

Table of Contents

9500 Infrastructure

Table of Contents
Index

9510 Public Assistance Program Administration and Appeals

9510.1 Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation (1/9/01) and Appendix (4/17/01)

9520 Public Assistance Eligibility

9521 Applicant Eligibility

- 9521.1 Community Center Eligibility (6/19/08)
- 9521.2 Private Nonprofit Museum Eligibility (8/17/99)
- 9521.3 Private Nonprofit (PNP) Facility Eligibility (7/18/07)
- 9521.4 Administering American Indian and Alaska Native Tribal Government Funding (4/30/07)
- 9521.5 Eligibility of Charter Schools (Interim Policy) (6/16/06)

9522 General Work Eligibility

9523 Emergency Work

- 9523.1 Snow Assistance Policy (12/28/99)
- 9523.2 Eligibility of Building Inspections in a Post-Disaster Environment (1/28/08)
- 9523.3 Provision of Temporary Relocation Facilities (7/16/98)
- 9523.4 Demolition of Private Structures (7/18/07)
- 9523.6 Mutual Aid Agreements for Public Assistance and Fire Management Assistance (8/13/07)
- 9523.7 Public Housing Authorities (PHAs) (4/14/03)
- 9523.8 Mission Assignments for ESF #10 (6/4/01)
- 9523.9 100% Funding for Direct Federal Assistance and Grant Assistance (6/9/06)
- 9523.10 Eligibility of Vector Control (Mosquito Abatement) (9/12/06)
- 9523.11 Hazardous Stump Extraction and Removal Eligibility (5/15/07)
- 9523.12 Debris Operations – Hand-Loaded Trucks and Trailers (5/1/06)
- 9523.13 Debris Removal from Private Property (7/18/07)
- 9523.15 Eligible Costs Related to Evacuations and Sheltering (4/6/07)
- 9523.17 Emergency Assistance for Human Influenza Pandemic (3/31/07)
- 9523.18 Host-State Evacuation and Sheltering Reimbursement (7/18/07)
- 9523.19 Eligible Costs Related to Pet Evacuations and Sheltering (10/24/07)

9524 Restoration of Damaged Facilities

- 9524.1 Policy on the Eligibility of Welded Steel Moment-Frame Inspections (11/5/07)
- 9524.2 Landslides and Slope Failures (5/23/06)
- 9524.3 Policy for Rehabilitation Assistance for Levees and Other Flood Control Works (8/17/99)
- 9524.4 Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) (The 50% Rule) (9/24/98)
- 9524.5 Trees, Shrubs and Other Plantings Associated with Facilities (7/18/07)
- 9524.6 Collections and Individual Objects (6/30/08)
- 9524.7 Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster (6/8/01)
- 9524.8 Eligibility for Permanent Repair of Roads on Tribal Lands (7/24/07)
- 9524.9 Replacement of Animals Associated with Eligible Facilities (8/18/08)

9525 Allowable Costs

- 9525.1 Post Disaster Property Tax Assessment (12/12/07)
- 9525.2 Donated Resources (4/9/07)
- 9525.3 Duplication of Benefits (7/24/07)
- 9525.4 Emergency Medical Care and Medical Evacuations (7/16/08)
- 9525.5 Americans with Disabilities Act (ADA) Access Requirements (10/26/00)
- 9525.6 Project Supervision and Management Costs of Subgrantees (4/22/01)
- 9525.7 Labor Costs - Emergency Work (11/16/06)
- 9525.8 Damage to Applicant Owned Equipment (8/17/99)
- 9525.9 Section 324 Management Costs and Direct Administrative Costs (3/12/08)
- 9525.11 Payment of Contractors for Grant Management Tasks (4/22/01)
- 9525.12 Disposition of Equipment, Supplies and Salvageable Materials (7/14/08)
- 9525.13 Alternate Projects (8/22/08)
- 9525.14 Grantee Administrative Costs (11/7/06)
- 9525.15 Telecommunications Support Lines for States (7/11/00)
- 9525.16 Research-Related Equipment and Furnishings (5/4/07)

9526 Mitigation

- 9526.1 Hazard Mitigation Funding Under Section 406 (Stafford Act) (7/30/07)

9527 Codes and Standards

- 9527.1 Seismic Safety – New Construction (11/21/07)
- 9527.4 Construction Codes and Standards (2/5/08)

9528 *(Reserved)*

9529 *(Reserved)*

9530 Public Assistance Insurance Requirements

9530.1 Retroactive Application of a Letter of Map Amendment (LOMA) or a Letter of Map Revision (LOMR) to Infrastructure Grants (8/8/00)

9540 *(Reserved)*

9550 Fire Suppression Assistance

9550.3 Interim Policy on Fire Suppression Assistance (3/19/01)

9560 Compliance with Environmental, Historic Preservation, Cultural Initiatives, Other Laws

9560.1 Environmental Policy Memoranda (8/17/99)

9560.3 Programmatic Agreement-Historic Review (5/29/02)

9570 Standard Operating Procedures (limited distribution of hard copy – separate filing)

9570.2 SOP Public Assistance Coordinator (9/99)

9570.4 SOP Kickoff Meeting (9/99)

9570.5 SOP Project Formulation (9/99)

9570.6 SOP Validation of Small Projects (9/99)

9570.7 SOP Immediate Needs Funding (9/99)

9570.8 SOP Cost Estimating Format for Large Projects (11/98)

9570.9 SOP Historic Review (9/01)

9580 Job Aids and Fact Sheets (limited distribution of hard copy – separate filing)

9580.2 Fact Sheet: Insurance Responsibilities for Field Personnel (6/4/07)

9580.3 Fact Sheet: Insurance Considerations for Applicants (5/29/08)

9580.4 Fact Sheet: Debris Operations – Clarification (1/19/01)

9580.100 Fact Sheet: Mold Remediation (11/07/06)

9580.101 Fact Sheet: Frequently Asked Questions (FAQs) 2006 Special Community Disaster Loan Program (8/21/06)

9580.102 Fact Sheet: Permanent Relocation (11/2/06)
Permanent Relocation Fact Sheet Clarification Memorandum (5/29/07)

9580.103 Fact Sheet: GSA Disaster Recovery Purchasing Program (7/7/08)

9580.201 Fact Sheet: Debris Removal Applicant Checklist (4/10/06)

9580.202 Fact Sheet: Debris Removal Authorities of Federal Agencies (1/27/07)

9580.203 Fact Sheet: Debris Monitoring (5/3/07)

9590 (Reserved)

DSGs

- DSG 1: Million Dollar Queue Notification for Hurricane Katrina
- DSG 2: Eligible Costs for Emergency Sheltering Declarations – Katrina
- DSG 3: Hurricane Katrina Private Property Debris Removal in Coastal Areas
- DSG 5: Leasing of Warehouse Space for Donated Goods
- DSG 6: Hurricane Rita Private Property Debris Removal in Heavily Impacted Areas
- DSG : Charging of Emergency Protective Measure Costs (Category B) Between Hurricanes Katrina and Rita
- DSG : Utility Subsidies for Katrina/Rita Evacuees



Other FEMA Sources:

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended
- The Code of Federal Regulations -- Title 44
- FEMA 321 PA Policy Digest
- FEMA 322 PA Guide (replaced FEMA 286)
- FEMA 323 PA Applicant Handbook
- FEMA 324CD PA Eligibility
- FEMA 325 PA Debris Management Guide
- FEMA 326 *(Reserved)*
- FEMA 327CD National Historic Preservation Act
- FEMA 328 Public Assistance Program (Factsheet)
- FEMA 328S El Programa Asistencia Pública
- FEMA 329 *(Reserved)*
- FEMA 330 *(Reserved)*



INDEX

50% Rule.....	9524.4
404 Hazard Mitigation.....	9523.4
406 Hazard Mitigation.....	9526.1
ADA.....	9525.5
Advisory Council on Historical Preservation.....	9560.3
Alaska Native Tribal Government.....	9521.4
American Indian.....	9521.4
Americans with Disabilities Act.....	9525.5
Applicant-Owned Equipment.....	9525.8
Arboretums.....	9521.2
Art Objects.....	9524.6
Assessments.....	9525.1
Blizzards.....	9523.1
Botanical Gardens.....	9521.2
Building Code Inspections.....	9523.2
Building Inspections.....	9523.2
Buyout and Relocation Projects.....	9523.4
Charter Schools, Eligibility of.....	9521.5
Code Upgrades.....	9524.4
Collections.....	9524.6
Community Center.....	9521.1
Construction Inspections.....	9523.2
Contiguous Counties.....	9523.1
Contributions.....	9525.2
Cost Effectiveness.....	9526.1
Damaged Equipment.....	9525.8
Debris.....	9523.4
Debris Removal from Private Property.....	9523.13
Debris Removal from Private Property Immediate Threat.....	9523.14
Debris Operations – Hand-Loaded Trucks.....	9523.12
Demolition.....	9523.4
Direct Federal Assistance.....	9523.9
Disabilities Act.....	9525.5
Disposition of Equipment and Supplies.....	9525.12
Donated Resources.....	9523.6, 9525.2
Duplication of Benefits.....	9525.3
Emergency Operating Centers.....	9550.3
Emergency Work - Labor Costs.....	9525.7
Environmental Policy Memos.....	9560.1
Equipment.....	9525.12
Excess Credit.....	9525.2
Exhibits.....	9524.6

Facility Ownership.....	9521.3
Fair Market Value.....	9525.12
Fire Suppression.....	9550.3
Flood Control Works.....	9524.3
Flood Damaged Facilities.....	9530.1
Flood Fighting.....	9524.3
Flood Insurance Rate Maps (FIRM).....	9530.1
Fund Raising.....	9525.3
Geotechnical Studies.....	9524.2
Grantee Administrative Costs.....	9524.2
Grass.....	9524.5
Hazard Mitigation Section 404.....	9523.4
Hazard Mitigation Section 406.....	9526.1
Historical Agreement.....	9560.3
Historical Preservation.....	9560.3
Homeowners Associations.....	9521.3
Indian Tribes.....	9521.4
Insurance Reductions.....	9530.1
LAN/WAN Connections.....	9525.15
Landslides.....	9524.2
Labor Costs - Emergency Work.....	9525.7
Lease Agreements.....	9521.3
Levees.....	9524.3
LOMA.....	9530.1
LOMR.....	9530.1
Medical Care.....	9525.4
Medical Evacuations.....	9525.4
Membership Fees.....	9521.3
Model Agreement – Historical.....	9560.3
Museum (PNP).....	9521.2
Mutual Aid.....	9523.6, 9550.3
NEMIS.....	9525.15
NCRS.....	9524.3
NOAA.....	9523.1
Nursing Facilities.....	9525.4
Open to General Public.....	9521.1, 9521.3
Ownership.....	9521.3
Parks.....	9524.5
Patient Transportation.....	9525.4
Path of Travel (ADA).....	9525.5
Plantings.....	9524.5
Primary Function Area.....	9525.5

Primary Purpose.....	9521.1, 9521.3
Private Nonprofit (PNP)	9521.1, 9521.2, 9521.3
Programmatic Agreement.....	9560.3
Property Tax Assessment.....	9525.1
Public Interest	9523.4
Recreation Centers.....	9521.3
Regional Environmental Officers	9560.1
Religious Purposes.....	9521.3
Relocation Costs	9523.3
Replacement Rule.....	9524.4
Reproductions (Art)	9524.6
Safety Inspections	9523.2
Salvaged Materials.....	9525.12
Seasonal Employees.....	9525.7
Seismic.....	9527.1
Severe Operating Conditions	9525.8
Shrubs	9524.5
Slabs.....	9523.4
Slope Failure	9524.2
Snow Assistance	9523.1
Snow Removal	9523.1
Sod	9524.5
Stabilization	9524.2
Staging Resources.....	9550.3
State Historical Preservation Officer	9560.3
Steel Moment Frames	9524.1
Straight Time	9525.7
Stump Removal.....	9523.11
Supplies.....	9525.12
T-1 Telecommunications	9525.15
Tax Assessment	9525.1
Telecommunications for States.....	9525.15
Temporary Relocation	9523.3
Trees.....	9524.5
Tribal Government.....	9521.4
USACE	9524.3
Volunteer Credits.....	9525.2
Vector Control	9523.10
Welded Steel Moment Frames.....	9524.1
Winter Storm.....	9523.1



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** January 9, 2001
2. **Response and Recovery Directorate Policy Number:** 9510.1
3. **Title:** Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation
4. **Purpose:** This procedure describes and refines FEMA's practices for developing and coordinating new, revised and interim policies in the 9500 series of documents and other documents related to the implementation of the public assistance and fire management assistance programs.
5. **Scope and Audience:** This procedure is an internal administrative procedure intended for FEMA staff generating or revising policies related to the public assistance and fire management assistance programs. This procedure is applicable to policies issued after October 30, 2000.
6. **Background:** FEMA supplements information contained in law and regulation with policies and other guidance documents that are intended to assure nationally consistent program implementation. The publication of this supplementary information is a long-standing practice under the internal guidance authority of 44 CFR §2.7.

Title III of the Robert T. Stafford Disaster Relief and Emergency Assistance Act was amended by the Disaster Mitigation Act of 2000 to require public notice, comment and consultation prior to issuance of new and modified policies that could result in a significant reduction of assistance under the public assistance grant program. It also requires consultation on interim policies that are likely to result in a significant reduction of assistance under the public assistance program or that change the terms of written agreements for a disaster or emergency to which the Federal Government is a party.

In addition to the above notice, comment and consultation requirements, the amendment also requires public access to policies governing the implementation of the public assistance grant program.

This procedure documents the system for meeting the requirements of the new law and formalizes extant coordination requirements for other documents (see Paragraph 7.B.).

7. **Policy:**
 - A. FEMA issues program guidance in the form of regulations and RR9500 policy. RR9500 policies generally are issued to clarify the intent of FEMA Headquarters on

national issues, deal with new issues with broad implications, or correct inconsistent practices.

- B. FEMA issues other documents that are derived from law, regulation and policy documents. They generally restate law, regulation and policy in a user-friendly style. They include: FEMA publications (e.g., FEMA 321, FEMA 322, etc.), RR9500 fact-sheets, RR9500 job aids, and RR9500 procedures. The derivative documents may include procedural information and implementation guidance, and they may document current practices. They do not contain new or modified policy. Derivative documents are coordinated by a method determined on a case-by-case basis by the Director, Infrastructure Division (IS).

FEMA may also be a party to written agreements relating to specific disasters. Any change to those written agreements that may result in a significant reduction must be accomplished in accordance with Paragraph 7.D.5.

- C. "Significant reduction" will be defined by the Director, IS, on a case-by-base basis. Generally, the determination that there is a potential of significant reduction in assistance will be made when any part of a proposed new, modified and interim policy reduces assistance from that which is available under current national practice or policy.

D. Coordination requirements.

- 1) Coordination requirements for policies without likelihood of significant reduction of assistance:
 - a) Release by Branch Chief or Senior Policy Advisor (of the Infrastructure Division (IS)) for informal coordination with key staff within the agency,
 - b) Action Officer reconciliation of comments,
 - c) Preparation of draft policy for official comment by Regional Directors (RDs), FEMA headquarters offices, National Emergency Management Association (NEMA),ⁱ and interested members of the public,
 - d) Coordination signatures required prior to release for official comment:
 - i) IS: Action Officer, Branch Chiefs, Senior Policy Advisor, Division Director,
 - ii) Headquarters: Office of General Counsel (OGC) and other key offices, as appropriate,
 - iii) Response and Recovery Directorate (RR): Policy Advisor, Deputy Associate Director (DAD), Executive Associate Director (EAD),
 - iv) Office of the Director, FEMA (DR),
 - v) Signature and release by EAD,
 - e) Coordination by memorandum with RDs,
 - f) Coordination by letter with NEMA,ⁱⁱ
 - g) Posting on FEMA website,
 - h) Action Officer documentation and reconciliation of comments
 - i) Final coordination signatures required prior to release and posting of final policy on the FEMA website:

- i) IS: Action Officer, Branch Chiefs, Senior Policy Advisor, Division Director,
 - ii) Headquarters: OGC and other key offices, as appropriate,
 - iii) RR: Policy Advisor, DAD, EAD,
 - iv) DR,
 - v) Signature and release by EAD,

- 2) Coordination requirements for policies with likelihood of significant reduction of assistance:
 - a) Release by a Branch Chief or the Senior Policy Advisor (of the Infrastructure Division (IS)) for informal coordination with key staff within the agency,
 - b) Action Officer reconciliation of comments,
 - c) Preparation for official comment by Regional Directors, FEMA headquarters offices (including additional staff for select program areas), National Emergency Management Association (NEMA),ⁱⁱⁱ and interested members of the public,
 - d) Coordination signatures required prior to release for official comment:
 - i) IS: Action Officer, Branch Chiefs, Senior Policy Advisor, Division Director,
 - ii) Headquarters: Office of General Counsel (OGC) and other key offices, as appropriate,
 - iii) Response and Recovery Directorate (RR): Policy Advisor, Deputy Associate Director (DAD), Executive Associate Director (EAD),
 - iv) Office of the Director, FEMA (DR),
 - v) Signature and release by EAD,
 - e) Information copies to Office of Public Affairs, Office of Congressional and Legislative Affairs, and other directly affected offices,
 - f) Coordination by memorandum with RDs,
 - g) Coordination by letter with NEMA,^{iv}
 - h) Posting on FEMA website,
 - i) Publication as Notice in the Federal Register,
 - j) Action Officer documentation and reconciliation of comments,
 - k) Final coordination signatures required prior to release, posting of final policy on the FEMA website, and publication of final policy as a Notice in the Federal Register:
 - i) IS: Action Officer, Branch Chiefs, Senior Policy Advisor, Division Director,
 - ii) Headquarters: OGC and other key offices, as appropriate,
 - iii) RR: Policy Advisor, DAD, EAD,
 - iv) DR,
 - v) Signature and release by EAD,
 - vi) Posting on FEMA website and publication of Notice in Federal Register.
 - l) These policies may not be retroactive.

