link means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.
- c. Existing facility on a unit of CBRS established by Public Law 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.
- d. Expansion means changing a facility to increase its capacity or size.
- e. Facility means “public facility” as defined in § 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

- f. Financial assistance means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.
- g. New financial assistance on a unit of the CBRS established by Public Law 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.
- h. Start of construction for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.
- i. Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.
- j. Substantial improvement means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities") as defined in the Stafford Act) either:
  - 1. Before the repair or improvement is started; or
  - 2. If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term substantial improvement does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

- k. System unit means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

**§ 206.343 Scope.**

- a. The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.
- b. FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:
  - 1. Individual and Family Grants that are not for acquisition or construction purposes;
  - 2. Crisis counseling;
  - 3. Disaster Legal services; and
  - 4. Disaster unemployment assistance.

**§ 206.344 Limitations on Federal expenditures.**

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

- a. Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;
- b. Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and
- c. Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.



## **§ 206.345 Exceptions.**

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

- a. After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:
  1. Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;
  2. Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and
  3. Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.
- b. After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;
  1. Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;
  2. Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);
  3. Repair of air and water navigation aids and devices, and of the access thereto;
  4. Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;
  5. Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife

habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

6. Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

#### **§ 206.346 Applicability to disaster assistance.**

- a. Emergency assistance. The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:
  1. Removal of debris from public property;
  2. Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;
  3. Emergency restoration of essential community services such as electricity, water or sewer;
  4. Provision of access to a private residence;
  5. Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;
  6. Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);
  7. Home repairs to private owner-occupied primary residences to make them habitable;
  8. Housing eligible families in existing resources in the CBRS; and
  9. Mortgage and rental payment assistance.
- b. Permanent restoration assistance. Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

1. Roads and bridges;
2. Drainage structures, dams, levees;
3. Buildings and equipment;
4. Utilities (gas, electricity, water, etc.); and
5. Park and recreational facilities.

**§ 206.347 Requirements.**

- a. Location determination. For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:
  1. Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRM's) for the convenience of field personnel.
  2. If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.
  3. If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and 206.349.
- b. Emergency disaster assistance. For each emergency disaster assistance action listed in § 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.
  1. FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

2. Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:
  - i. Identification of the unit in the CBRS;
  - ii. Description of work approved;
  - iii. Amount of Federal funding; and
  - iv. Additional measures required.
- c. Permanent restoration assistance. For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Director shall meet the requirements set out below.
  1. Essential links. For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:
    - i. No facility may be expanded beyond its predisaster design.
    - ii. Consultation in accordance with § 206.348 shall be accomplished.
  2. Channel improvements. For the repair of existing channels, related structures and the disposal of dredged materials:
    - i. No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;
    - ii. Expansion of the facility beyond its predisaster design is not permitted;
    - iii. Consultation in accordance with § 206.348 shall be accomplished.
  3. Energy facilities. For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

- i. No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;
  - ii. Consultation in accordance with § 206.348 shall be accomplished.
4. Special-purpose facilities. For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:
  - i. Consultation in accordance with § 206.348 shall be accomplished;
  - ii. No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.
5. Other public facilities. For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:
  - i. No such facility may be repaired, reconstructed, or replaced unless it is an “existing facility;”
  - ii. Expansion of the facility beyond its predisaster design is not permitted;
  - iii. Consultation in accordance with § 206.348 shall be accomplished;
  - iv. No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.
6. Private nonprofit facilities. For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

- i. Consultation in accordance with § 206.348 shall be accomplished.
  - ii. No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.
7. Improved project. An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.
8. Alternate project. A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

#### **§ 206.348 Consultation.**

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

- a. The consultation shall be by written memorandum to the DOI representative and shall contain the following:
  1. Identification of the unit within the CBRS;
  2. Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;
  3. Amount of proposal Federal funding;
  4. Additional mitigation measures required; and
  5. A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

- b. Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.
- c. For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

### **§ 206.349 Consistency determinations.**

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along with Atlantic and Gulf coasts. For those actions where a consistency determination is required, the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