- 3) Occasionally, interim policies for national application are needed on an emergency basis. When this occurs, an interim national policy may be issued for

a temporary period (not to exceed 12 months). This may be done only when there is no likelihood of significant reduction in assistance. The policy expires at the end of the 12-month period. The coordination procedure is as follows:

- a) Release by Branch Chief or Senior Policy Advisor for informal coordination with key staff within the agency,
- b) Action Officer reconciliation of comments,
- c) Final coordination, as determined by the Director, Infrastructure Division,
- d) Final coordination signatures required prior to release:
 - i) IS: Action Officer, Branch Chiefs, Senior Policy Advisor, Division Director,
 - ii) Headquarters: OGC and other key offices, as appropriate,
 - iii) RR: Policy Advisor, DAD, EAD,
 - iv) DR,
 - v) Signature and release by EAD.

4) Interim national policies that may result in a significant reduction in assistance are not permitted.

5) Occasionally, an interim policy for specific disasters is required on an emergency basis. When the policy may result in a significant reduction in assistance or in a change in the terms of a written agreement concerning the declaration of the disaster or emergency to which FEMA is a party, special procedures are required:

- a) The Federal Coordinating Officer/Disaster Recovery Manager (FCO/DRM), Regional Director, IS Director, and the EAD consult and must conclude that the need for the interim policy is immediate,
- b) With EAD approval, Disaster Recovery Manager (FCO/DRM) consults to the maximum extent practicable with the grantee and subgrantees,
- c) Disaster Recovery Manager (FCO/DRM) and Regional Director consider comments and issue written policy for the disaster,
- d) EAD and IS Director consider need for the policy for national application and initiate the full notice, comment and consultation procedure.

E. Exceptions to the policy coordination requirements in this procedure must not conflict with the intent of law or regulation. Generally, exceptions include:

- a) Technical advice on application/implementation of policy,
- b) Formalization of past practice,
- c) Interpretations of law, regulation, policy or other text,
- d) Correction of policies/practices inconsistent with law, regulation, policy or national intent,
- e) Appeal decisions,
- f) Administrative issues internal primarily to FEMA systems or to FEMA headquarters.

F. Distribution.

- 1) Signed copies of final and interim policies will be transmitted by FAX to regional IS Branch Chiefs.

- 2) Copies of the signed document will be sent to each FEMA Regional Director and to headquarters and regional Response and Recovery Division Directors. In addition, as determined by the IS Senior Policy Advisor, copies also may be sent to the FEMA Inspector General, the FEMA General Counsel, the FEMA Director of Public Affairs, the FEMA Director of Congressional Affairs, the FEMA Director of Regional Operations, Infrastructure Division staff, collaborating offices at headquarters, and RR instructors.
- 3) Electronic copy. All documents affecting program implementation and intended for public use will be posted on the FEMA web site.
- 4) Official Government Record. Master file with electronic and hard copy (as well as coordination background and comment reconciliation records) are filed in the RR/IS filing system.

8. Supersession: New document

9. Authorities: Section 325, Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; 44 CFR 2.7.

10. Originating Office: Infrastructure Division, Response and Recovery Directorate

11. Review Date: Five years from date of publication

12. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors

ⁱ Generally, NEMA represents the State public assistance program management and is a valuable source of comments. However, there may be more appropriate organizations from which comments should be solicited, in addition to or instead of NEMA.

ⁱⁱ As above.

ⁱⁱⁱ As above.

^{iv} As above.

APPENDIX TO RR POLICY #9510.1¹

CONSULTATION PROCESS: INTERIM POLICIES FOR SPECIFIC DISASTERS

The Stafford Act requires: “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 the 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”

In addition, although not required by the Stafford Act, Federal Emergency Management Agency (FEMA) may opt to solicit views and recommendations on interim policies that are not expected to result in a significant reduction of assistance to applicants.

An appropriate timetable for the sequence of steps will be established by the Federal Coordinating Officer (FCO) of the disaster to facilitate an inclusive but expeditious process for circulating the draft and soliciting views and recommendations.

Sequence

1. FEMA coordinates draft interim policy internally at regional and national levels.
2. FEMA national office approves the draft interim policy for distribution to the Grantee and potential subgrantees (tending to a more inclusive, than restricted, definition of potential subgrantees).
3. FEMA informally coordinates draft interim policy with the State Coordinating Officer (SCO) and works with the SCO to identify appropriate subgrantees from whom views and recommendations should be solicited.
4. FEMA advises national and local congressional offices (briefing as appropriate).
5. FEMA sets reasonable deadline for comments and provides the draft interim policy and instructions for commenting on it to the Grantee, keeping a record (name, organization, address, date) of to whom it was sent/given.
6. FEMA sets reasonable deadline for comments and provides the draft interim policy and instructions for commenting on it to the subgrantees, keeping a record (name, organization, address, date) of to whom it was sent/given.

¹ This Appendix provides internal implementation detail for Paragraph 7.D.5) of RR Policy #9510.1, Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation, dated January 9, 2001



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

I. TITLE: **Community Center Eligibility**

II. DATE: JUN 19 2008

III. PURPOSE:

To provide guidance on community center eligibility criteria that a private nonprofit (PNP) facility should meet to qualify for public assistance.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for use by Federal Emergency Management Agency (FEMA) personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 102 and, 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5122 and 5172, and 44 CFR §206.221(e)(1)-(7).

VI. BACKGROUND:

A. All PNP applicants must meet eligibility criteria that are described in 44 CFR §206 and Disaster Assistance Policy DAP9521.3, *Private Nonprofit (PNP) Facility Eligibility*, in order to receive disaster assistance.

B. In the past, all PNPs had to be open to the general public. However, a careful reading of legislative authorities made clear that in 1988, in amending the "Disaster Relief Act of 1974, Congress intended that only facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature "[as defined in 44 CFR §206.221(e)(7)] must be open to the general public to be eligible for public assistance.

VII. POLICY:

A. Definitions

1. Community Center. A building, including attached structures and grounds, that is established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities consistent with the PNP's Internal Revenue Service status. Community centers fall within the category of "other essential governmental service facilities", and therefore, must be open to the general public. Facilities established or



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

primarily used for political, athletic, religious, recreational, vocational or academic training, conferences, or similar activities are not eligible PNP community centers. Recreational, vocational or academic training, and conference facilities were specifically listed as examples of ineligible facilities in the Supplementary Information section of the final rule revising 44 CFR §206.221(e) (see 58 FR 47992, September 14, 1993).

2. Open to the General Public. In order to be considered open to the general public, a facility must be available to the public on a non-discriminatory basis, and any access fees should be reasonable. Generally, a facility at which most community center functions are offered to the public either free or for a reasonable-use charge would meet this requirement. However, a facility with a high initiation or usage fee, or high annual dues, generally would not be eligible (see DAP9521.3 VII.C.).

B. Eligible Facilities

1. Purpose. The statement that a community center be “established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities” refers to the principal purpose for which the facility was instituted.

a. When a PNP organization owns a facility for which it has legal responsibility for disaster-related repairs, and leases it to an operator of an eligible PNP community center, the PNP owner will be the Applicant.

b. Purpose should be determined by reviewing the organization's (pre-disaster) charter, bylaws, amendments, and other well-documented evidence of longstanding, routine (day-to-day) use of such facility as a community center. If it cannot be established by documentary or other evidence that a facility was used as a community center prior to a disaster, it will not be considered an eligible community center.

c. A facility offering a wide range of activities for only a brief period, or at irregular intervals, would not be eligible as a community center.

d. Further evidence of the established purpose of a facility is the degree to which community center staff actively manage, oversee, and promote community activities (e.g., Are designated staff members responsible for developing, conducting, or scheduling community activities? Do designated staff members actively sponsor community activities, or do they merely allow some community activities to use their facility?). Simply making facility space available to a requesting community organization does not make a facility an eligible community center.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

2. Primary Use. For a community center to be “primarily used as a gathering place for a variety of social, educational enrichment, and community service activities,” more than half (i.e., over 50%) of the total use should support those activities. To be eligible for disaster assistance, a community center need not be used exclusively for community activities; however, the majority use should be for community center functions.

a. In determining primary use, an on-site visit should be made whenever possible, and particularly whenever eligibility is in doubt. Materials (such as the organizational charter, articles of incorporation, minutes of board meetings, activity logs, and other documents that existed and which provide evidence of the facility’s activities and uses prior to the disaster) should be obtained and reviewed to ensure that a facility is not, for the first time, being identified as a community center only after the disaster.

b. Primary use can be established by approximating the space and time dedicated to community activities. A determination of the amount of space can be made by approximating the floor space, number of rooms, or levels dedicated to community use. A determination of the amount of time can be made by approximating the hours actually used (not just scheduled) for community activities and comparing it with the hours used for non-community activities.

c. In determining the eligibility of a facility, the entire building will be assessed, not just several rooms or a portion of the building. Thus, space designated and/or used for community center purposes will be evaluated in relation to the entire building within which it is located. In multiple-use facilities, FEMA uses the principle of majority (51% or more) use to qualify the facility. In other words, if a basement is designated and/or used for community center purposes, but the rest of the building is used as a gymnasium, convention center, church, or theater, the entire building will be evaluated for purposes of determining whether it is an eligible community center.

d. A PNP organization that operates multiple community centers, or a single community center composed of more than one building, should have each building evaluated independently, even if all are located on the same grounds. For example, assume a PNP organization owns a site on which three separate buildings are located, and operates the entire group of buildings as a single community center. If two of the three buildings were determined to be eligible community center facilities and the third to be an administrative center, only two buildings would be considered eligible.

e. If a building is part of a complex that includes outdoor facilities (e.g., swimming pools, athletic fields, and tennis courts); the building will not be evaluated separately from the



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

rest of the complex in determining eligibility of the building. For example, an outdoor pool usually has a clubhouse for controlling entry, providing locker rooms, etc. In such cases, the clubhouse cannot be evaluated for eligibility separately since it is an intrinsic part of the pool complex.

f. An approximation of the number of participants regularly involved in various activities should also be considered in determining primary use. For example, if a facility is used by 500 people a week for the pool and exercise equipment, and by 125 people a week for various community activities, it is primarily a recreation center, not a community center. If 2,500 people attend religious services each week at a particular facility, and 200 people participate in community activities there during the same period, its primary use is as a religious center, not an eligible community center.

3. Gathering Place. To be a “gathering place for a variety of social, educational enrichment, and community service activities”, the facility should be used by many individuals and groups for a variety of different purposes. Such use indicates the facility is used to the benefit of a broad segment of the local population, i.e., the community at large.

4. Activities. Social, educational enrichment and community service activities are key functions that define a community center. Although it is not mandatory that a facility be used for all three general categories, a facility used exclusively for only one category (for example, educational enrichment activities) may not necessarily serve a sufficiently broad segment of the community to be eligible. Also, because of the inherent social nature of a community center, a facility only rarely used as a gathering place for community activities or meetings would not ordinarily qualify. Various referred to as "community activities", "community oriented activities", or "community center functions", they encompass the following three categories:

a. Social activities include meetings and gatherings of individuals and groups to pursue items of mutual interest or concern, including activities involving the community as a whole. For example: community board meetings, youth and senior citizen group meetings, neighborhood barbecues, and various social functions of community groups.

b. Educational enrichment activities include a wide variety of activities, but not vocational, academic, or professional training. For example, seminars involving typical hobby or at-home pursuits such as gardening, sewing, ceramics, car care, personal financial and tax planning, and stamp and coin collecting would be considered educational enrichment, not vocational training. In contrast, a facility primarily operated to train individuals to pursue the same activities as full-time paying careers would be considered a vocational or professional training institute, not an eligible community center.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

c. Community service activities include functions undertaken for the primary purpose of meeting significant needs of various individuals, groups, or the community at large. For example, senior citizen projects, rehabilitation programs, community clean up projects, blood drives, local government meetings, and similar activities would be included.

d. A community center should involve a variety of different activities, serving many diverse groups in order to be eligible. A facility used for only one or two types of activities or limited to a narrow range of activities would not ordinarily serve a sufficiently broad and varied segment of the community to constitute an eligible community center. A facility that tailors its social, educational enrichment and community services and activities in a manner that is intended to appeal/attract/serve a "sub-community" (e.g., women, African-Americans, teenagers) may be an eligible community center, provided it is otherwise available to the public on a non-discriminatory basis. An important consideration when evaluating these types of facilities is to determine whether the facility and the majority of its services and activities are open to, and accessible by, all members of the community.

5. Lease Agreements. An eligible applicant that leases an asset of an otherwise ineligible PNP applicant and uses it as a community center may be eligible for assistance. The lease, pre-dating the disaster, must clearly specify that the eligible applicant is responsible for repair of disaster damage.

C. Ineligible Facilities

1. Religious Facilities. Facilities established or primarily used for religious activities are not eligible community centers. A facility used for a variety of community activities but primarily established or used as a religious institution or place of worship would be ineligible. Generally this includes churches, synagogues, temples, mosques, and other centers of religious worship. However, just because a community center is operated by a religious institution does not automatically make it ineligible. In addition to worship services, many religious institutions conduct a variety of activities that benefit the community. Many of these activities are similar or identical to those performed by secular institutions and local governments. Although distinguishing between the religious and secular activities undertaken by religious institutions can be complex, some general guidelines can be offered. A key determinant for religious-based community centers is the nature of the activities. Inherently religious activities mean sectarian activities such as worship, proselytization, and religious instruction. An activity is not inherently religious merely because it is motivated by religious faith. The use of the term "ministry" in a religious institution's literature, bulletin boards, flyers, advertisements, etc. in reference to an activity is generally construed to have a religious connotation, hence not a community center function. Bingo, bake sales, and other fundraising activities undertaken for



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.1

the benefit of a religious institution would not be considered toward eligibility, whereas the same activities done to help the community at large, such as raising money to help the homeless, may be.

2. Political Facility. Facilities primarily established or used for political or similar activities are not eligible community centers. This includes partisan political activities, advocacy and lobbyist groups and any other groups that primarily serve to promote a political campaign, candidate, agenda, philosophy, or cause.

3. Other Facilities. Facilities primarily established or used for athletic, recreational, vocational or academic training, conferences, or similar activities are not eligible community centers. These types of facilities were specifically listed as examples of ineligible facilities in the Supplementary Information section of the final rule revising 44 CFR §206.221(e). (58 FR 47992, September 14, 1993).

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes RP 9521.1 dated August 11, 1998, and all previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

/signed/
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

SEE ATTACHED APPENDIX FOR COMMUNITY CENTER EXAMPLES



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

PRIVATE NON-PROFIT COMMUNITY CENTER POLICY

CASE EXAMPLES

Below are examples of typical community centers. An analysis follows each center's description as a guide in evaluating similar facilities for the purpose of FEMA disaster assistance eligibility. Each of the notional community centers detailed below is based on an actual facility. Facilities which are not eligible as community centers may or may not be eligible for assistance under other categories of PNP facilities.

Windsor Community Center

Windsor Community Center is a large facility providing a suburban community with a wide range of activities. To the right of the large, open foyer is a large theater with stage; to the left, a group of general-purpose rooms. Upstairs are an artist's workshop and gallery. Approximately 50% of the interior space is occupied by the theater, 25% by the gallery, and 25% by meeting rooms. The center has no indoor or outdoor athletic facilities or pool.

Summer activities listed in the center's quarterly program guide "Winds O'er Windsor" include performances of several plays and movies; storytelling; concerts; fine arts competition in dance, music, theater, and visual arts; a "Windsor Day" festival with an 8k fun run, rides and amusements, crafts exhibits, chorale performances, and model airplane show; blood drive; indoor garage sale; Russian festival; antique show; crafts bazaar; day trips to gardens and museums; overnight trips to cities in the U.S. and Great Britain; tennis camp (at a nearby park); and a day camp. Summer classes are offered in calligraphy, ballet, computer skills, dance, fencing, various arts, bridge, country/western line dancing, tap dance, dog training, finance, fitness, home projects, driving for seniors, volunteer certification, and starting your own business.

ANALYSIS

Despite a substantial number of community activities, Windsor Community Center would not be an eligible community center because it was established and is primarily used for performing and fine arts, which are specifically excluded from eligibility. Primary use is evidenced by space (approximately 75% of the facility space is occupied by a theater and art gallery) and activities, many of which emphasize various forms of dance, visual arts, and similar activities.



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

Westover RECenter

Westover RECenter is the largest of 8 similar community facilities located throughout the metropolitan area. Although the facility is an acknowledged recreation center, it also sponsors a number of activities found in eligible community centers and is representative of a number of private nonprofit facilities.

The center is available for rental Friday, Saturday, and Sunday evening to companies, religious groups, clubs, and civic organizations. It is offered as a location for league parties, office parties, lock-ins, retreats, corporate meetings, seminars, conferences, holiday celebrations, and receptions. Meeting rooms are available for \$25/hour.

Indoors, the center has rooms set aside for seniors' bridge and other card games, along with workshops for photography, pottery, and ceramics, and art. It also has a pre-school, game/TV area, kitchen, and snack bar.

Arts and crafts activities include many for children ("Dinosaur Craftasaurus," cartooning, discovery art, drawing, kids crafts, jewelry making, plastic model building, pottery, theater arts, ballet, tap dancing), teens and adults (babysitting, 35 mm photography, darkroom techniques, portrait photography, beginning and intermediate pottery, mosaic art, drawing, painting, animation, picture framing, quilting, clowning, ballroom dancing I and II, line dancing, belly dancing I and II, and guitar).

Outside, the center has acres of athletic fields for baseball, lacrosse, and soccer, and courts for tennis and basketball. It operates a kids "Fun Camp" (i.e., day care) which emphasizes athletic activities, but includes crafts as well as day trips to various locations. Lessons are offered in racquetball, soccer, basketball, and tennis. Leagues are open for basketball, racquetball, indoor rollerblade hockey, soccer, T-ball, and softball.

However, the center is primarily oriented to athletics, as exemplified by a large indoor pool and locker room, a half dozen squash/racquetball courts, a weight/exercise room, and a 9,200-sq. ft. gymnasium/basketball court. It also has a sauna and a dance room.

ANALYSIS

While Westover RECenter offers a number of activities generally considered eligible community center functions, it is, first and foremost, a recreation center. In contrast to the definition of an eligible community center, it is neither established nor primarily used as a "gathering place for a variety of social, educational enrichment, and community service activities," even though it does offer some of these. The vast majority of activities are athletic and recreational, which as



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

stated in the definition “Facilities established or primarily used for . . . athletic (or) recreational . . . activities . . . are not eligible community centers.”

It is not necessary to calculate the percentage of time or space devoted to community activities versus athletic and recreational activities, because Westover is overwhelmingly athletic and recreational. This is abundantly evident in the listings for Westover RECenter contained in the in-house periodical “Westover Once-over” which are almost entirely of an athletic nature. For these reasons, a private, nonprofit facility similar to Westover would not be an eligible community center.

Faith Community Center

Faith Community Center is operated by a national religious charity. It is open to the public, charges no fees, and does not require participants to belong to any particular religious faith nor proselytize during activities. No worship services or other religious activities are held at the center at any time. Classes and workshops are offered in arts and crafts, needlework, English as a second language, humanities, and consumer education. It provides health screening, blood pressure monitoring, and support groups for seniors, along with a daily lunch. Information and referral services for housing, health, leisure and social services are offered. Center staff makes home visits and telephone calls to homebound persons. It also sponsors trips to museums and parks, choir participation, holiday parties, gardening, theater, games and intergenerational programs. It has an active volunteer recruitment and development program.

ANALYSIS

Faith Community Center would be an eligible community center, since it meets all the requirements of the definition. Although associated with a specific religion, it accepts members without regard to faith and is not used for religious activities.

Parklawn Community Center

Parklawn Community Center is one of 5 similar centers operated by the Blackstone Conservancy, a nonprofit community association located in Blackstone, a planned community. Every resident of Blackstone is automatically a member of the Conservancy, which provides a variety of community services and facilitates the participation of Blackstone residents in community activities and government. The Conservancy also operates to preserve the community environment and natural surroundings, and keep up property values through various restrictions and covenants on exterior appearances of homes and lawns.



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

Parklawn Community Center is available to all Blackstone residents. Residents may schedule courses, meetings, and neighborhood cluster parties at this center or rent it for private, social, or professional gatherings. Rental fees are \$15 per hour on weekdays and \$30 per hour (4-hour minimum) on weekends. The center is often used for events to which the entire community is invited.

The building has a large front porch and a rear deck overlooking a duck pond. Inside are two large stone fireplaces, one at each end of the building. There are two rooms on the main floor, approximately 600 and 800 square feet respectively, in addition to a 700-square-foot loft and a large hallway opposite the sliding doors leading to the deck. A warming kitchen, closets, restrooms, and tables and chairs occupy the remaining space.

On the grounds of the facility are a large outdoor pool, toddler pool, and 4 tennis courts.

Recent activities offered by the Blackstone Conservancy include “Music and Me” (a children’s summer camp program), art camp, CPR classes, sports first aid, finishing and modeling, patchwork and appliqué baskets, fine hand quilting, hatha yoga, self defense and tae kwon do, and a farmers market on Saturday mornings. However, none of these activities is scheduled for the Parklawn Community Center; instead they will be held at the other 4 centers and a local parking lot.

ANALYSIS

Parklawn Community Center would not be an eligible community center for a number of reasons. First, it is open to Blackstone residents, not the general public. Second, although the pool and tennis courts are outdoors, they are not only part of the facility, but the part most used. The center is primarily a recreational facility and for this reason alone is not eligible. The few activities offered by the Blackstone Community Conservancy cannot be credited to Parklawn Community Center because none are held there.

Riverdale Community Center

Indoors, Riverdale Community Center consists of a gymnasium/basketball court, a recreation room with billiards and table tennis equipment, and several small rooms for meetings. One of these is used for seniors activities, including lectures, card games, and socials.

Outdoors, the center has a playground with swings, slides, and similar equipment.

The center is most heavily used in the summer months when it sponsors a recreation program for children in grades 1-6. Participants enjoy a variety of activities, including fun and fitness,



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

indoor and outdoor games, team sports, nature, crafts, storytelling, field trips, sports festivals, talent shows, and supervised play sessions. Some activities are also offered for young adults in grades 6-12.

Center activities decrease in the fall, although the seniors' room continues operations at about the same level with classes in advanced Spanish, nutrition, chair exercises, and line dancing.

ANALYSIS

Riverdale Community Center is primarily a recreation center. The gymnasium and game room occupy over 75% of the indoor space and the outdoor area is a playground. Although the senior activities are appropriate for a community center, the space and time scheduled for them are insignificant. Therefore, this would not be an eligible community center.

Somerset Community Center

Somerset Community Center consists of a number of meeting rooms, a lending library, social services room, health services room, dining room, activity area with games and wide-screen TV, a darkroom, pianos for practice, ceramics lab, woodshop, computer, sewing machines, exercise room, and a large foyer. Outside are a fitness trail, garden plots, an outdoor basketball court and softball field, a gazebo, and picnic area.

A nominal membership fee is charged, however, in lieu of payment, members may work as volunteers at the center or borrow hours from the volunteer hours bank. The center is partially supported through weekly bingo, thrift and gift shop sales, and other fundraising activities.

Classes are offered in piano, bridge, arts and crafts, and gourmet and microwave cooking. The center sponsors numerous seniors' activities, which include trips, luncheons, and recreational and educational activities. A lunch program is offered for seniors and their spouses. Some exercise classes are also offered.

Health screenings and immunizations are regularly offered. Door-to-door transportation is provided to those who need it.

ANALYSIS

By virtue of the wide range of community activities, Somerset Community Center would be an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; therefore, it is not a recreational center. The minimal fee (which can be earned through volunteer work) essentially make it open to the public.



FEMA

DISASTER ASSISTANCE POLICY –Appendix

DAP9521.1

Hopewell Community Center

Hopewell Community Center is operated by a national organization which, in all its activities, affirms the tenets of a major religious denomination, but does not proselytize. Although the religious principles are an implicit part in the organization's charter, the center is not used for religious purposes. Any person, regardless of race, religious beliefs, etc., may join; however, membership is required in order to use the facility. Annual dues range from \$200 for youths and seniors to over \$500 for full family privileges. The center occasionally runs membership drives which allow new members to join without paying the normal \$25 to \$250 initiation fee. Nonmembers are allowed to participate in individual programs by paying a \$25 fee however, their access is limited to program participation.

Inside the facility are an Olympic pool, weight room, exercise room, and multipurpose room. A recent flier advertised the availability of swimming, aerobics, water exercise, karate, games, raffles, and day camp. A summer "Science & Technology" camp is offered to boys and girls ages 6 to 14. A Family Night involving swimming, a movie, and snacks is a typical offering.

ANALYSIS

Although there is an underlying religious affiliation, this itself is not a disqualifying factor, since religious services are not held at the facility, religion is not explicitly promoted, nor is adherence to any particular faith required.

What disqualifies the Hopewell Community Center is that it is primarily a recreation center, as evidenced by the pool and athletic facilities, and the lack of any substantial community programs. Additionally, it is not open to the public by virtue of its high initiation fee and annual dues. Accordingly, this would not be an eligible community center.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999
2. **Response and Recovery Directorate Policy Number:** 9521.2
3. **Title:** Private Nonprofit Museum Eligibility
4. **Purpose:** This policy clarifies what constitutes a museum as an eligible private non-profit (PNP) facility for the purpose of funding repair or replacement.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the provisions of the Public Assistance (PA) Program. This policy does not address museum collections or individual holdings; that topic will be the subject of a separate policy.
6. **Background:**
 - A. Publicly owned museums have long been eligible for disaster recovery assistance. More recently, Congress specifically added PNP museums as eligible facilities. Museums were included on the list of PNP essential governmental services listed in House Report No. 100-517, which accompanied H.R. 2707 (the bill which became the Stafford Act).
 - B. This policy was developed to guide consistent treatment of PNP museums.
7. **Policy:**
 - A. PNP museums are confined facilities which are constructed or manufactured whose primary purposes are to:
 - Preserve a documented collection of artistic, historic, scientific or other objects, and
 - Exhibit the documented collection to the general public.

Subject to the provisions that follow, PNP museums may be eligible for public assistance grant funding.

 - B. Specific inclusions:
 - The museum buildings that are used for the preservation and exhibition of the documented collection.

- Permanent facilities (e.g., walkways and driveways) of outdoor areas dedicated to museum-type exhibits.
- PNP-owned historical buildings, including their appurtenances such as barns and other outbuildings, intended for preservation and exhibition of artifacts when they are within a defined area and maintained to exhibit the historical culture.
- PNP-owned fixed facilities and equipment that are part of arboretums and botanical gardens.
- Infrastructure (water, power, sewer/septic) necessary to support the museum building.

C. Exclusions:

- Administrative buildings and other assets that are not essential to the preservation and exhibition of objects for the general public are not eligible for public assistance funding.
- The grounds at museums and historical sites are not eligible.
- The definition of PNP museums does not include open natural areas or features, and it does not include entities that promote the preservation and conservation of such areas.

8. Supersession: Memorandum from Craig S. Wingo to Nicholas B. Nikas dated October 5, 1995; Subject: FEMA-1044-DR-CA, Clarification of Term “Museum” as applied to Santa Catalina Island Conservancy, and other relevant provisions of previous policy documents.

9. Authorities: Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, Section 102 (9) and Section 406(a)(2); 44 CFR 206.221(e)(6).

10. Originating Office: Infrastructure Division, Response and Recovery Directorate

11. Review Date: Two years from date of publication

12. Signature:

Signed

 Lacy E. Suiter
 Executive Associate Director
 Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

I. TITLE: **Private Nonprofit (PNP) Facility Eligibility**

II. DATE: July 18, 2007

III. PURPOSE:

This policy relates to the repair, restoration, reconstruction, or replacement of damaged facilities and provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in Title 44 Code of Federal Regulations (CFR) § 206.221.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance (PA) Program.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended and Department of Homeland Security (DHS) Appropriations Act of 2007 (DHS Appropriations Act, 2007), P. L. 109-295, § 611, 120 Stat.1355 (2006), and 44 CFR §206.221.

VI. BACKGROUND:

A. The guidelines for eligibility of PNP organizations and facilities have been refined over the past several years as eligibility issues have surfaced. The regulatory definition of a PNP organization and facility can be found in 44 CFR §206.221. However, PNP organizations offer so many types of services that it is still necessary to provide additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule published at 58 Federal Register (FR) 47992, September 14, 1993. The terms, "purposes," "activities," "uses," and "services" as used in this policy are derived from the governing statute, regulations, and customary usage and may overlap.

B. In the past, all PNPs had to be open to the general public. However, a careful reading of legislative authorities made clear that in 1988, in amending the Disaster Relief Act of 1974, Congress intended that only facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature "[as defined in 44 CFR §206.221(e)(7)] must be open to the general public to be eligible for public assistance.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

C. The Disaster Mitigation Act of 2000, amended Section 102(9) of the Stafford Act, 42 U.S.C. 5122, adding “irrigation” facilities to the list of eligible PNP facilities, to the extent they provide water for essential services of a governmental nature to the general public.

D. The DHS Appropriations Act, 2007 amends Sections 102 and 406 of the Stafford Act, adding “performing arts facilities” and “community arts centers” to the list of eligible PNP facilities providing essential services of a governmental nature. Note that these additional eligible PNP applicants must also meet the eligibility criteria, detailed primarily in 44 CFR §206, in order to receive disaster assistance.

E. The DHS Appropriations Act, 2007 also adds education to the definition of “critical services” in Section 406 of the Stafford Act. These changes have been incorporated into the existing policy, which is presented in its entirety below.

VII. POLICY:

A. Applicants – Basic Statutory and Regulatory Requirements.

1. The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State that it is a nonprofit organization doing business under State law as outlined in 44 CFR §206.221(f).

2. The applicant must meet requirements as listed in 44 CFR §206.221 – §206.226, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.

3. The applicant must meet the requirements of the Civil Rights Act of 1964.

B. Facilities – Basic Statutory and Regulatory Requirements/Information.

1. The facility, at a minimum, must meet the criteria outlined in 44 CFR §206.221(e).

2. The facility must be primarily used for one of the services or facilities listed in 44 CFR §206.221(e).

3. Certain types of facilities are not required to be open to the general public if they meet the definition of an educational, utility, emergency, medical, or custodial care facility [enumerated in 44 CFR §206.221(e)(1),(2),(4),(5),(6)]. Other types of private nonprofit facilities that provide certain essential government type services to the general public, which include PNP irrigation facilities [as defined in 44 CFR §206.221(e)(3)] and facilities that provide “other essential government



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

services” as defined in 44 CFR §206.221(e)(7), and as listed in 4(g) below, must be open to the general public, (See VII.C).

4. Eligible PNP Facilities. The following generally are eligible for assistance, and may be subject to the requirements of paragraph F of this policy:

- a. educational facilities [as defined in 44 CFR §206.221 (e)(1)],
- b. utilities [as defined in 44 CFR §206.221 (e)(2)],
- c. irrigation facilities [as defined in 44 CFR §206.221(e)(3)]
- d. emergency facilities [as defined in 44 CFR §206.221 (e)(4)],
- e. medical facilities [as defined in 44 CFR §206.221 (e)(5)],
- f. custodial care facilities [as defined in 44 CFR §206.221 (e)(6)],
- g. facilities that provide essential governmental services and which must be open to the general public [as defined in 44 CFR §206.221(e)(7) and in the DHS Appropriations Act, 2007] such as:
 - i) museums (see Disaster Assistance Policy DAP9521.2, PNP Museum Eligibility),
 - ii) zoos,
 - iii) performing arts facilities – facilities whose primary purposes are the presentation of live performances involving actors, singers, dancers, musicians, performance groups and ensembles, and/or other performing artists to the general public; or the production/facilitation of such performances (e.g., creation of artistic works or productions, public education, professional training, rehearsals, design and construction of production materials). The facility may include, but is not limited to: rehearsal and performance spaces, box office, audience spaces, amphitheatres, outdoor stages, classrooms, and other areas dedicated to performing arts production and presentation.
 - iv) community centers (see Disaster Assistance Policy DAP9521.1, Community Center Eligibility),
 - v) community arts centers - facilities whose primary purposes are to offer multi-purpose arts programming and/or to provide arts services that have been designated, recognized or authorized by a State or local government. Arts services may include, but are not limited to: art classes, performing arts classes, arts administration, and management of public arts festivals. The facility may include, but is not limited to: performance spaces, rehearsal spaces, shared workspace for community artists, exhibition/gallery spaces, classrooms, and studios.
 - vi) libraries,
 - vii) homeless shelters,
 - viii) senior citizen centers,
 - ix) shelter workshops, and
 - x) health and safety services of a governmental nature, including, for example:



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

- low-income housing (as defined by Federal, State or local law or regulation),
- alcohol and drug treatment centers,
- residences and other facilities offering programs for battered spouses,
- animal control facilities directly related to public health and safety,
- facilities offering food programs for the needy,
- daycare centers for children, and
- daycare centers for individuals with special needs (e.g., those with Alzheimer's disease, autism, muscular dystrophy, etc.).

5. Ineligible PNP Facilities. Some PNP facilities that might have been assisted prior to 1993 are no longer eligible under the governing statutes and regulations. Examples include:

- a. recreation facilities,
- b. job counseling and training centers,
- c. facilities for advocacy groups not directly providing health services,
- d. housing (other than low-income),
- e. cemeteries,
- f. parking garages,
- g. conference facilities,
- h. facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and
- i. daycare centers for purposes other than those described in paragraph 4 above.

C. Defining "open to the general public." Being "open to the general public" and "providing services to the general public," are requirements for facilities that provide "other essential governmental services" [as defined in 44 CFR §206.221(e)(7)]. Facilities that meet the definition of an educational, utility, emergency, medical, or custodial care facility as defined in 44 CFR §206.221(e) are exempt from this requirement.