- a. Impact identification. FEMA shall identify impacts of the following types that would result from the proposed action:
  - 1. Risks to human life;
  - 2. Risks of damage to the facility being repaired or replaced;
  - 3. Risks of damage to other facilities;
  - 4. Risks of damage to fish, wildlife, and other natural resources;

5. Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
  6. Encouragement of new development.
- b. Mitigation. FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.
  - c. Conservation. FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.
  - d. Finding. For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

**§§ 206.350-206.359 [Reserved]**

**SUBPART K—COMMUNITY DISASTER LOANS**

**Source: 55 FR 2314, Jan. 23, 1990, unless otherwise noted.**

**§ 206.360 Purpose.**

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Stafford Act. Sections 206.360 through 206.367 of the subpart do not implement the Community Disaster Loan Act of 2005. (see § 206.370).

[70 FR 60446, Oct. 18, 2005]

**§ 206.361 Loan program.**

- a. General. The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.
- b. Amount of loan. The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but shall not exceed



\$5 million. The term fiscal year as used in this subpart means the local government's fiscal year.

- c. Interest rate. The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest 1/8 percent.
- d. Time limitation. The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.
- e. Term of loan. The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)
- f. Use of loan funds. The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonFederal share of any Federal program, including those under the Act.
- g. Cancellation. The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

- h. Relation to other assistance. Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]

### **§ 206.362 Responsibilities.**

- a. The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.
- b. The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.
- c. The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.
- d. The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.
- e. The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee

shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

- f. The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

**§ 206.363 Eligibility criteria.**

a. Local government.

1. The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.
2. Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

b. Loan eligibility.

1. General. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, must demonstrate a need for financial assistance in order to perform its governmental functions, and must not be in arrears with respect to any payments due on previous loans. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.
2. Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

- i. Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;
  - ii. Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;
3. Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:
  - i. Whether there are sufficient funds to meet current fiscal year operating requirements;
  - ii. Whether there is availability of cash or other liquid assets from the prior fiscal year;
  - iii. Current financial condition considering projected expenditures for governmental services and availability of other financial resources;
  - iv. Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
  - v. Debt ratio (relationship of annual receipts to debt service);
  - vi. Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
  - vii. Displacement of revenue-producing business due to property destruction;
  - viii. Necessity to reduce or eliminate essential municipal services; and
  - ix. Danger of municipal insolvency.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]

### **§ 206.364 Loan application.**

- a. Application.

1. The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).
  2. The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.
- b. Financial requirements.
1. The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.
    - i. Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.
    - ii. Each application for a Community Disaster Loan must also include:

- A. A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and
    - B. A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.
  2. Operating budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
  3. Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.
  4. Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.
  5. Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in § 206.366(b).
- c. Federal review.
1. The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.
  2. Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of

inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

d. Community disaster loan.

1. The loan shall not exceed the lesser of:
  - i. The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or
  - ii. 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.
2. Promissory note.
  - i. Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.
  - ii. If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

**§ 206.365 Loan administration.**

a. Funding.

1. FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.
2. When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA

in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

b. Financial management.

1. Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.
2. FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

c. Loan servicing.

1. The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.
2. The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.
3. The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

d. Inactive loans. If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such



funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

**§ 206.366 Loan cancellation.**

a. Policies.

1. FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term operating budget to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
2. If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.
3. If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.
4. If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

5. It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.
- b. Disaster-related expenses of a municipal operation character.
1. For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.
  2. Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.
  3. Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:
    - i. Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.
    - ii. Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.
    - iii. Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.
    - iv. The cost to the applicant of flood insurance required under Public Law 93–234, as amended, and other hazard insurance required under section 311, Public Law 93–288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

4. The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:
  - i. The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.
  - ii. Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.
  - iii. Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.
  - iv. Expenses incurred by the local government which are reimbursed on the applicant's project application.
- c. Cancellation application. A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.
  1. Financial information submitted with the application shall include the following:
    - i. Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;
    - ii. Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.
    - iii. The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:
      - A. The market value of the tax base (dollars);
      - B. The assessment ratio (percent);
      - C. The assessed valuation (dollars);

- D. The tax levy rate (mils);
  - E. Taxes levied and collected (dollars).
- iv. Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.
  - v. Other financial information specified in the Application for Loan Cancellation.
2. Narrative justification. The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.
- d. Determination.
- 1. If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be canceled, the principal amount which is canceled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncanceled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.
  - 2. A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.
  - 3. The uncanceled portion of the loan must be repaid in accordance with § 206.367.
  - 4. Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local

government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approved by the Office of Management and Budget under Control Number 3067-0026)

**§ 206.367 Loan repayment.**

- a. Prepayments. The local government may make prepayments against loan at any time without any prepayment penalty.
- b. Repayment. To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:
  1. The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.
  2. The interest amount due will be computed separately for each Treasury disbursement as follows:  $I = P \times R \times T$ , where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.
  3. Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.
  4. The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

5. Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.
  6. In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.
- c. Additional time. In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:
1. The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.
  2. The principal amount shall be the original uncanceled principal plus related interest.
  3. The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.
  4. The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

**§§ 206.368-206.369 [Reserved]**

**§ 206.370 Purpose and scope.**

- a. Purpose. Sections 206.370 through 206.377 provide policies and procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act and the Community Disaster Loan Act of 2005, Public Law 109–88.
- b. Scope. Sections 206.370 through 206.377 apply only to Special Community Disaster Loans under the Community Disaster Loan Act of 2005, Public Law 109–88. Community Disaster Loans issued prior

to the enactment of Public Law 109–88 or other subsequent loans not issued under the authority of the Public Law 109–88 are not covered under §§ 206.370 through 206.377.

[70 FR 60446, Oct. 18, 2005]

**§ 206.371 Loan program.**

- a. General. The Associate Director may make a Special Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to provide essential services.
- b. Amount of loan. The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.
- c. Interest rate. The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States. If an applicant can demonstrate unusual circumstances involving financial hardship, the Associate Director may approve a rate equal to the five year maturity rate plus 1 per centum, adjusted to the nearest 1/8 percent, and further reduced by one-half.
- d. Time limitation. The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year.
- e. Term of loan. The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider a request for an extension of a loan based on the local government's financial condition. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment (see § 206.377(c)).

- f. Use of loan funds. The local government shall use the loaned funds to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. The loan may not be used as the nonfederal share of any Federal program, including those under the Stafford Act.
- g. Relation to other assistance. Any Special Community Disaster Loans made under this program shall not reduce or otherwise affect any commitments, grants, or other assistance under the Stafford Act or part 206 of this title.

[70 FR 60446, Oct. 18, 2005]

### **§ 206.372 Responsibilities.**

- a. The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, and §§ 206.370 through 206.377. The local government shall send all loan application, loan administration, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the FEMA Associate Director.
- b. The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.
- c. The Regional Director or designee shall review each loan application received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.
- d. The Associate Director, or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment is completed and the Promissory Note is discharged.



- e. The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director.
- f. The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

[70 FR 60446, Oct. 18, 2005]

**§ 206.373 Eligibility criteria.**

a. Local government.

- 1. The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.
- 2. Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

b. Loan eligibility.

- 1. General. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.
- 2. Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a

substantial loss of tax and other revenue include the following disaster-related factors:

- i. Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;
  - ii. Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.
3. Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:
- i. Whether there are sufficient funds to meet current fiscal year operating requirements;
  - ii. Whether there is availability of cash or other liquid assets from the prior fiscal year;
  - iii. Current financial condition considering projected expenditures for governmental services and availability of other financial resources;
  - iv. Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
  - v. Debt ratio (relationship of annual receipts to debt service);
  - vi. Displacement of revenue-producing business due to property destruction;
  - vii. Necessity to reduce or eliminate essential services; and
  - viii. Danger of municipal insolvency.

[70 FR 60446, Oct. 18, 2005]

**§ 206.374 Loan application.**

- a. Application.