1. A private nonprofit facility that provides "other essential governmental services" is likely to meet the "open to the general public" requirement if:

- a. It is open to the general public;
- b. Membership fees, if any, are nominal;
- c. Membership fees, if any, are waived in instances in which someone can show inability to pay the fee.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

2. A private nonprofit facility that provides “other essential governmental services” [defined in 44 CFR §206.221(e)(7)] is not likely to meet the “open to the general public” requirement if:

a. A membership fee is of such magnitude as to preclude access to the facility by a significant portion of the community.

b. The membership fee clearly exceeds what would be considered an appropriate user fee based upon a reasonable assumed use of a facility.

c. Membership is limited to a certain number of people in the community.

d. Membership is limited to a defined group of individuals who have a financial interest in the facilities managed by the PNP (for example, a condominium association).

e. Membership discriminates against certain discrete classes of people, or is limited to individuals from some geographic area that is more restrictive than the community from which the facility in question could normally be expected to draw users.

D. Facility Eligibility Based on Primary Use. Even when an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space is the primary consideration in determining if a facility is eligible.¹ Where certain spaces are used both for eligible and ineligible purposes, eligibility is determined by looking at the time the facility is used for eligible versus ineligible services.

1. A facility must have over 50% of its space dedicated to eligible uses in order for any of the facility to be eligible. Common space (lobbies, restrooms, utility closets, janitorial closets, elevators, stairs, parking, etc.) is not included in calculating the proportion of eligible use. A facility is assessed as an entire structure and not its individual parts such as a basement, floor, or building wing.

2. When space is not dedicated to specific activities, or is used for eligible and ineligible purposes, primary use is determined by the amount of time used for eligible services.

3. Space dedicated to or primarily used for religious, political, athletic, recreational, or vocational purposes, is not eligible for Public Assistance Program assistance under the governing statutes and regulations.

¹ PNP irrigation facilities used in delivering water for essential governmental services are exempt from this requirement.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

4. FEMA will consider damages to the entire facility, not just to the portion occupied by the eligible services. However, the assistance is in direct proportion to the percentage of space dedicated to eligible services. The balance of costs to repair damages or replace a facility will not be funded by FEMA.

5. Contents that are the responsibility of an ineligible occupant are not eligible for reimbursement if damaged.

E. Ownership. There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion for an ineligible service or use. In other situations an eligible organization may be a partial owner in a facility with an ineligible organization. The following guidelines are to be used in determining the eligible costs for such facilities.

1. Total Ownership by PNP. A facility must have over 50% of its space dedicated to an eligible purpose/mission in order to be eligible.

a. If the facility meets the 50% threshold, then the eligibility of the repairs is in direct proportion to the percentage of space dedicated to its eligible purpose/mission. In any event, the applicant must repair the entire building. Exceptions to repairing the entire building may be granted in unusual situations.

b. A facility that does not meet the 50% space threshold is not an eligible PNP facility.

c. A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant must mitigate the entire building if the applicant opts to request the pro-rated mitigation project funding.

2. Partial Ownership by PNP. Reimbursement depends upon the percentage of ownership, amount of space being occupied by the applicant and amount of space dedicated to eligible services. The grant assistance may fund work in any part of the facility; however, reimbursement is contingent upon the entire facility being repaired. Exceptions to repairing the entire building may be granted in unusual situations.

a. The eligible applicant: (1) must own more than 50% of the facility, and (2) must occupy and use for eligible services more than 50% of the facility's space at the time of the disaster. If the eligible space meets that threshold, funding is in direct proportion to the percentage of space dedicated to the eligible use.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

b. The percentage eligible cannot exceed the percentage represented by the space being occupied by the applicant. For example, if the applicant owns 70% of the building but only uses 60% for its eligible purposes, then the maximum eligible percentage is 60%.

c. A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant and/or other owners must mitigate the entire building if the pro-rated mitigation project funding is requested.

d. Alternate project or improved project funding may be approved but reimbursement is based on the eligible funding of the original repairs. A Section 406 Hazard Mitigation grant is not eligible for either of these funding options with the exception of an improved project that maintains the same facility for which the mitigation is approved.

e. If a partnership agreement states the repair responsibilities of each partner, the eligible reimbursement will be based on the percentage of responsibility.

F. Requirements for Applying to the Small Business Administration (SBA).

1. Critical PNP Facilities. PNP facilities providing “critical services” as defined in 44 CFR §206.226(c)(1), 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, education, emergency medical care, fire department services, emergency rescue, and nursing homes, may apply immediately for FEMA emergency and permanent work disaster assistance. Critical PNPs do not have to apply to SBA for loans.

2. Non-critical PNP Facilities.

a. “Non-critical” PNPs, as defined in 44 CFR §206.221(e)(7), may immediately apply for FEMA emergency work assistance.

b. “Non-critical” PNP facilities requesting reimbursement for **permanent work** costs must apply for a disaster loan from the SBA. This should be done simultaneously with submitting a Request for Public Assistance (RPA) to the State for disaster assistance.

c. The SBA loan application process for “non-critical” PNP facilities will result in one of four outcomes:

i) The PNP is declined for an SBA loan. The PNP may then apply for FEMA assistance.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

ii) The PNP is approved for an SBA loan and the loan fully covers eligible damages from the disaster event. No assistance from FEMA is available.

iii) The PNP is approved for an SBA loan and the maximum SBA loan for which the facility is eligible does not fully cover eligible damages. The excess damages are eligible for FEMA assistance.

iv) The PNP is approved for an SBA loan, but does not accept the loan. The amount of FEMA assistance will be reduced by the amount of the approved SBA loan.

G. Lease Agreements. An eligible applicant must be legally responsible for disaster-related repairs whether they own a facility or lease it. An eligible applicant that leases an asset of an otherwise ineligible applicant and uses it in a way that normally would qualify it for assistance may be eligible for assistance. The lease, pre-dating the disaster, must clearly specify that the eligible applicant is responsible for repair of major damage and not just maintenance or minor repairs.

H. Examples. Several examples are offered for clarification purposes in the attached Appendix A. In addition, DAP9521.1, "Community Center Eligibility," and DAP9521.2, "Private Nonprofit (PNP) Museum Eligibility" should be reviewed as complementary policies and for more examples of partial eligible use.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes RP 9521.3 dated May 23, 2003, and all previous guidance on this subject.

X. REVIEW DATE: Five years from date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

SEE ATTACHED APPENDIX FOR CASE EXAMPLES



FEMA

DISASTER ASSISTANCE POLICY

DAP 9521.3 APPENDIX

PRIVATE NONPROFIT FACILITY (PNP) ELIGIBILITY

CASE EXAMPLES

Below are examples of private nonprofit facilities that could be expected to request eligibility determinations. See also: Community Center Eligibility, DAP Policy 9521.1.

Parkland Hospital Medical Office Building

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are 70% of the floor space excluding the common area floor space as defined in this policy.

ANALYSIS

The building is not eligible because the eligible services were offered in less than 50% of the building space. If the for-profit leases had not exceeded the 50% threshold, the grant assistance would have been pro-rated based on the percentage of the building occupied by the eligible nonprofit services.

Springtown Recreation Center

The PNP Springtown Recreation Center claims that it provides eligible essential government services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for battered spouses, and shelter workshops. These programs are provided by the recreation center staff and offered five days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.

ANALYSIS

The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces will determine eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, the level of FEMA assistance will be pro-rated based on the proportion of the total time it is used for eligible services.



FEMA

DISASTER ASSISTANCE POLICY

DAP 9521.3 APPENDIX

Community Church School

The Community Church operates a State certified school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education and religious doctrine. The school has an average attendance of 500 students. The church has constructed three education buildings that are used exclusively by the school. The church occasionally uses the education buildings for religious activities. The school occasionally uses the church, but that use is always substantially less than 50%.

ANALYSIS

Look at the church and three education buildings separately. The three education buildings are eligible because: a) the school meets FEMA requirements to be considered an eligible education institution; b) the buildings generally are not used for ineligible purposes and their primary purpose is to serve the school; and c) the few religious classes in the curriculum is not sufficient to influence the primary use for secular education. However, in the spaces used for eligible and ineligible purposes, the level of FEMA assistance will be based on the proportion of the total time that such spaces are used for eligible purposes. The church's primary use is an ineligible service under the governing statutes and regulations and its peripheral use by the school is not sufficient to establish its eligibility.

Southlake Hospital Parking Garage

The parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor that faces a busy public street is leased to retail businesses. The leased space occupies 15 percent of the total space of the garage.

ANALYSIS

44 CFR 206.221(e) authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes Southlake Hospital's parking garage. Since the hospital uses more than 50% of the parking garage, the facility is eligible based on primary use. The leased space does not make the garage ineligible because it only represents 15% of the total space in the facility. FEMA assistance would be pro-rated based on the percentage of space used for the eligible parking purpose. If the leased space had exceeded 50% of the facility space, the primary use of the facility would become ineligible. The parking garage is eligible only because of its association with the hospital.



FEMA

DISASTER ASSISTANCE POLICY

DAP 9521.3 APPENDIX

Woodlands Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a two hundred home development. The Homeowners' Association's services are local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center and a recreational lake and dam.

ANALYSIS

The Homeowners' Association operates facilities that provide essential government services and therefore is an eligible PNP. The lake and dam, park and streets do not meet the definition of eligible facilities. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The community center might be eligible if it is open to the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment and community service activities (i.e., meeting the requirements of RR Policy 9521.1).

Midwest Methodist University

The University is a private nonprofit education facility as defined in the Stafford Act, Section 102. It is supported by the United Methodist Church organization and offers both secular and religious education. The State's Department of Education officially recognizes the University as a school of higher education offering courses such as history, math, English, science, theology, religious education and religious counseling. The University offers undergraduate and graduate degrees in all fields of study. The campus consists of a large number of buildings for education, administration and religious worship.

ANALYSIS

Damaged buildings that are primarily used for secular courses normally found on university campuses are eligible. Buildings containing student and administrative services also are eligible because they support educational, emergency, or medical facilities (as outlined in 44 CFR 206.221). The damaged buildings with religious courses must be carefully reviewed for eligibility. If a damaged building is primarily used for religious worship or religious instruction, it is not eligible because a peripheral eligible service is not sufficient to establish the eligibility of a facility.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.4

I. TITLE: *Administering American Indian and Alaska Native Tribal Government Funding*

II. DATE: April 30, 2007

III. PURPOSE:

Provide guidance in administering Public Assistance funding to American Indian and Alaska Native Tribal Governments when Tribal Governments choose to act as Grantee, or when the State cannot legally act as the Grantee.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance Program. This policy applies only to Federally-recognized Indian Tribal Governments. It does not apply to other Tribal Governments, e.g., State-recognized Tribes or Alaska Native Corporations.

V. AUTHORITY:

Sections 403, 406, 407, 420, 502 and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, and 44 CFR §206.44, 206.202(f)(1), and 206.222(c); Federal Register: January 12, 1999 (Vol. 64, No. 7), Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments.

VI. BACKGROUND:

The State usually serves as the Grantee for all Public Assistance funding, and is responsible for administering all funds provided for subgrantees under this program. However, 44 CFR §206.202(f)(1) provides an exception for Indian Tribes or authorized tribal organizations when the State cannot legally act as the Grantee. In keeping with the intent of FEMA's overall policy, "Government-to-Government Relations with American Indian and Alaska Native Tribal Governments," published in the January 12, 1999, issue of the Federal Register, a qualified Tribal Government will be permitted to deal directly with FEMA on Public Assistance funding and act as its own Grantee. Administrative Plans should be developed before a disaster to expedite response and recovery actions and to ensure an understanding of roles and responsibilities.



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.4

VII. DEFINITIONS. For the purposes of this policy, the following definitions apply:

A. **Indian Tribe.** An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

B. **Indian Tribal Government.** The recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* The shortened name, Tribal Government, is used throughout this policy.

VIII. POLICY:

A. A Tribal Government may act as Grantee if the State Governor has requested a major disaster or emergency declaration, and the disaster or emergency has been approved by the President. In such cases, the Tribal Government must submit an SF 424, Application for Federal Assistance, directly to FEMA.

B. A Tribal Government that assumes Grantee status becomes responsible for the entire non-federal share of the public assistance grant, unless the State provides some or all of that cost. The State should be encouraged to continue existing relationships with the Tribe.

C. The Tribal Government and State will operate under the same disaster declaration number issued as a result of the Governor's request. Disasters on tribal lands that cross State borders must be requested in separate disaster requests. Arrangements for administering disasters on tribal lands crossing State borders will be made on a case-by-case basis.

D. The Tribal Government will be required to comply with the following conditions in order to receive Public Assistance funding.

1. A Tribal Government must meet all requirements placed on a Grantee in accordance with 44 CFR Part 13.

2. A formal FEMA-Tribal Agreement must be executed between FEMA and the Tribal Government. The Agreement is similar to the FEMA-State Agreement in that it reflects the understandings, commitments, and conditions under which assistance will be provided to the Tribal Government. FEMA Headquarters Disaster Assistance Directorate, Public Assistance Division will draft the basic provisions for the Agreement. FEMA Regional Administrators will add specific provisions related to the disaster and the Tribal Government. All proposed



FEMA DISASTER ASSISTANCE POLICY

DAP9521.4

changes to the basic Agreement must be reviewed by FEMA Headquarters and the affected Tribe(s) prior to inclusion or approval.

3. The Tribal Government must develop and submit a Public Assistance Administrative Plan as outlined in 44 CFR §206.207. The Plan must be approved by FEMA.

4. The Tribal Government, acting as Grantee, will receive project funding, Grantee management costs, and administrative allowances under the Public Assistance Program (see Disaster Assistance Policy DAP9525.14, Public Assistance Grantee Administrative Costs). Subgrantee administrative allowances will be provided to subgrantees if they are subdivisions of the tribal government. The Grantee management cost and administrative allowance will no longer be applicable upon publication of the final management cost rule pursuant to Section 324 of the Stafford Act.

5. When the Tribal Government does not have access to SMARTLINK, it must submit Form 270, Request for Advance or Reimbursement, to request payment or reimbursement of Federal funding.

6. The Tribal Government, as the Grantee, will be subject to a financial closeout.

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

X. SUPERSESSION: This policy supersedes all previous guidance on this subject.

XI. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate



FEMA

RECOVERY POLICY (INTERIM) RP9521.5

I. TITLE: Eligibility of Charter Schools

II. DATE: June 16, 2006

III. PURPOSE:

To clarify the circumstances under which a charter school may receive FEMA Public Assistance as a local government applicant.

IV. SCOPE AND AUDIENCE:

This interim policy applies to all disasters declared on or after August 28, 2005. All personnel are directed to follow this interim policy until it is superseded by the final policy.

V. AUTHORITY:

Sections 102 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121-5206, and implementing regulations at 44 CFR Part 206, Subpart H.

VI. BACKGROUND:

A. Section 102(6) of the Stafford Act, 42 U.S.C. §5122(6), defines “local government” to include, among other things, a local public authority, school district, or agency or instrumentality of a local government. Section 102(9) of the Stafford Act, 42 U.S.C. §5122(9), defines “private nonprofit facility” to include any private nonprofit education facility. Section 406 of the Stafford Act, 42 U.S.C. §5172, authorizes assistance to local governments and private non-profits for the repair, restoration and replacement of damaged facilities. The owner or operator of a non-profit school facility must first apply to the Small Business Administration (SBA) before FEMA may provide any assistance under section 406. 42 U.S.C. §5172(a)(3). The Stafford Act does not require local governments to apply to the SBA.

B. Charter schools are defined in Section 5210(1) of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §7221i.

VII. POLICY:

A. Charter schools as defined at 20 U.S.C. §7221i will be recognized by FEMA as a local government applicant for purposes of applying for Public Assistance, including for permanent



FEMA

RECOVERY POLICY (INTERIM) RP9521.5

repair, restoration, and replacement assistance under section 406. As such, charter schools will not be required to first apply to the SBA.

B. A charter school applicant must provide documentation to FEMA authoritatively establishing, pursuant to State law, approval by an authorized chartering agency to operate a charter school.

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch)

IX. SUPERSESSION: This policy supersedes all previous policy and guidance on this subject.

X. REVIEW DATE: Not less than one year from the date of publication.

//signed//

David Garratt
Acting Director of Recovery
Federal Emergency Management Agency



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** December 28, 1999
2. **Response and Recovery Directorate Policy Number:** 9523.1
3. **Title:** Snow Assistance
4. **Purpose:** This document describes the procedures for evaluating States' requests for emergency and major disaster declarations due to snowfall. This document also describes eligible work for snow or blizzard related emergencies and major disasters. It updates and replaces the 1998 document of the same name. This newer version of the policy clarifies certain aspects of snowstorm declaration criteria and provides additional guidance on eligible applicants and assistance.
5. **Scope and Audience:** This policy applies to all emergency or major disaster requests received after the date of this policy. It provides guidance to FEMA, State, and local personnel responsible for administering the snow assistance regulation published in Title 44, Code of Federal Regulations (CFR), Section 206.227.
6. **Background:**
 - A. **History:** Prior to the winter of 1976/1977, requests for winter storm assistance under earlier disaster relief acts were rare. Only seven winter storm incidents were declared between 1953 and 1977, and most of these were the result of ice storms that caused enough damage to justify the declaration of major disasters.