1. The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).
  2. The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.
- b. Financial requirements.
1. The loan application shall be developed from financial information contained in the local government's annual operating budget (see paragraph (b)(2) of this section) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, and certification and assurances requested by the Associate Director.
    - i. Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must, unless impracticable, accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.
    - ii. Each application for a Special Community Disaster Loan must also include:

- A. A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and
    - B. A copy of the pertinent State statutes, ordinances, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.
  2. Operating budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.
  3. Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.
  4. Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due.
  5. Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated.
- c. Federal review.
1. The Associate Director or designee shall approve a Special Community Disaster Loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance as the result of the disaster to provide essential municipal services.
  2. Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be submitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.
- d. Special Community Disaster Loan.
1. The loan shall not exceed the lesser of:

- i. The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or
  - ii. 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.
2. Promissory note.
  - i. Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see paragraph (d)(2)(ii) of this section). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.
  - ii. If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.
- e. Waiver of requirements. Notwithstanding any other provision of this or other sections promulgated pursuant to Public Law 109–88, the Associate Director may, upon the request of an applicant or loan recipient, waive any specific application requirement or financial reporting requirement (see, e.g., § 206.375(a)(2)) upon a finding by the Associate Director that the effects of the major disaster prevent the applicant from fulfilling the application requirement and that waiving the requirements would be consistent with the purposes of the Community Disaster Loan Act of 2005.

[70 FR 60446, Oct. 18, 2005]

### **§ 206.375 Loan administration.**

- a. Funding.
  1. FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.
  2. When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial

report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds.

b. Financial management.

1. Each local government with an approved Special Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.
2. FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, the Department of Homeland Security Inspector General, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under §§ 206.370 through 206.377.

c. Loan servicing.

1. The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.
2. FEMA will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.
3. FEMA shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

d. Inactive loans. If no funds have been disbursed from the loan program, and if the local government does not anticipate a need for

such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA.

[70 FR 60446, Oct. 18, 2005]

**§ 206.376 [Reserved]**

**§ 206.377 Loan repayment.**

- a. Prepayments. The local government may make prepayments against loan at any time without any prepayment penalty.
- b. Repayment. Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:
  1. The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by FEMA or FEMA's designated Disbursing Agency.
  2. The interest amount due will be computed separately for each Treasury disbursement as follows:  $I = P \times R \times T$ , where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year.
  3. Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.
  4. The Associate Director may defer payments of principal and interest for up to five years. However, interest will continue to accrue.
  5. Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.
  6. In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the

outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

- c. Additional time. In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:
1. The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.
  2. The principal amount shall be the original principal plus related interest less any payments made.
  3. The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate. A reduced rate may not be applied if it was not previously applied to the loan.
  4. The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

[70 FR 60446, Oct. 18, 2005]

**§§ 206.378-206.389 [Reserved]**

**SUBPART L—FIRE SUPPRESSION ASSISTANCE**

**Source: 55 FR 2318, Jan. 23, 1990, unless otherwise noted.**

**§ 206.390 General.**

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

**§ 206.391 FEMA-State Agreement.**

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance



(the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

**§ 206.392 Request for assistance.**

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the control number 3067–0066)

**§ 206.393 Providing assistance.**

Following the Associate Director’s decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

**§ 206.394 Cost eligibility.**

- a. Cost principles. See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments.
- b. Program specific eligible costs.
  - 1. Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.
  - 2. Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

3. Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.
  4. Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.
  5. Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.
  6. Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.
  7. Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.
  8. Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.
  9. State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/State and privately owned forest or grassland.
  10. In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.
- c. Program specific ineligible costs.
1. Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.
  2. Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

3. State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

**§ 206.395 Grant administration.**

- a. Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.
- b. In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)
- c. Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. (See subpart G of this part.)
- d. A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

**§§ 206.396-206.399 [Reserved]**



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## **SUBPART A—GENERAL**

### **§ 13.1 Purpose and scope of this part.**

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

### **§ 13.2 Scope of subpart.**

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

### **§ 13.3 Definitions.**

As used in this part:

*Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for:

1. Goods and other tangible property received;
2. Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and
3. Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

*Accrued income* means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

*Acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

*Administrative requirements* mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a

program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

*Awarding agency* means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

*Cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

*Contract* means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

*Cost sharing or matching* means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

*Cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

*Equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

*Expenditure report* means:

1. For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);
2. For construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

*Federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.



*Government* means a State or local government or a federally recognized Indian tribal government.

*Grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

*Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

*Local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

*Obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

*OMB* means the United States Office of Management and Budget.

*Outlays* (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or

performance are required, such as annuities, insurance claims, and other benefit payments.

*Percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

*Prior approval* means documentation evidencing consent prior to incurring specific cost.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Share*, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

*State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

*Subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

*Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

*Supplies* means all tangible personal property other than equipment as defined in this part.

*Suspension* means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion

of an investigation and such legal or debarment proceedings as may ensue.

*Termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. “Termination” does not include:

1. Withdrawal of funds awarded on the basis of the grantee’s underestimate of the unobligated balance in a prior period;
2. Withdrawal of the unobligated balance as of the expiration of a grant;
3. Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or
4. Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

*Terms of a grant or subgrant* mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

*Third party in-kind contributions* mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

*Unliquidated obligations for reports prepared on a cash basis* mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

#### **§ 13.4 Applicability.**

- a. General. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of section 13.6, or:

1. Grants and subgrants to State and local institutions of higher education or State and local hospitals.
2. The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, Chapter 2, Section 583— the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant).
3. Entitlement grants to carry out the following programs of the Social Security Act:
  - i. Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);
  - ii. Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);
  - iii. Foster Care and Adoption Assistance (Title IV-E of the Act);
  - iv. Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and
  - v. Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).
4. Entitlement grants under the following programs of The National School Lunch Act:
  - i. School Lunch (section 4 of the Act),
  - ii. Commodity Assistance (section 6 of the Act),
  - iii. Special Meal Assistance (section 11 of the Act),

- iv. Summer Food Service for Children (section 13 of the Act), and
  - v. Child Care Food Program (section 17 of the Act).
5. Entitlement grants under the following programs of The Child Nutrition Act of 1966:
    - i. Special Milk (section 3 of the Act), and
    - ii. School Breakfast (section 4 of the Act).
  6. Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).
  7. A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;
  8. Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;
  9. Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and
  10. Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).
- b. Entitlement programs. Entitlement programs enumerated above in § 13.4(a) (3) through (8) are subject to subpart E.

### **§ 13.5 Effect on other issuances.**

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 13.6.

### **§ 13.6 Additions and exceptions.**

- a. For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.
- b. Exceptions for classes of grants or grantees may be authorized only by OMB.
- c. Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

## **SUBPART B—PRE-AWARD REQUIREMENTS**

### **§ 13.10 Forms for applying for grants.**

- a. Scope.
  1. This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.
  2. This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.
- b. Authorized forms and instructions for governmental organizations.
  1. In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.
  2. Applicants are not required to submit more than the original and two copies of preapplications or applications.
  3. Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction

Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

4. When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

### **§ 13.11 State plans.**

- a. Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.
- b. Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.
- c. Assurances. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:
  1. Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,
  2. Repeat the assurance language in the statutes or regulations, or
  3. Develop its own language to the extent permitted by law.
- d. Amendments. A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

**§ 13.12 Special grant or subgrant conditions for “high-risk” grantees.**

- a. A grantee or subgrantee may be considered “high risk” if an awarding agency determines that a grantee or subgrantee:
  1. Has a history of unsatisfactory performance, or
  2. Is not financially stable, or
  3. Has a management system which does not meet the management standards set forth in this part, or
  4. Has not conformed to terms and conditions of previous awards, or
  5. Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
- b. Special conditions or restrictions may include:
  1. Payment on a reimbursement basis;
  2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
  3. Requiring additional, more detailed financial reports;
  4. Additional project monitoring;
  5. Requiring the grante or subgrantee to obtain technical or management assistance; or
  6. Establishing additional prior approvals.
- c. If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
  1. The nature of the special conditions/restrictions;
  2. The reason(s) for imposing them;
  3. The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and