Beginning in January 1977, and continuing through the winter of 1978/1979, the North Central and Northeast States experienced an extraordinary series of winter storms which resulted in below normal temperatures, heavy snowfall, and blizzards which threatened lives and public health and safety due to the disruption of emergency transportation facilities. During that period, 14 emergencies and one major disaster were declared. Although other types of emergency assistance were made available to save lives and protect public health and safety, snow removal assistance was provided from 1977 through 1979 in order to provide emergency access to essential facilities.

In 1993, 18 emergency declarations were authorized as a result of a severe winter storm, categorized by the National Weather Service (NWS) as a blizzard. The entire eastern seaboard experienced severe conditions caused by the storm system. The basis of these declarations was the actual and potential loss of life, the widespread nature of the event, and the need to supplement emergency assistance efforts. In 1994, 11 major disaster declarations were granted for winter storms that caused significant property damage. The conditions experienced during these events were freezing rain and icing that caused extensive power outages and health and safety hazards. In 1996, 12 major disaster declarations were granted for winter storms

along the East Coast. Heavy snowfalls jeopardized access to emergency services and created health and safety hazards. Federal assistance consisted of reimbursement for costs incurred for snow removal from snow emergency routes. In 1997, 3 major disaster declarations were granted for States in the Upper Midwest. Federal assistance was provided for snow removal from snow emergency routes and other emergency actions.

During the winter of 1998, the President declared four snow emergencies in the Midwest and in New York State. Emergency protective measures, including snow removal operations, were provided to those counties which received record or near record snowfall as determined by the National Oceanic and Atmospheric Administration (NOAA). Counties that were not eligible based on their own snowfall amount, but were contiguous to counties that received record or near record snowfall, were determined to be eligible for emergency protective measures. Snow assistance was provided for 48-hours to aid the affected local governments in providing emergency access to critical facilities and to address the most critical needs of the community. The intent of providing 48-hours of assistance was to allow the community flexibility in determining which roads and facilities were the most critical for the provision of emergency services. In addition, it was intended to reduce the administrative burden to the local, State, and Federal government in determining which roads served as snow emergency routes, and, in turn, determining eligible costs. Numerous counties requested time extensions to complete their snow removal operations. FEMA denied these requests and determined that additional time would only be provided in situations where the snowfall greatly exceeded the record amount. Following the emergency declarations, it was determined that additional guidance and revisions to the policy were required to further clarify FEMA's provision of snow assistance.

- B. Authority: The authority to provide Federal assistance for such disasters is provided in the Robert T. Stafford Disaster Relief and Emergency Assistance Act P.L. 93-288, as amended and 44 CFR 206.227. 44 CFR 206.227 reads as follows: "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."
- C. Official Government Records: The NWS, a division of the Department of Commerce, NOAA, is the cognizant Federal agency that collects, forecasts, and performs operational analyses of official information pertaining to snowfall. The National Climatic Data Center, a part of NOAA's National Environmental Satellite, Data, and Information Service, is mandated to perform historical climatological analyses of this data and serve as the official archive of snowfall data. To assist FEMA in implementing the Snow Assistance regulation, NOAA has provided historical snowfall data for approximately 7,000 reporting stations across the country. This information includes the maximum 1-, 2-, and 3-day snowfalls that have been recorded over the time period that records have been maintained.

7. Policy:

- A. It continues to be Federal policy that disaster response and recovery is the responsibility of State and local governments. Federal assistance is supplementary and is appropriate only when an event is of such severity and magnitude that response requirements exceed State and local capabilities.
- B. In addition to satisfying the requirements under 44 CFR 206.35 or 44 CFR 206.36 for emergency or major disaster declarations, the event must be determined to be a record or near record snowfall using NOAA data. Snowfall for a specific event will be measured against the historical snowfall data maintained and provided by NOAA.
- C. Federal assistance is intended for record snowfall situations. However, a very significant snowstorm that is not a record event may exceed State and local response capabilities. Therefore, FEMA will consider the impact of other occurrences, including the following, when evaluating requests for Federal assistance for near record snowstorms:
 - 1. Heavy snowfall over a very extended period of time;
 - 2. Severe winds and extraordinary drifting;
 - 3. Extraordinary ice formation; and
 - 4. Cumulative effect of snow on the ground.
- D. In the event of an emergency or major disaster declaration resulting from snow or blizzard conditions, Federal assistance will be provided for emergency protective measures (including, but not limited to, snow removal, de-icing, salting and sanding roads) as described in 44 CFR 206.225. Federal emergency assistance will be provided for only a specified period of time determined by the circumstances of the event. Under the provisions of this policy, Federal assistance is intended for emergency purposes only, not for the total costs of recovery from the snowstorm. The duration of emergency assistance will be recommended by FEMA and decided by the President. The provisions of 44 CFR 206.228(a)(4) apply.
- E. The Executive Associate Director has the authority to add counties and to adjust the eligible period for assistance after the President has declared the emergency or disaster.
 - 1. Counties subsequently added to the declaration must meet the basic criteria for a declaration as specified in Paragraph 7.b. above. Requests for additional counties should be made by the Governor or the Governor's Authorized Representative and include supporting documentation. Requests for add-on counties should be made within 30 days of the declaration or the end of the incident period, whichever is later.
 - 2. Generally, FEMA will provide assistance for a continuous 48-hour period, to allow time for eligible applicants to address the most critical emergency needs. The 48-hour period for snow removal assistance may begin at a time other than when the storm actually began. Each applicant will designate the beginning of the 48-hour period.

3. If snowfall quantities greatly exceed record amounts, an additional 24-hours of snow assistance may be requested. The extension of the eligible time period will be made for all designated counties within a State. For the State to qualify for an extension of the eligible time period, a significant number of the designated counties must experience snowfall that greatly exceeds the record amount.
- F. The Hazard Mitigation Grant Program under Section 404 of the Stafford Act will not be activated following a "snow" declaration. It may be authorized only for a "severe winter storm" which is declared as a major disaster.
- G. A county that does not receive a record or near record snowfall, but is contiguous to a county that receives a record or near record snowfall, may be added to the declaration and be eligible for snow assistance. Contiguous counties are those with some portion of their border common to a designated county. Those counties that are not eligible based on their own snowfall amounts, must have snowfall equal to or greater than that of the designated contiguous county that was designated on the basis of a record or near record snowfall.

For example, county "A" is designated because it receives 1-day snowfall of 20 inches that exceeds its historical record snowfall. County "B" is contiguous to county "A" and also receives a 1-day snowfall of 20 inches. However, county "B's" 1-day record snowfall is 25 inches. Therefore county "B" is not eligible under the record or near-record snowfall criteria. However, because county "B" received snowfall equal to that of county "A" and is contiguous to county "A", county "B" is also eligible for snow assistance.
- H. All snow removal insurance proceeds must be reduced from the eligible snow assistance amounts.

8. Procedure:

- A. Requests for emergency or major disaster declarations for snow assistance on the basis of extraordinary snowfall shall cite "snow" or "snowfall" as the incident type in the request letter and Regional documentation. This type of declaration allows reimbursement for costs associated with snow removal and emergency protective measures for a specified period of time.
- B. Requests for emergency or major disaster declarations for winter storms that cause substantial infrastructure damage resulting from snow, ice, high winds, and other blizzard conditions shall cite "severe winter storm" as the incident type. Declarations based on these requests are to be justified on the basis of an estimate of actual damage. Eligible work will not include snow removal unless "record" or "near record" snowfall criteria are met. Rather, only a very limited level of snow removal, incidental to the recovery, will be eligible for assistance. (For example, snow removal that is necessary in order to access debris or for access to repair essential facilities may be eligible following a snowstorm that does not meet the "record" or "near record" criteria). This limitation is not intended to inhibit the Federal Coordinating Officer from authorizing measures to protect public health and safety.

C. There may be events warranting an emergency or major disaster declaration with different types of assistance provided to different counties within the State. Some counties may warrant a designation for "snow" emergency protective measures and snow removal assistance due to record or near record snowfall. Others may warrant a designation for damages resulting from a "severe winter storm." In some cases a single county might warrant assistance for both "snow" and a "severe winter storm." The Governor's request for assistance must cite and justify the reason for the request as:

1. "Snow"
2. "Severe winter storm" or
3. "Severe winter storm/snow"

D. Measurement of Snowfall:

1. For the purposes of this policy, the maximum snowfall over a 1-, 2-, or 3-day period, as documented by historical records maintained by NOAA, is defined as a record snowfall.
2. If Federal assistance is requested for a snowstorm that occurs over a 1-, 2-, or 3-day period, then the snowfall data for the specific event shall be compared to the record snowfall data for the reporting stations in each of the affected counties. The snowfall values shall be compared for the same time period. That is, if the current snowstorm occurred over 2-days, then the current 2-day snowfall shall be compared to the 2-day historical record snowfall.

E. Use of official snowfall data:

1. With the Governor's request for an emergency or major disaster declaration, the State will provide official government snowfall data as provided by NWS.
2. The Regional Office will then measure the snowfall against the record values on a county by county basis. For a county to receive FEMA assistance, the snowfall must be a record or near record event.
3. For counties with multiple snowfall reporting stations, at least one reporting station must experience a record or near record snowfall as determined by NOAA data.
4. For counties that do not have NOAA reporting stations, a comparison of the snowfall values for reporting stations within adjacent counties or the nearest reporting station shall be used for declaration recommendation purposes.

F. Request processing:

1. The Governor requests an emergency or major disaster declaration, providing the following information:
 - a) identification of counties for which a declaration is sought;
 - b) amount of snowfall for each affected county;

- c) date(s) of snowfall;
- d) impact of snowfall; and
- e) type of assistance requested.

2. Regional Director:

- a) evaluates the request;
- b) validates the actual snowfall and effects;
- c) compares actual snowfall with historical record snowfall;
- d) evaluates any extenuating problems, and makes a recommendation on the request for declaration;
- e) on a case by case basis; recommends the incident period for the snowstorm;
- f) proposes time span for eligible Federal assistance; and
- g) submits to Headquarters a Regional Summary and a Regional Analysis and Recommendation that includes the above information in addition to a narrative of the event, the impacts of the event to the private and public sector, health and safety impacts, emergency shelter information, type and extent of damage (in case of a request for a major disaster), the type of assistance needed, and State and local resources allocated.

3. FEMA Headquarters evaluates the data and any extenuating problems and makes a recommendation on the declaration to the President.

9. Supersession: FEMA Snow Policy dated November 10, 1998; RR Policy Number 9523.1

10. Authorities and References: Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, and 44 CFR 206.227

11. Originating Office: RR-IS

12. Review Date: Two years from the date of publication

13. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

14. Distribution: Regional Directors, Regional R&R Division Directors, Regional IS Branch Chiefs



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.2

I. TITLE: Eligibility of Building Safety Inspections Supporting Emergency Work

II. DATE: JAN 28 2008

III. PURPOSE:

This policy provides guidance on the eligibility of building safety inspections under the Federal Emergency Management Agency (FEMA) Public Assistance program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It pertains to eligible work under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. It is intended for personnel making eligibility determinations under the Public Assistance program.

V. AUTHORITY:

Sections 403 (42 U.S.C. 5170b) and 502 (42 U.S.C. 5192) respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and 44 Code of Federal Regulations (CFR) § 206.225.

VI. BACKGROUND:

A. This policy is limited to the extent of assistance permitted under sections 403 and 502(b) of the Stafford Act, and 44 CFR §206.225, which address immediate threats to life, public health and safety, and improved property.

B. Some types of building inspection activities do not address immediate threats to life, public health and safety, or improved property, and are more appropriately related to hazard mitigation, or the repair, restoration, and replacement of damaged buildings. These types of building inspection activities are not addressed in this policy.

VII. POLICY:

A. Eligible Work for Building Safety Inspections under Sections 403 and 502(b). Work authorized by sections 403 and 502(b) of the Stafford Act and 44 CFR §206.225 must be necessary to address an immediate threat to lives, public health and safety, or improved property.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.2

1. Eligible building safety inspection activities include inspecting buildings to determine whether they are safe for entry, occupancy, and lawful use as well as posting appropriate placards.
 - a. Generally, building safety inspections consist of a thorough visual examination, inside and out, to determine whether a building is safe for use, potentially dangerous (*i.e.*, limited entry), or unsafe.
 - b. Building safety inspections primarily address structural safety, but may also address nonstructural risks such as electrical hazards, hazardous materials (including mold and asbestos), or fire safety issues.
2. Eligible work for building safety inspections will be written as “Category B” emergency work on the Project Worksheet (PW).
3. In accordance with 44 CFR §206.204, emergency work must be completed within six months of the disaster declaration. Extensions for extenuating circumstances or unusual project requirements beyond the control of the subgrantee must be approved by the Grantee.
4. An eligible applicant may conduct building safety inspections on public and private facilities, as long as the inspections are otherwise eligible emergency work (*i.e.*, the inspections address an immediate threat to life, public health and safety, or improved property). See 44 CFR §206.225.
 - B. Eligible Costs for Building Safety Inspections under Sections 403 and 502(b). Under sections 403 and 502(b) of the Stafford Act, FEMA can consider the increased demand for building safety inspection services as an eligible emergency protective measure if such inspections are related to the disaster and are necessary to establish if damaged structures pose an immediate threat to life, public health or safety, or improved property. Short-term allowable costs that may be reimbursed (if eligible in accordance with 44 CFR §206.228, 44 CFR Part 13 and OMB Circular A-87) include, but are not limited to:



FEMA

DISASTER ASSISTANCE POLICY

1. Overtime (but not straight-time) for permanently employed staff.
2. Hiring and/or contracting of additional staff.
3. Additional office space for staff.
4. Telecommunications set-up.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes FEMA policy 9523.2, *Eligibility of Building Inspections in a Post-Disaster Environment*, June 23, 1998, and all previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** July 16, 1998
2. **Response and Recovery Directorate Policy Number:** 9523.3
3. **Title:** Provision of Temporary Relocation Facilities
4. **Purpose:** This policy will facilitate national uniformity in determining eligibility for and duration of temporary relocation under the FEMA public assistance program.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for use by all personnel involved in the administration of the FEMA public assistance program. This policy is effective on publication.
6. **Background:** As a result of disasters, services provided at public and private nonprofit (PNP) facilities may be disrupted to the extent that they cannot continue unless they are temporarily relocated to another facility. Applicants may request that their services be relocated temporarily to continue that service. Criticality of the service and safety of the facility are the factors used to determine the need for temporary relocation.

Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), authorizes FEMA to provide Federal assistance to meet immediate threats to life, and property resulting from a major disaster. Specifically, Section 403 (a)(3)(D) allows for the provision of temporary facilities for schools and other essential community services, when it is related to saving lives and protecting and preserving property or public health and safety. For essential facilities, temporary relocation may be eligible both for immediate relocation and/or for relocation during repairs/reconstruction when the repair/reconstruction is begun within the timelines outlined in this policy.

7. Policy:

A. General Provisions

This policy is based on the general eligibility requirements in Title 44 of the Code of Federal Regulations (44 CFR) 206.223. To be eligible, an item of work must 1) be required as a result of the major disaster event, 2) be located within a designated disaster area, and 3) be the legal responsibility of the applicant.

1. Applicant Eligibility

To be eligible, the applicant, whether a public or a PNP entity, must own or operate a school (educational institution) or a facility that provides an essential community service, per Section 403 of the Stafford Act. A school is defined as

an elementary, secondary, or institution of higher education as outlined in 44 CFR 206.221. Essential community services are those that are necessary to save lives, and/or to protect and preserve property or public health and safety.

- Essential government facilities include facilities for police, fire, and other essential governmental operations. Not all government facilities are essential. For example, recreation facilities, parking facilities, and other facilities that do not provide essential community services are not eligible.
- Specifically for PNPs, essential community services include medical, custodial care, education, emergency, utilities and other health and safety services of a governmental nature. Libraries (other than school libraries), museums, zoos, community centers, senior citizen centers, rehabilitation facilities, shelter workshops, etc. are not considered essential community services/facilities. Because the disruption or discontinuance of these services would not result in a threat to lives, property or public health and safety, these facilities are not eligible for relocation assistance under Section 403 of the Stafford Act.
- The ancillary facilities of essential facilities are not eligible for relocation assistance; examples include: parking garages, athletic stadiums, faculty and student housing, administration buildings, hospital laundry facilities, research facilities, warehouse facilities, and student union buildings.

2. Capacity of Relocation Facilities

The capacity of temporary facilities must be comparable to the pre-disaster capacity of the facility that housed the displaced services.

B. Basis for Temporary Relocation:

1. The facility was not damaged by the disaster but lacks a critical utility or operational item (such as potable water, electricity, and cellular telephone service) for a period of time beyond which is reasonable given the nature of the services provided and relocation would restore services to the community more quickly than awaiting restoration of the disrupted vital utility at the current site.
2. The facility was damaged by the disaster to the extent that the facility cannot be occupied safely and the nature of the service provided requires that it be relocated.
3. The facility was damaged by the disaster, but can be used if emergency protective measures, such as temporary shoring, are performed. If this work will take place over a period of time beyond which is reasonable given the nature of the services provided, temporary relocation is permitted both before and during the time emergency work is performed.

4. Temporary relocation is needed for the duration of eligible, disaster-related repairs, which begin and proceed on a work plan within the time lines outlined below.
5. A temporary relocation is needed for the time necessary to construct a replacement facility, if construction begins and proceeds on a work plan within the time lines outlined below.
6. In the case of an improved project (but not alternate project), temporary relocation is needed during the estimated period of time that would have been required for the performance of the eligible repair or replacement project (but not for the full time required for the improved project) and work begins within the time lines outlined below.

C. Time Limitations for Temporary Facilities:

1. 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 (44 CFR 206.204(c)).
2. A time estimate (days, weeks, months) must be provided in the damage survey report scope of work prepared for the temporary facility.
3. The Governor's Authorized Representative (GAR) does not have the authority to grant time extensions for temporary facilities, since time extensions for temporary relocation change the approved scope of work and increase costs and those determinations may only be made by FEMA.
4. The GAR may recommend a time extension based on information provided by the applicant documenting: 1) extenuating circumstances beyond the control of the applicant that prevented the completion of work within the initial time limit (e.g., FEMA delays in historic or environmental reviews), 2) a design proposal, 3) a schematic, and 4) the revised timeline for the project. If a design proposal, schematic and timeline cannot be presented, an extension may not be granted.
5. If the GAR supports an applicant request for temporary relocation, the GAR may request approval of a time extension from the FEMA Regional Director (RD), providing the RD with a new proposed scope of work. If granted, a time extension may not exceed six-months (i.e., for a 12 month total). Exceptions to the 12-month relocation policy may be granted by the Regional Director if construction has begun before the 12-month expiration date. The exceptions may be projected for the duration of the construction based on regional policy and industry standards for construction (e.g., from R.S. Means or equivalent source).
6. If a time extension is approved by FEMA, a new description of the scope of work shall be prepared as a supplement to the original scope of work that funded the temporary relocation.

D. Eligible Temporary Relocation Facilities

Eligible temporary facilities may be leased, purchased, or constructed. The selected facility must be used to provide the eligible function to the same extent and manner as it was provided prior to the disaster. The selected facilities option must be reasonable, cost-effective and temporary in nature. FEMA will not mandate that the applicant pursue a specific option for temporary relocation, but FEMA will fund only the least costly option. FEMA will not fund utilities (power, water, heat, etc.), maintenance, or operating costs, nor will FEMA fund the differential should these costs increase.

1. Cost Comparison

Based on the preferred alternative, the applicant must supply FEMA with information sufficiently detailed so that a cost comparison can be made by FEMA. This information should consist of at least three proposals that include cost estimates. FEMA will review the estimates and perform a cost comparison to identify the most cost-effective facility option.

2. Renting/Leasing Option

The applicant can pursue this option and receive Federal disaster assistance from FEMA for the rent of a temporary facility during the eligible time period, as previously explained.

3. Purchase/Construction Option

Costs associated with the purchase/construction of a facility to which an applicant will temporarily relocate may be eligible for FEMA assistance if FEMA confirms that it is the most cost-effective option.

- With the exception of modular or manufactured units, all proposed purchase/construction options must be submitted in advance to the Executive Associate Director for review and approval. Before approving a proposal, FEMA may determine it is in the best interest of the federal government to impose conditions on the applicant's use and/or disposition of the facility.
- Pursuant to 44 CFR 13.24 or Office of Management and Budget Circular A-110, FEMA will require that it be compensated when the authorized temporary relocation time period has ended or the facility is no longer needed by the applicant for the authorized temporary relocation purpose (i.e., the approved scope of work), whichever occurs first. As a general rule, if FEMA has paid only a portion of the cost of the facility, FEMA shall be entitled to compensation in an amount equal to FEMA's proportionate equity in the facility. The amount due FEMA will be computed by applying FEMA's percentage of participation in the cost of the purchase/construction to the fair market value or sale proceeds taking into consideration reasonable out-of-pocket costs related to the sale.

E. Insurance

Some insurance policies provide funds for temporary relocation. Therefore, FEMA must determine the amount of funding available from the applicant's insurance carrier and make appropriate adjustments to assure that there is no duplication of benefit.

F. Policy Application

This section provides direction on the application of this policy as it pertains to the following topics:

1. Relocation costs

These are costs associated with the transfer of the eligible pre-disaster service, including equipment and supplies, and costs for rent, purchase or construction of the temporary facility itself. The allowable costs associated with the provision of temporary relocation include:

- Reasonable alterations of the temporary facility if they are *required* to make the space functional and meet the pre-disaster needs of the applicant.
- Moving expenses to and from the temporary facility.
- If an applicant uses force account labor and/or equipment to relocate to a temporary facility, the eligibility for straight and overtime labor costs and equipment costs are based on the provisions of 44 CFR 206.228 for emergency work.
- Minimal life safety or other building upgrades required by an applicable State or local code or standard in effect at the time the temporary facility is acquired (by purchase or lease). For example, a "change in use" could trigger the need for such work.

2. Alternate Projects

Funds approved for temporary facilities may not be applied to an alternate project defined by 44 CFR 206.203(d)(2). Further, if temporary relocation costs were approved before a decision by an applicant to pursue an alternate project, these costs will be deducted from the eligible Federal estimate for the permanent restoration of the damaged facility.

3. Improved Projects

For improved projects [CFR 206.203(d)(1)], temporary relocation facilities are eligible; however, there are funding limitations. If an applicant chooses to incorporate improvements into the repair of disaster damages or to expand the pre-disaster capacity of a damaged facility, a temporary facility is eligible only during the time estimated as necessary to perform the approved scope of repair or replacement work. In other words, funding of a temporary relocation facility will not be based on the total amount of time necessary to complete the improved project.

4. Additional Emergency Services
Increased capacity for the existing essential service or the addition of new services will not be eligible for relocation costs.
5. Temporary storage space
If a facility is authorized for temporary relocation, FEMA also will fund additional temporary space for the storage and protection of property (e.g., equipment, supplies, and furniture) for the same period of time for which temporary relocation has been approved. The total space/capacity (for relocation of the essential service and the storage space) must not exceed the original space/capacity of the facility that was damaged or is being repaired or replaced. Temporary storage is eligible if the service is essential, the need has been demonstrated, and the facility/service is otherwise eligible.
6. Increase in Rental Costs
Applicants that perform essential services in leased facilities may have to temporarily relocate to another leased facility as a result of the disaster. If the rent for the temporary facility is greater than the rent for the pre-disaster facility, only the rental cost differential is eligible for FEMA funding. FEMA considers the pre-disaster rental cost a fixed commitment made by the applicant before the disaster and the increase in rental costs a direct result of the disaster, thus, the differential is eligible for FEMA assistance subject to Sections 7.B. and 7.C. above.
8. **Supersession:** This policy updates and replaces all previous FEMA public assistance policy memoranda on this subject.
9. **Authorities:** Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and implementing regulations in Title 44 of the Code of Federal Regulations Section 206.
10. **Origintating Office:** Infrastructure Support Division, Response and Recovery Directorate
11. **Review Date:** Two years from date of publication
12. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate
13. **Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

I. TITLE: **Demolition of Private Structures**

II. DATE: July 18, 2007

III. PURPOSE:

This policy provides guidance in determining the eligibility of demolition of private structures under the Federal Emergency Management Agency's (FEMA) Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 403(a)(3)(E) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5172, 44 CFR 206.225, and 44 CFR 206.226.

VI. BACKGROUND:

A. Section 403 of the Stafford Act, 42 U.S.C. 5170b, provides FEMA authority to provide assistance essential to meeting immediate threats to life and property resulting from a major disaster. Specifically, Section 403(a)(3)(E) provides FEMA authority to fund the demolition of unsafe structures which endanger the public on public and private property (44 CFR 206.225). Eligible Public Assistance applicants may be eligible for Public Assistance grant funding under Section 403 of the Stafford Act under the conditions of this policy.

B. The demolition of unsafe structures owned by eligible public and private nonprofit (PNP) applicants may be eligible for Public Assistance grant funding under Section 406 of the Stafford Act, which funds the repair, restoration, reconstruction, or replacement of eligible facilities (44 CFR 206.226).



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

VII. POLICY:

A. Definitions.

1. Demolition: The act or process of reducing a structure, as defined by State or local code, to a collapsed state.
2. Demolition debris: Materials including building materials and personal effects that are deposited as a result of the demolition process.
3. Legal responsibility: A statute, formally adopted local code, or ordinance that gives local government officials the responsibility to enter private property to demolish unsafe structures or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).
4. Unsafe structure: A structure found to be dangerous to the life, health or safety of the public because such structure is so damaged or structurally unsafe as a direct result of the declared disaster that partial or complete collapse is imminent.

B. Duplication of Benefits (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the demolition of private structures.

1. When demolition of private structures is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the demolition costs.
2. If it is discovered that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding the property owners received from other sources.

C. Eligibility of Demolition of Private Structures.

1. Demolition of privately owned structures and subsequent removal of demolition debris may be eligible for Public Assistance grant funding under Section 403 of the Stafford Act when the following conditions are met:



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

a. The structures were damaged and made unsafe by the declared disaster, and are located in the area of the declared disaster (44 CFR 206.223(a)(1) and (2)).

b. The State or local government applicant certifies that the structures are determined to be unsafe and pose an immediate threat to the public (44 CFR 206.225(a)). The Public Assistance applicant provides a detailed explanation documenting its legal responsibility to enter private property to demolish an unsafe structure, and confirms that all legal processes and permission requirements (e.g., rights-of-entry) for such action have been satisfied. The Public Assistance Group Supervisor must concur that the demolition of unsafe structures and removal of demolition debris are in the public interest. FEMA will consider alternative measures to eliminate threats to life, public health, and safety posed by disaster-damaged unsafe structures, including fencing off unsafe structures and restricting public access, when evaluating requests for demolition.

i. The eligible applicant must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to demolish unsafe private structures (44 CFR 206.223(a)(3)). Codes and ordinances must be germane to the structural condition representing an immediate threat to life, public health, and safety, and not merely define the local government's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of demolition of private structures. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants may not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).

ii. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety should be independent of any expectation, or request, that FEMA will reimburse costs incurred for demolition of private structures and the removal of demolition debris from private property. In addition, an applicant's legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.

c. The State or local government confirms that a legally authorized official has ordered the exercise of public emergency powers or other appropriate authority to enter onto



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

private property in order to remove/reduce threats to life, public health, and safety threat via demolition of unsafe structures and removal of demolition debris (44 CFR 206.223).

d. The State or local government indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the demolition of unsafe private structures and removal of demolition debris from private property (44 CFR 206.9).

e. The work is completed within the completion deadlines outlined in 44 CFR 206.204 for emergency work.

2. Eligible costs associated with the demolition of private structures may include, but are not limited to:

- a. capping wells;
- b. pumping and capping septic tanks;
- c. filling in basements and swimming pools;
- d. testing and removing hazardous materials from unsafe structures, including asbestos and household hazardous wastes;
- e. securing utilities (electric, phone, water, sewer, etc.);
- f. securing permits, licenses, and title searches. Fees for permits, licenses, and titles issued directly by the applicant are not eligible unless it can be demonstrated that the fees are above and beyond administrative costs; and
- g. demolition of disaster-damaged outbuildings such as garages, sheds, and workshops determined to be unsafe.

3. Ineligible costs associated with the demolition of private structures may include:

- a. removal of slabs or foundations, except in very unusual circumstances, such as when disaster-related erosion under slabs on a hillside causes an immediate public health and safety threat;
- b. removal of pads and driveways;



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

4. Structures condemned as safety hazards before the disaster are not eligible for demolition and subsequent demolition debris removal under Public Assistance grant authority.

5. Individuals and private organizations (except for eligible PNPs) will not be reimbursed for demolition activities on their own properties under the Public Assistance Program (44 CFR 206.224(c)).

6. The removal of substantially damaged structures and associated appurtenances acquired through a Section 404 FEMA Hazard Mitigation Grant Program buyout and relocation project may be eligible for Public Assistance grant funding under Section 407 of the Stafford Act. Such removal must be completed within two years of the declaration date, unless extended by the Assistant Administrator of the Disaster Assistance Directorate (44 CFR 206.224(a)(4)).

D. Demolition of Commercial Structures. The demolition of commercial structures is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of demolition. However, in some cases as determined by the FCO, the demolition of commercial structures by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).

Apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial structures with respect to Public Assistance funding.

E. Environmental and Historic Review Requirements. Eligible demolition activities must satisfy environmental and historic preservation compliance review requirements as established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.4

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Recovery Policy 9523.4 dated November 9, 1999, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed/

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

I. TITLE: **Mutual Aid Agreements for Public Assistance and Fire Management Assistance**

II. DATE: **AUG 13, 2007**

III. PURPOSE:

This policy specifies criteria by which the Federal Emergency Management Agency (FEMA) will recognize the eligibility of costs under the Public Assistance (PA) Program and the Fire Management Assistance Grant (FMAG) Program incurred through mutual aid agreements between applicants and other entities.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters, emergencies, and fire management assistance declarations declared on or after the date of this policy. This policy is intended for personnel involved in the administration of the PA and the FMAG programs.

V. AUTHORITY:

This policy applies to emergency work authorized under Sections 403, 407, 420, and 502, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, and the implementing regulations of 44 CFR § 204 and § 206.

VI. BACKGROUND:

Many State, Tribal, and local governments and private nonprofit organizations enter into mutual aid agreements to provide emergency assistance to each other in the event of disasters or emergencies. These agreements often are written, but occasionally are arranged verbally after a disaster or emergency occurs. This policy addresses both written and verbal mutual aid agreements and the eligibility of costs under the Emergency Management Assistance Compact (EMAC).

The National Incident Management System (NIMS) maintains that states should participate in these agreements and should look to establish intrastate agreements that encompass all local jurisdictions. The Incident Management Systems Division will be responsible for developing a national system of standards and guidelines as described in the NIMS as well as the preparation of guidance to assist agencies in implementing the system. This policy supports the NIMS by



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

establishing standard criteria for determining the eligibility of costs incurred through mutual aid agreements.

VII. POLICY:

A. Terms Used in this Policy:

1. *Backfill*. Replacement personnel who perform the regular duties of other personnel while they are performing eligible emergency work under the PA or FMAG programs.
2. *Declared Emergency or Major Disaster*. An emergency or major disaster as defined at 44 CFR § 206.2 (a)(9) and (17), respectively.
3. *Declared Fire*. An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster for which the Disaster Assistance Directorate Assistant Administrator has approved a declaration in accordance with the criteria listed in 44 CFR § 204.21.
4. *Emergency Management Assistance Compact (EMAC)*. This type of interstate mutual aid agreement allows states to assist one another in responding to all kinds of natural and man-made disasters. It is administered by the National Emergency Management Association (NEMA).
5. *Incident Commander*. The ranking official responsible for overseeing the management of emergency or fire operations, planning, logistics, and finances of the field response.
6. *Providing Entity*. The entity providing mutual aid assistance to a Requesting Entity pursuant to a local or statewide mutual aid agreement.
7. *Requesting Entity*. An entity that requests mutual aid assistance from a Providing Entity for emergency work resulting from a declared fire, emergency or major disaster within its legal jurisdiction. The requesting entity is eligible to receive FEMA assistance for the eligible mutual aid activities performed by the providing entities.
8. *Intra-state Mutual Aid*. Mutual Aid that supports local and regional mutual aid efforts within a State as well as regional mutual aid agreements and compacts involving local



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

jurisdictions that cross State boundaries, or are adjacent to a neighboring State (i.e. Kansas City, Kansas/Kansas City, Missouri , etc.).

9. *Inter-state Mutual Aid.* Mutual Aid that supports national mutual aid efforts requested directly between two or more States or territories through established Multi-agency Coordination Systems as directed by approved mutual aid agreements or compacts (i.e. EMAC), etc.

B. General:

1. To be eligible for reimbursement by FEMA, the mutual aid assistance should have been requested by a Requesting Entity or Incident Commander; be directly related to a Presidentially-declared emergency or major disaster, or a declared fire; used in the performance of eligible work; and the costs must be reasonable.

2. FEMA will not reimburse costs incurred by entities that "self-deploy" (deploy without a request for mutual aid assistance by a Requesting Entity) except to the extent those resources are subsequently used in the performance of eligible work at the request of the Requesting Entity or Incident Commander.

3. The reimbursement provisions of a mutual aid agreement must not be contingent on a declaration of an emergency, major disaster, or fire by the Federal government.

4. This policy is applicable to all forms of mutual aid assistance, including agreements between Requesting and Providing Entities, statewide mutual aid agreements, and the mutual aid services provided under the EMAC.

C. Pre-Event Written Mutual Aid Agreements.

FEMA recognizes mutual aid agreements between Requesting and Providing Entities, and statewide mutual aid agreements wherein the State is responsible for administering the claims for reimbursement of Providing Entities. In addition, FEMA recognizes the standard EMAC agreement as a valid form of mutual aid agreement between member states.

1. FEMA encourages parties to have written mutual aid agreements in place prior to a declared fire, emergency, or major disaster.

a. When a pre-event written agreement exists between a Requesting Entity and a Providing Entity, the Providing Entity may be reimbursed through the Requesting Entity. In



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

these circumstances, the Requesting Entity should claim the eligible costs of the Providing Entity, pursuant to the terms and conditions of the mutual aid agreement and the requirements of this policy, on its subgrant application, and agree to disburse the Federal share of funds to the Providing Entity.

b. When a statewide pre-event mutual aid agreement exists that designates the State responsible for administering the reimbursement of mutual aid costs, a Providing Entity may apply, with the prior consent of the Requesting Entity, for reimbursement directly to the Grantee, in accordance with applicable State law and procedure. In such cases, the Providing Entity should obtain from the Requesting Entity the certification required in section H. (3) of this policy and provide it to the State as part of its reimbursement request.