4. The method of requesting reconsideration of the conditions/ restrictions imposed.

## **SUBPART C—POST-AWARD REQUIREMENTS**

### **Financial Administration**

#### **§ 13.20 Standards for financial management systems.**

- a. A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—
  1. Permit preparation of reports required by this part and the statutes authorizing the grant, and
  2. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
- b. The financial management systems of other grantees and subgrantees must meet the following standards:
  1. Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
  2. Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially- assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
  3. Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
  4. Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data,

including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

5. Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
  6. Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
  7. Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter of- credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.
- c. An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

### **§ 13.21 Payment.**

- a. Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.
- b. Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

- c. Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.
- d. Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.
- e. Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.
- f. Effect of program income, refunds, and audit recoveries on payment.
  - 1. Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
  - 2. Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.
- g. Withholding payments.

1. Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless:
    - i. The grantee or subgrantee has failed to comply with grant award conditions or
    - ii. The grantee or subgrantee is indebted to the United States.
  2. Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 13.43(c).
  3. A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- h. Cash depositories.
1. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.
  2. A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.
    - i. Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

### § 13.22 Allowable costs.

- a. Limitation on use of funds. Grant funds may be used only for:
  1. The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
  2. Reasonable fees or profit to cost type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
- b. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

<b>For the costs of a—</b>	<b>Use the principles in—</b>
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

### § 13.23 Period of availability of funds.

- a. General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.
- b. Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide

with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

### **§ 13.24 Matching or cost sharing.**

a. Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

1. Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.
2. The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

b. Qualifications and exceptions.

1. Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.
2. General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.
3. Cost or contributions counted towards other Federal cost-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.
4. Costs financed by program income. Costs financed by program income, as defined in § 13.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 13.25(g).)

5. Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.
6. Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.
7. Special standards for third party in-kind contributions.
  - i. Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.
  - ii. Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.
  - iii. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:
    - A. An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or
    - B. A cost savings to the grantee or subgrantee.
  - iv. The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind

contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

c. Valuation of donated services.

1. Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.
2. Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

d. Valuation of third party donated supplies and loaned equipment or space.

1. If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.
2. If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

e. Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

1. Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,
2. Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:



- i. If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost-sharing or matching.
  - ii. If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 13.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.
- f. Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.
- g. Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

### **§ 13.25 Program income.**

- a. General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.
- b. Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award reflected in the final financial report.
- c. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
- d. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.
- e. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 13.34.)
- f. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 13.31 and 13.32.
- g. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees

and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

1. Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
  2. Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.
  3. Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.
- h. Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

### **§ 13.26 Non-Federal audit.**

- a. Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.” The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.
- b. Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

1. Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A- 110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;
  2. Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;
  3. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;
  4. Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and
  5. Require each subgrantee to permit independent auditors to have access to the records and financial statements.
- c. Auditor selection. In arranging for audit services, § 13.36 shall be followed.

[53 FR 8079, 887, Mar. 11, 1988, as amended at 62 FR 45939, 45945, Aug. 29, 1997

## **Changes, Property, and Subawards**

### **§ 13.30 Changes.**

- a. General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

- b. Relation to cost principles. The applicable cost principles (see § 13.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.
- c. Budget changes.
  - 1. Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:
    - i. Any revision which would result in the need for additional funding.
    - ii. Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.
    - iii. Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).
  - 2. Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.
  - 3. Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.
- d. Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:
  - 1. Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).
  - 2. Need to extend the period of availability of funds.

3. Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
  4. Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 13.36 but does not apply to the procurement of equipment, supplies, and general support services.
- e. Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.
  - f. Requesting prior approval.
    1. A request for prior approval of any budget revision will be in the same budget form as the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.
    2. A request for a prior approval under the applicable Federal cost principles (see § 13.22) may be made by letter.
    3. A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

### **§ 13.31 Real property.**

- a. Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- b. Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed

for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

- c. Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
  1. Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
  2. Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
  3. Transfer of title. Transfer title to the awarding agency or to a third party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

### **§ 13.32 Equipment.**

- a. Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- b. States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and

procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

c. Use.

1. Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
2. The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
3. Notwithstanding the encouragement in § 13.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
4. When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

d. Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.



2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
  4. Adequate maintenance procedures must be developed to keep the property in good condition.
  5. If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- e. Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
1. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
  2. Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
  3. In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.
- f. Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:
1. Title will remain vested in the Federal Government.
  2. Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.
  3. When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

- g. Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
1. The property shall be identified in the grant or otherwise made known to the grantee in writing.
  2. The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 13.32(e).
  3. When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

### **§ 13.33 Supplies.**

- a. Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.
- b. Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

### **§ 13.34 Copyrights.**

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- a. The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- b. Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

### **§ 13.35 Subawards to debarred and suspended parties.**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or

suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

**§ 13.36 Procurement.**

- a. States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.
- b. Procurement standards.
  1. Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
  2. Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
  3. Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - i. The employee, officer or agent,
    - ii. Any member of his immediate family,
    - iii. His or her partner, or
    - iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee’s or subgrantee’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors,

potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

4. Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
5. To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
6. Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
7. Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
8. Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

9. Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
  10. Grantees and subgrantees will use time and material type contracts only:
    - i. After a determination that no other contract is suitable, and
    - ii. If the contract includes a ceiling price that the contractor exceeds at its own risk.
  11. Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
  12. Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:
    - i. Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
    - ii. Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.
- c. Competition.

1. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are not limited to:
  - i. Placing unreasonable requirements on firms in order for them to qualify to do business,
  - ii. Requiring unnecessary experience and excessive bonding,
  - iii. Noncompetitive pricing practices between firms or between affiliated companies,
  - iv. Noncompetitive awards to consultants that are on retainer contracts,
  - v. Organizational conflicts of interest,
  - vi. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
  - vii. Any arbitrary action in the procurement process.
2. Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
  - i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum

essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

- ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

d. Methods of procurement to be followed:

1. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
2. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 13.36(d)(2)(i) apply.
  - i. In order for sealed bidding to be feasible, the following conditions should be present:
    - A. A complete, adequate, and realistic specification or purchase description is available;
    - B. Two or more responsible bidders are willing and able to compete effectively and for the business; and

- C. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- ii. If sealed bids are used, the following requirements apply:
  - A. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - B. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
  - C. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - D. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - E. Any or all bids may be rejected if there is a sound documented reason.
- 3. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  - i. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
  - ii. Proposals will be solicited from an adequate number of qualified sources;
  - iii. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;



- iv. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - v. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
4. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
- i. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
    - A. The item is available only from a single source;
    - B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - C. The awarding agency authorizes noncompetitive proposals; or
    - D. After solicitation of a number of sources, competition is determined inadequate.
  - ii. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
  - iii. Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
- e. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

1. The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
  - v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.
- f. Contract cost and price.
  1. Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on

prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

2. Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 13.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

g. Awarding agency review.

1. Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- i. A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
  - ii. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
  - iii. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
  - iv. The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - v. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
3. A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
- i. A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
  - ii. A grantee or subgrantee may self certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.
- h. Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding

agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
  2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- i. Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
  2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
  3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
  4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29

CFR Part 3). (All contracts and subgrants for construction or repair)

5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995]

### **§ 13.37 Subgrants.**

- a. States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:
  1. Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;
  2. Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;
  3. Ensure that a provision for compliance with § 13.42 is placed in every cost reimbursement subgrant; and
  4. Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.
- b. All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:
  1. Ensure that every subgrant includes a provision for compliance with this part;
  2. Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and
  3. Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.
- c. Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

1. Section 13.10;
2. Section 13.11;
3. The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 13.21; and
4. Section 13.50.