2. FEMA encourages parties to address the subject of reimbursement in their written mutual aid agreements. FEMA will honor the reimbursement provisions in a pre-event agreement to the extent they meet the requirements of this policy.

3. 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 such initial unpaid period.

4. When a pre-event agreement specifies that no reimbursement will be provided for mutual aid assistance, FEMA will not pay for the costs of assistance.

D. Post-Event Mutual Aid Agreements.

1. When the parties do not have a pre-event written mutual aid agreement, or where a written pre-event agreement is silent on reimbursement, the Requesting and Providing Entities may verbally agree on the type and extent of mutual aid resources to be provided in the current event, and on the terms, conditions, and costs of such assistance.

2. 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 agreement should be consistent with past practices for mutual-aid between the parties. A written post-event agreement should be submitted within 30 days of the Requesting Entity's Applicant's Briefing.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

E. Force Account Labor Costs.

1. The straight- or regular-time wages or salaries of a Requesting Entity's permanently employed personnel performing or supervising emergency work are not eligible costs, pursuant to 44 CFR § 206.228(a)(4), and § 204.43(c), even when such personnel are reassigned or relocated from their usual work location to provide assistance during an emergency. Overtime costs for such personnel are eligible and may be submitted as part of a subgrant application.

2. The labor force expenses of a Providing Entity will be treated as contract labor, with regular time and overtime wages and certain benefits eligible, provided labor rates are reasonable. The labor force expenses of the Providing Entity will not be treated as contract labor if the labor force is employed by the same local or State government as the Requesting Entity.

3. In circumstances where a Providing Entity is also an eligible applicant in its own right, the determination of eligible and ineligible costs will depend on the capacity in which the entity is incurring costs. As stated in paragraphs E(1) and (2), an applicant's straight-time wages are not eligible costs when the applicant is using its permanently employed personnel for emergency work in its own jurisdiction.

4. Requesting and Providing Entities may not mutually deploy their labor forces to assist each other so as to circumvent the limitations of paragraph E(1) or (2) of this policy.

5. The straight- or regular-time wages or salaries for backfill personnel incurred by Providing Entities are not eligible for reimbursement. However, the overtime portion of the replacement personnel's salary is considered an additional cost of deploying personnel who perform eligible work and is eligible for reimbursement under this policy.

F. Types of Mutual Aid Work

There are two types of mutual aid work eligible for FEMA assistance: Emergency Work and Grant Management Work. Both are subject to the eligibility requirements of the respective PA and FMAG programs:

1. **Emergency Work.** Mutual aid work provided in the performance of emergency work necessary to meet immediate threats to life, public safety, and improved property, including firefighting activities under the FMAG program, is eligible.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

a. Examples of eligible emergency work include:

- (i) Search and rescue, sandbagging, emergency medical care, debris removal;
- (ii) Reasonable supervision and administration in the receiving State that is directly related to eligible emergency work;
- (iii) The cost of transporting equipment and personnel by the Providing Entity to the incident site, subject to the requirements of paragraphs B(1), (2) and (3) of this policy;
- (iv) Costs incurred in the operation of the Incident Command System (ICS), such as operations, planning, logistics and administration, provided such costs are directly related to the performance of eligible work on the disaster or fire to which such resources are assigned;
- (v) State Emergency Operations Center or Joint Field Office assistance in the receiving State to support emergency assistance;
- (vi) Assistance at the National Response Coordination Center (NRCC), and Regional Response Coordination Center (RRCC), if requested by FEMA (labor, per diem and transportation);
- (vii) Dispatch operations in the receiving State;
- (viii) Donations warehousing and management (eligible only upon approval of the Assistant Administrator of the Disaster Assistance Directorate);
- (ix) Firefighting activities; and,
- (x) Dissemination of public information authorized under Section 403 of the Act.

b. Examples of mutual aid work that are not eligible, include:

- (i) Permanent recovery work;
- (ii) Training, exercises, on-the-job training;



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

- (iii) Long-term recovery and mitigation consultation;
- (iv) Costs outside the receiving State that are associated with the operations of the EMAC system (except for FEMA facilities noted in paragraph F.(1)(a)(v) and (vi) above);
- (v) Costs for staff performing work that is not eligible under the PA or the FMAG programs;
- (vi) Costs of preparing to deploy or "standing-by" [except to the extent allowed in the FMAG program pursuant to 44 CFR § 204.42(e)];
- (vii) Dispatch operations outside the receiving State;
- (viii) Tracking of EMAC and U.S. Forest Service Incident Cost Accounting and Reporting System (ICARS) resources; and
- (ix) Situation reporting not associated with ICS operations under VII(F)(iv) of this policy.

2. Grant Management Work. For PA only, work associated with the performance of the Grantee's responsibilities as the grant administrator, as outlined in 44 CFR § 206.202(b). Use of EMAC-provided assistance to perform these tasks is eligible mutual aid work.

G. Eligible Applicants.

1. Only Requesting Entities are eligible applicants for FEMA assistance. With the exception of G.(2), below, a Providing Entity must submit its claim for reimbursement to a Requesting Entity.

2. States may be eligible applicants when statewide mutual aid agreements or compacts authorize the State to administer the costs of mutual aid assistance on behalf of local jurisdictions.

H. Reimbursement of Mutual Aid Costs.

1. Requesting and Providing Entities must keep detailed records of the services requested and received, and provide those records as part of the supporting documentation for a reimbursement request.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

2. A request for reimbursement of mutual aid costs must include a copy of the mutual aid agreement - whether pre- or post-event - between the Requesting and Providing Entities.

3. A request for reimbursement of mutual aid costs should include a written and signed certification by the Requesting Entity certifying:

a. The types and extent of mutual aid assistance requested and received in the performance of eligible emergency work; and

b. The labor and equipment rates used to determine the mutual aid cost reimbursement request.

4. FEMA will not reimburse the value of volunteer labor or the value of paid labor that is provided at no cost to the applicant. However:

a. To the extent the Providing Entity is staffed with volunteer labor, the value of the volunteer labor may be credited to the non-Federal cost share of the Requesting Entity's emergency work in accordance with the provisions of Disaster Assistance Policy #9525.2, Donated Resources.

b. If a mutual aid agreement provides for an initial period of unpaid assistance or provides for assistance at no cost to the Requesting Entity, the value of the assistance provided at no cost to the Requesting Entity may be credited to the non-Federal cost share of the Requesting Entity's emergency work under the provisions of Disaster Assistance Policy #9525.2. Donated Resources.

5. Reimbursement for work beyond emergency assistance, such as permanent repairs, is not eligible for mutual aid assistance.

6. For PA only, reimbursement for equipment provided to a Requesting Entity will be based on FEMA equipment rates, approved State rates or, in the absence of such standard rates, on rates deemed reasonable by FEMA.

7. For FMAG only, reimbursement for equipment provided to a Requesting Entity will be based on 44 CFR § 204.42 (b)(3) and (4).



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.6

8. For PA only, reimbursement for damage to equipment used in emergency operations will be based on Recovery Policy #9525.8, Damage to Applicant Owned Equipment.

9. For FMAG only, reimbursement or replacement of equipment damaged or destroyed in the course of eligible firefighting activities will be based on 44 CFR § 204.42 (b)(5), and (6).

10. For PA only, reimbursement for equipment purchased by a subgrantee to support emergency operations will be based on Recovery Policy #9525.12, Disposition of Equipment, Supplies, and Salvaged Materials.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy updates and replaces RP9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance, dated September 22, 2004, and the Mutual Aid Policy Clarification Memorandum, dated March 15, 2005.

X. REVIEW DATE: Three years from date of publication.

/signed/
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



Federal Emergency Management Agency

Washington, D.C. 20472

- 1. Date Published:** April 14, 2003
- 2. Recovery Division Policy Number:** 9523.7
- 3. Title:** Public Housing Authorities (PHAs)
- 4. Purpose:** The attached memorandum of understanding (MOU) is being numbered as part of the Federal Emergency Management Agency (FEMA) Public Assistance Program policy publication system. It states the policy that FEMA and the Department of Housing and Urban Development (HUD) have agreed to with regard to funding the repair of PHA facilities that are damaged by a major disaster, as declared by the President.
- 5. Scope and Audience:** This policy is applicable to PHA facilities that were developed or modernized with funds provided under Section 9(k) of the Housing Act of 1937, as amended, and is applicable to all major disasters declared after January 8, 2001. It is for use by FEMA personnel making public assistance eligibility determinations for the Public Assistance Program.
- 6. Background:** Although HUD has specific authority under Section 9(k) of the U.S. Housing Act of 1937, as amended, to provide funds for the repair of disaster damaged PHA facilities, FEMA has generally funded these costs in the past. FEMA and HUD developed the attached agreement to eliminate confusion among the respective agencies and applicants and to ensure that all publicly-subsidized housing facilities have access to appropriate Federal assistance following major disasters. This policy does not result in a significant reduction in assistance for publicly-subsidized housing facilities.

Since issuing this policy in March, 2001, FEMA has learned that not all publicly-subsidized housing facilities are eligible for disaster assistance funding from HUD. Specifically, HUD is only authorized to provide disaster assistance to publicly-subsidized housing facilities that were developed or modernized using funds provided under Section 9(k) of the U.S. Housing Act of 1937, as amended. Publicly-subsidized housing facilities that were developed and financed from other sources, such as other HUD programs (e.g., Section 8, FHA Mortgage Insurance, etc.) or funds provided by cities, do not qualify for HUD disaster assistance. It was not the intent of the MOU or this Policy to deny disaster assistance to otherwise eligible publicly-subsidized housing facilities. Therefore, publicly-subsidized housing facilities that do not qualify for disaster assistance from HUD may apply directly to FEMA for public assistance grants under any category of work, including Section 406 permanent repairs.

Furthermore, American Indian and Alaskan Native Tribal organizations that own and/or operate public housing facilities are not eligible for HUD disaster assistance. These groups do not fall under the authority of the Housing Act of 1937, but are subject to separate legislation addressing their special circumstances. Since the Federal law governing Indian housing has no provisions for emergency or disaster-related funding, American Indian and Alaskan Native PHAs may apply directly to FEMA for disaster assistance.

7. **Policy:** The policy is attached.
8. **Supersession:** R&R Policy #9523.7, dated March 19, 2001.
9. **Authorities:** Section 403, Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended [42 U.S.C. § 5170b(3)]; Section 9(k), United States Housing Act of 1937, authority, as amended [42 U.S.C. § 1437g(k)], The Native American Housing Assistance and Self Determination Act of 1996, as amended (25 U.S.C 4101).
10. **Originating Office:** Recovery Division, Emergency Preparedness and Response Directorate.
11. **Review Date:** Three years from date of publication.
12. **Signature:**

Signed
Laurence W. Zensinger
Acting Director
Recovery Division
Emergency Preparedness and Response Directorate



Federal Emergency
Management Agency
Washington, D.C. 20472

U.S. Department of Housing
and Urban Development
Washington, D.C. 20410



MEMORANDUM FOR: HUD Secretary's Representatives
HUD State Coordinators
HUD Public Housing Directors
FEMA Regional Directors
FEMA Regional Response and Recovery Division Directors
FEMA FCO Cadre Members
Public Housing Authority Directors

FROM: Harold Lucas
Assistant Secretary for Public and Indian Housing
Department of Housing and Urban Development

Lacy Suiter
Executive Associate Director
Response and Recovery Directorate
Federal Emergency Management Agency

SUBJECT: Coordination of HUD and FEMA Disaster Assistance to Public Housing
Authorities (PHAs)

This is to inform you that the Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) have agreed on a new policy for coordination of disaster assistance to PHAs for properties damaged by major disasters declared by the President. This policy is effective for disasters declared after the date of this memorandum.

HUD and FEMA have agreed that with respect to public housing authorities FEMA will, in its discretion, provide for essential assistance authorized under section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (at 42 U.S.C. 5170b(3)). This assistance may include debris removal, demolition of unsafe structures, and any actions necessary to reduce an immediate threat to life, property, and public health and safety.

This essential assistance is generally provided immediately following a disaster. To receive essential assistance from FEMA, PHAs should submit a *Request For Public Assistance* to the State Public Assistance Officer within 30 days of the disaster designation for that area. The State will forward it to FEMA who will assign a Public Assistance Coordinator to work with the PHA to identify eligible assistance. For work FEMA approves as eligible, FEMA generally provides 75 percent of the cost of the work. For work FEMA does not approve, the PHA may appeal FEMA's decision in accordance with 44 CFR 206.206.

For PHAs' disaster recovery costs not covered by insurance and essential assistance from FEMA, HUD will provide funding from the capital public housing reserve authorized by section 9(k) of the United States Housing Act of 1937, authority, as amended (42 U.S.C. 1437g(k)), or similar statutory authority, subject to the availability of appropriations. Each PHA that incurs damage in excess of insurance coverage and essential assistance from FEMA from a Presidentially declared disaster is responsible for submitting a funding request to HUD.

- The PHA must submit its request to the local HUD field office (FO) after determining the amount of funds to be provided from insurance and other sources.
- To substantiate the extent of the damage and its request for funds, the PHA may include pictures, a videocassette, engineering surveys, etc.
- The HUD field office at its option, may conduct an on-site inspection or issue a task order to the Corps of Engineers (COE), with whom HUD has an interagency agreement, for such an inspection to verify the PHA's request for funds, e.g., need and cost.
- Within 14 calendar days of receipt of the PHA's request, the FO must complete its review and forward its recommendation for approval, with the PHA's request, to HUD headquarters for review and final decision.
- If the request is approved, HUD headquarters will notify the FO when funds have been assigned for the PHA and the FO will process the PHA's application, reserve the funds and execute an Annual Contributions Contract Amendment.
- If the FO does not recommend approval of the PHA's request the FO shall disapprove the request and notify the PHA in writing, including the reasons for disapproval.
- The PHA may appeal a FO's disapproval to HUD headquarters for a review and final determination.
- Funds received for damages resulting from a disaster do not require repayment.

We are pleased to announce this new public housing disaster assistance policy. It should ensure access by our Nation's PHAs to appropriate Federal assistance following major disasters to help with immediate and long-term recovery. If you have any questions, please call Patricia Stahlschmidt, Director, Infrastructure Division, FEMA, at (202) 646-4066 or William Flood, Director, Office of Capital Investments, HUD, at (202) 708-1640.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** June 4, 2001
2. **Response and Recovery Directorate Policy Number:** 9523.8
3. **Title:** Mission Assignments for ESF #10
4. **Purpose:** The attached memorandum is being numbered as part of the FEMA Public Assistance Program policy publication system. It states the policy that FEMA and EPA have agreed to in regard to funding Mission Assignments for ESF #10 activities in major disasters and emergencies. It clarifies policy that is currently in place in the form of a policy memorandum.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for use by all personnel involved in the administration of the FEMA public assistance program. This policy is effective on publication.
6. **Background:** FEMA and EPA reached an agreement in September 1998 that stated that it was FEMA's intent to utilize Stafford Act funds to reimburse EPA for specific emergency response activities related to hazardous materials (hazardous substances, pollutants, contaminants, and oil) under ESF #10, when there is an Emergency or Major Disaster Declaration. In September 1999, interim guidance for Hurricane Floyd was issued that further clarified the 1998 document.

This guidance, for use on all ESF #10 Mission Assignments, is intended to provide further clarification for the 1998 and 1999 Policy memoranda and the FRP ESF #10 Annex. There will inevitably be activities that occur following a natural disaster or terrorism attack that are not covered in this guidance which will require close coordination among the FCO, ESF #10 and the State. Additionally, hazardous material releases and/or problems may not be identified for some time after the occurrence of the disaster. Decision-makers must be aware that such typical occurrences are associated with the disaster and that the determination of the threat posed by such releases is made at the time the release or incident is discovered (e.g., drums containing hazardous materials, discovered after flood waters recede, may pose a threat to public health that warrants response, even if the typical emergency phase of operations has ended).

This policy is a formalization of past practice. Therefore, the amount of assistance that an applicant would receive will not change as a result of this publication. As provided in RR Policy 9510.1 *Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation*, par. 7.E.b), the Director of the Infrastructure Division has granted an exception to the policy coordination requirements.

7. **Policy:** The policy is attached.
8. **Supersession:** Policy Memoranda on ESF #10 Mission Assignments from Lacy E. Suiter dated September 27, 1998, and from Robert J. Adamcik dated September 24, 1999
9. **Authorities:** Section 403, Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §5170b(3))
10. **Originating Office:** Infrastructure Division, Response and Recovery Directorate
11. **Review Date:** Five years from date of publication
12. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. **Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors

SEE ATTACHED POLICY MEMORANDUM WITH GUIDANCE



Federal Emergency
Management Agency
Washington, D.C. 20472

United States
Environmental Protection Agency
Washington, D.C. 20460



MEMORANDUM FOR: FEMA Acting Regional Directors, Federal Coordinating Officers,
EPA Removal Managers, EPA On-Scene Coordinators

FROM: Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate
Federal Emergency Management Agency

Jim Makris
Director
Chemical Emergency Preparedness & Prevention Office
Environmental Protection Agency

SUBJECT: Policy Guidance on ESF #10 Mission Assignments

In September 1998, FEMA and EPA agreed that it was FEMA's intent to utilize Stafford Act funds to reimburse EPA for specific emergency response activities related to hazardous materials (hazardous substances, pollutants, contaminants, and oil) under ESF #10, when there is an Emergency or Major Disaster Declaration. In September 1999, interim guidance for Hurricane Floyd was issued which further clarified the 1998 document.