## **Reports, Records Retention, and Enforcement**

### **§ 13.40 Monitoring and reporting program performance.**

- a. Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.
- b. Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.
  1. Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.
  2. Performance reports will contain, for each grant, brief information on the following:
    - i. A comparison of actual accomplishments to the objectives established for the period. Where the output of the project



can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

- ii. The reasons for slippage if established objectives were not met.
  - iii. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
3. Grantees will not be required to submit more than the original and two copies of performance reports.
  4. Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.
- c. Construction performance reports. For the most part, on-site technical inspections and certified percentage-of completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.
  - d. Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:
    1. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
    2. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
  - e. Federal agencies may make site visits as warranted by program needs.
  - f. Waivers, extensions.
    1. Federal agencies may waive any performance report required by this part if not needed.

2. The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

### **§ 13.41 Financial reporting.**

#### a. General.

1. Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:
  - i. Submitting financial reports to Federal agencies, or
  - ii. Requesting advances or reimbursements when letters of credit are not used.
2. Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.
3. Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.
4. Grantees will not be required to submit more than the original and two copies of forms required under this part.
5. Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.
6. Federal agencies may waive any report required by this section if not needed.

7. Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

b. Financial Status Report.

1. Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.
2. Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.
3. Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.
4. Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

c. Federal Cash Transactions Report.

1. Form.
  - i. For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.
  - ii. These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting

is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

2. Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the “Remarks” section of the report.
  3. Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days’ needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.
  4. Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.
- d. Request for advance or reimbursement.
1. Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)
  2. Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)
  3. The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.
- e. Outlay report and request for reimbursement for construction programs.
1. Grants that support construction activities paid by reimbursement method.

- i. Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.
  - ii. The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.
2. Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.
  - i. When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by paragraphs (b) (3) and (4) of this section.
  - ii. When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in paragraph (d) of this section.
  - iii. The Federal agency may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.
3. Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by paragraph (b)(2) of this section.

#### **§ 13.42 Retention and access requirements for records.**

##### **a. Applicability.**

1. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:
  - i. Required to be maintained by the terms of this part, program regulations or the grant agreement, or

- ii. Otherwise reasonably considered as pertinent to program regulations or the grant agreement.
  2. This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 13.36(i)(10).
- b. Length of retention period.
1. Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.
  2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.
  3. To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.
- c. Starting date of retention period.
1. General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.
  2. Real property and equipment records. The retention period for real property and equipment records starts from the date of the

disposition or replacement or transfer at the direction of the awarding agency.

3. Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
4. Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - i. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - ii. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- d. Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.
- e. Access to records.
  1. Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

2. Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.
- f. Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

### **§ 13.43 Enforcement.**

- a. Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:
1. Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
  2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
  3. Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
  4. Withhold further awards for the program, or
  5. Take other remedies that may be legally available.
- b. Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.
- c. Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:



1. The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect. (d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to “Debarment and Suspension” under E.O. 12549 (see § 13.35).

#### **§ 13.44 Termination for convenience.**

Except as provided in § 13.43 awards may be terminated in whole or in part only as follows:

- a. By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- b. By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 13.43 or paragraph (a) of this section.

### **SUBPART D—AFTER-THE-GRANT REQUIREMENTS**

#### **§ 13.50 Closeout.**

- a. General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.
- b. Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

1. Final performance or progress report.
  2. Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)
  3. Final request for payment (SF-270) (if applicable).
  4. Invention disclosure (if applicable).
  5. Federally-owned property report: In accordance with § 13.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.
- c. Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.
- d. Cash adjustments.
1. The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.
  2. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

### **§ 13.51 Later disallowances and adjustments.**

The closeout of a grant does not affect:

- a. The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;
- b. The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
- c. Records retention as required in § 13.42;
- d. Property management requirements in §§ 13.31 and 13.32; and
- e. Audit requirements in § 13.26.

### **§ 13.52 Collection of amounts due.**

- a. Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the

award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

1. Making an administrative offset against other requests for reimbursements,
  2. Withholding advance payments otherwise due to the grantee, or
  3. Other action permitted by law.
- b. Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Chapter II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