The attached Policy Guidance, for use on all ESF #10 Mission Assignments, is intended to provide further clarification for both the 1998 Policy and the FRP ESF #10 Annex. **Please ensure that all staff are informed of this Policy Guidance.** If you have any questions, please call Chuck Stuart, FEMA at (202) 646-3691 or Lea Anne Thorne, EPA at (202) 564-7387.

Attachment

Guidance for Implementing Mission Assignments to ESF #10

FEMA and EPA reached an agreement in September 1998 which stated that it was FEMA's intent to utilize Stafford Act funds to reimburse EPA for specific emergency response activities related to hazardous materials (hazardous substances, pollutants, contaminants, and oil) under ESF #10, when there is an Emergency or Major Disaster Declaration. In September 1999, interim guidance for Hurricane Floyd was issued which further clarified the 1998 document.

This guidance, for use on all ESF #10 Mission Assignments, is intended to provide further clarification for both the 1998 Policy and the FRP ESF #10 Annex. There will inevitably be activities that occur following a natural disaster or terrorism attack that are not covered in this guidance which will require close coordination between the FCO, ESF #10 and State. Additionally, hazardous material releases and/or problems may not be identified for sometime after the occurrence of the disaster (e.g., the day the earthquake or hurricane hits). Decision-makers must be aware that such typical occurrences are associated with the disaster and that the determination of the threat posed by such releases is made at the time the release or incident is discovered (e.g., drums containing hazardous materials, discovered after flood waters recede, may pose a threat to public health that warrants response, even if the typical emergency phase of operations has ended).

Activities that EPA will fund:

- EPA will use CERCLA funds to pay for emergency response activities related to all pre-existing Superfund sites, that is, sites that have ongoing CERCLA response actions or are currently listed on the National Priorities List (NPL.)
- EPA will use Oil Spill Liability Trust Fund funds to pay for all response activities related to pre-existing Oil Pollution Act removal actions.

Activities that FEMA will fund through Stafford Act:

Clearly, these activities must be specifically requested by the State and be beyond the State's capability for a Mission Assignment and associated funding to be issued. Decisions will be made in consultation with the ESF #10 representative. Activities listed below are typical response actions that occur following a natural disaster.

- Staffing of pre-deployment teams (i.e., ROC, EST);
- Retrieving and disposing of orphan tanks and drums;
- Household hazardous waste program expenditures;
- Technical assistance to states;
- Pumping of water contaminated with hazardous materials or oil from basements when the problem is a widespread threat to public health;

- Initial assessments to determine if an immediate health and safety threat exists;
 - Control and stabilization of releases of hazardous materials or oil to deal with immediate threats to public health and safety;
 - Clean-up and disposal of hazardous materials that is necessary to mitigate immediate threats to public health and safety;
 - Monitoring of immediate health and safety threats resulting from debris removal operations.
- [The term "immediate" applies to a threat whenever it may occur which may not necessarily be right after the disaster event.]

Activities that FEMA may fund through Stafford Act:

These are activities, which may occur following a natural disaster. Consultation among the FCO, ESF #10 representative, and the State is critical before a determination is made on funding.

Again, these activities must be specifically requested by the State and be beyond the State's capability before a Mission Assignment and associated funding will be issued.

- Clean-up or removal of hazardous materials or oil contamination in buildings or facilities otherwise eligible for FEMA assistance (ex., public buildings.) An example of a situation where this may occur and should be funded would be decontamination of a subway system following a terrorism incident.

Activities that FEMA will not fund through Stafford Act:

- Testing/assessments of soil, air and waterways for mold and contaminants to determine long term clean-up requirements;
- Long term site remediation or restoration;
- Permanent storage of hazardous materials;
- Cleaning/replacement of equipment that is damaged/contaminated during long term clean-up activities;
- State/local costs for long-term clean-up measures.

signed May 18, 2001
 Lacy E. Suiter Date
 Executive Associate Director
 Response and Recovery Directorate
 Federal Emergency Management Agency

signed May 21, 2001
 Jim Makris Date
 Director
 Chemical Emergency
 Preparedness & Prevention Office
 United States Environmental Protection Agency



FEMA

RECOVERY POLICY – RP9523.9

I. TITLE: 100% Funding for Direct Federal Assistance and Grant Assistance

II. DATE: June 9, 2006

III. PURPOSE:

To provide guidance and establish procedures for providing 100% funding for Direct Federal Assistance and Grant Assistance.

IV. SCOPE AND AUDIENCE:

This policy applies to all major disasters declared on or after the publication date of this policy. It is intended for all states eligible to receive assistance under sections 403 and 407 of the Stafford Act, and all Federal agencies that may be directed by FEMA to provide such assistance.

V. AUTHORITY:

Sections 403 and 407 of the Robert T. Stafford Disaster Relief and Assistance Act, 42 U.S.C. 5121-5206, as amended.

VI. BACKGROUND:

FEMA's regulations at 44 CFR §206.208, Direct Federal Assistance, state, "When the State and local government lack the capability to perform or 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." This assistance is subject to the cost share provisions contained in the FEMA/State agreement and the Stafford Act. In addition, 44 CFR §206.47(d) states, "If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact." Generally, a "limited period in the initial days of the disaster" means the period of 100% funding will be limited the first 72 hours following the disaster declaration, or an applicant's selected 72-hour period. This period may be extended based on the gravity and scope of the disaster, as determined by the President.



FEMA

RECOVERY POLICY – RP9523.9

VII. POLICY:

A. **Terms Used in this Policy:**

1. **Mission Assignment:** Work order issued by FEMA to a Federal agency directing completion by that agency of a specified task. 44 CFR §206.2(a)(18).
2. **Mission Assignment Task Order:** Specific instruction given to a Federal agency under a mission assignment directing it to perform work of certain quantity or in a certain area under that mission assignment.
3. **Emergency Work:** All activities eligible under section 403 of the Stafford Act, including such activities when performed by a Federal agency as direct Federal assistance.
4. **Debris Clearance and Removal:** Clearance, pick up, hauling, processing and disposal of all manner of debris generated by the declared event on public property. This includes woody debris, sand and gravel, and components of buildings or other structures. This may also include debris on private property, when FEMA has approved such removal.
5. **Consumable Commodities:** Food, ice, water and other items not requiring installation, such as small plastic tarps and small generators.
6. **Emergency Protective Measures:** Actions (other than debris removal) eligible as Category B measures, including installation of plastic sheeting for temporary roofing, generators requiring installation, and shoring or demolition of unsafe structures.
7. **Designated Period:**
 - **For Direct Federal Assistance:** The period from 12:01 a.m. of the date of the Presidential declaration to 11:59 p.m. of the third full day after the date of the declaration.
 - **For Grant Assistance:** The period selected by an applicant for eligibility for 100% Federal share assistance. The period will be 72 hours 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.



FEMA

RECOVERY POLICY – RP9523.9

8. **Purchase Order:** Any unconditional agreement, contract or other commitment by a state or local government under state and local law for the acquisition of goods and services.

B. **Direct Federal Assistance.** FEMA will provide direct Federal assistance through a mission assignment to another Federal agency - upon request of the State - when the State and local government certify they lack the capability to perform or contract for the requested work. The duration of mission assignments for debris removal will be limited to 60 days from the disaster 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. Additional extensions will require approval by the Recovery Division Director at FEMA Headquarters. If the President has also authorized 100% Federal funding for emergency work and/or debris removal under sections 403 or 407 of the Stafford Act for the disaster, the Federal share of work mission-assigned by FEMA will be as follows:

1. **Debris Clearance and/or Removal:** When FEMA directs another Federal agency to accomplish debris clearance and/or removal, FEMA will provide at 100% Federal share the cost of actual debris clearance and/or removal work accomplished, *not mission assignment task orders initiated*, during the designated period. This work includes whatever clearance, pick up, hauling, processing and disposal activities FEMA authorizes but only during the designated period. After the designated period, if further direct Federal assistance for debris clearance or removal is necessary, it will be provided at the prevailing Federal cost share rate for the particular disaster. The State shall agree in advance to reimburse FEMA for the appropriate non-Federal share of the work including the overhead of the Federal agency assigned the task of debris removal.

2. **Food, Water, Ice and Other Consumable Commodities:** For a mission assignment task order approved during the designated period, such commodities and the work necessary to distribute them, but not including installation or set-up, shall be provided at 100% Federal share regardless of the work or project completion date. For task orders approved after the designated period, the commodities shall be provided at the prevailing Federal cost share rate for the particular disaster. The State shall agree in advance to reimburse FEMA for the appropriate non-Federal share of the work including the overhead of the Federal agency assigned the task.



FEMA

RECOVERY POLICY – RP9523.9

3. **Other Emergency Protective Measures:** For a mission assignment task order approved during the designated period, FEMA will provide at 100% Federal share the cost of the work actually completed during the designated period. Examples of these measures include: installation of generators, installation of large plastic sheet roofing, and shoring or demolition of unsafe structures. After the designated period, the work or supplies shall be provided at the prevailing Federal cost share rate for the particular disaster. The State shall agree in advance to reimburse FEMA for the appropriate non-Federal share of the work including the overhead of the Federal agency assigned the task.

C. **Grant Assistance.** When the President authorizes 100% Federal funding for emergency work under sections 403 and 407 of the Stafford Act for a limited period in the initial days of the disaster, the Federal share for Grant Assistance will be as follows:

1. **Debris Clearance and/or Removal:** FEMA will reimburse applicants 100% of the costs for the debris removal work accomplished during the designated period. This includes all clearance, pick up, hauling, processing and disposal activities, but only during the designated period. For work accomplished after the end of the designated period, assistance will be provided at the prevailing Federal cost share rate for the particular disaster.

2. **Food, Water, Ice, and Other Consumable Commodities:** FEMA will reimburse applicants 100% of the costs of eligible work for reasonable purchase orders approved and finalized pursuant to state and local law during the designated period, regardless of the work or project completion date. This includes expenses to *distribute* commodities, but does not include installation or set-up. For purchase orders approved and placed after the end of the designated period, assistance will be provided at the prevailing Federal cost share rate for the particular disaster.

3. **Other Emergency Protective Measures:** FEMA will reimburse applicants 100% of the costs of eligible work accomplished during the designated period. Examples of these measures include: installation of generators, installation of large plastic sheet roofing, and shoring or demolition of unsafe structures. For work accomplished after the designated period, assistance will be provided at the prevailing Federal cost share rate for the particular disaster.

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch).



FEMA

RECOVERY POLICY – RP9523.9

IX. SUPERSESSION: Response and Recovery Directorate Guidance No. 4150-E, September 26, 1995, *Direct Federal Assistance at 100% Federal Funding*; Unnumbered Guidance, October 6, 2004, *Eligibility for 100% Federal Share Assistance*; Recovery Division Policy 9523.9, March 10, 2006, *100% Funding for Direct Federal Assistance and Grant Assistance*.

X. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Director of Recovery
Federal Emergency Management Agency



FEMA

RECOVERY POLICY – RP9523.10

I. TITLE: Eligibility of Vector Control (Mosquito Abatement)

II. DATE: September 12, 2006

III. PURPOSE:

This policy describes the criteria the Federal Emergency Management Agency will use to determine eligibility for vector control (mosquito abatement) measures.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program, including applicants.

V. AUTHORITY:

Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, and 44 CFR §206.225(a)(3)(i).

VI. BACKGROUND:

A. Mosquito-borne illnesses continue to pose significant risks to parts of the population of the United States. Heavy rains and flooding caused by natural disasters can produce significant increases in biting mosquito populations in a short period of time in both inland and coastal areas. The increase in standing water not only provides additional habitat for mosquito egg laying by potential vector species of *Culex*, but also causes *Aedes* and *Psorophora* mosquito eggs to hatch that have lain dormant for months or even years. Typically, the first brood of adult mosquitoes will emerge from the standing water within 5-10 days of the disaster event. These adults will persist for 2-4 weeks and will lay additional eggs during their lifecycle. The result can be an enormous increase in the density of several mosquito species following a natural disaster. If standing water persists for long periods or is replenished by repeated rainfall, flooding, or normal drainage patterns are altered by the effects of the disaster event, increased mosquito production may continue for several weeks or months.

B. Certain species of mosquitoes are important vectors of West Nile Virus and other viral encephalitides in the U.S. (e.g., eastern equine encephalitis, western equine encephalitis, Saint Louis encephalitis). Dengue, also spread by mosquitoes, is endemic in the Caribbean and Mexico, and local transmission has been documented with increasing frequency in Texas.



FEMA

RECOVERY POLICY – RP9523.10

C. Disaster events may increase the risk of mosquito transmitted disease when epidemic virus transmission is occurring in the area prior to the disaster and the additional mosquitoes prolong or expand the epidemic. The increase in vector mosquitoes may also promote or intensify virus amplification from low levels (enzootic or background levels). Increases in human exposure (residents or responders) to vector mosquitoes further enhance risk.

D. Many states and local governments have ongoing programs to monitor the levels and types of vector populations and associated viral infections in animals and humans. Based on the pre-disaster “background level” of virus in mosquitoes, public health officials are able to monitor changes in arbovirus transmission levels in a disaster-affected area.

E. A large population of biting mosquitoes can pose an immediate threat to public health even when evidence of vector-borne diseases is not present or significant in the disaster affected area. Of particular concern are the following:

1. An extraordinary or unusual number of biting mosquitoes that can seriously impede response efforts. Workers that are required to work out-of-doors (i.e., debris removal operations, protection of damaged structures, restoration of power and telephone service, etc.) can often be significantly hampered in their work.

2. Housing may be compromised due to extended power outages (i.e., windows and doors are opened), which could increase the general public’s exposure to mosquitoes. This could in turn result in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick.

VII. DEFINITIONS:

A. **Aedes:** The genus name for a mosquito that transmits yellow fever and dengue.¹

B. **Arbovirus:** A virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.²

C. **Culex:** Common mosquito genus comprised of 29 species in North America.²

D. **Dengue:** An infectious tropical disease transmitted by mosquitoes and marked by fever, rash, and sever joint pain.¹

E. **Encephalitis:** A pathological condition characterized by inflammation of the brain.²



FEMA

RECOVERY POLICY – RP9523.10

F. **Enzootic:** A level of disease endemic in animals. An enzootic disease is constantly present in an animal population, but usually only affects a small number of animals at any one time.²

G. **Landing Rate:** An adult mosquito surveillance measure utilizing human volunteers as bait. Expressed as number of mosquitoes landing per minute.²

H. **Methoprene Briquettes:** A formulation of methoprene (compound that mimics the action of an insect growth-regulating hormone and prevents the normal maturation of insect larvae) growth inhibitor and a timed-release carrier that resembles a charcoal briquette. Briquettes are designed to control mosquitoes in small bodies of water artificial water-holding containers.²

I. **Psorophora:** Mosquito genus comprised of 13 species in North America.²

J. **Sentinel Organism:** An organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.²

K. **Seroconversion:** The development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.²

L. **Trap Count:** The number of female mosquitoes captured in a trap receptacle each night the traps are set.²

VIII. POLICY:

A. **Vector Control for Disease-Carrying or Extraordinary Mosquito Populations.** Vector control measures may be eligible in the disaster area as emergency protective measures under 44 CFR §206.225(a)(3)(i). FEMA may provide reimbursement for such costs at the written request of the State or local public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on the following:

1. Evidence of higher levels of disease transmitting mosquitoes in the disaster area following the event or a significant number of disease-carrying mosquitoes in the area due to the increase in event-related standing water; or evidence of the potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms (poultry, wild birds, mosquito pools) in the impacted area: prior to the storm event, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the storm event. Presence of known primary and secondary vector species in an affected area may presage future event-related disease transmission.



FEMA

RECOVERY POLICY – RP9523.10

2. A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors; thereby significantly hampering response and recovery efforts. Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-disaster surveillance results.

3. Verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick. This may occur when increased numbers of residents in disaster areas with extended power outages are forced to open buildings for air circulation.

B. Monitoring Mosquito Populations and Disease Transmission Levels. Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the emergency response. Similarly, termination of control efforts should be based on mosquito density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

1. The local jurisdiction's mosquito population density estimates pre- and post-disaster, including information about species composition.

2. Arbovirus transmission activity indices, including information about the location of surveillance activities. Indices may consist of:

- a. Infection rates in mosquitoes.
- b. Seroconversion in sentinel chickens.
- c. Equine cases.
- d. Human cases.

3. Additional information that assists in making an assessment of needs includes:

- a. The amount and type of flooding (e.g., saltwater/freshwater, coastal/inland).
- b. The extent and location of damage to housing.
- c. The extent, location, and anticipated duration of power interruption.
- d. The anticipated extent and duration of cleanup/recovery operations.



FEMA

RECOVERY POLICY – RP9523.10

4. Description of the type of mosquito management required (e.g., aerial or ground-based adulticide applications, larvicide applications), and duration of application to reduce the threat and the areas where the interventions are needed.

C. Abatement Measures. Insecticide formulations must be among those approved and registered by the U.S. Environmental Protection Agency for use in urban areas for mosquito control, and must be applied according to label directions and precautions by appropriately trained and certified applicators. Furthermore, mosquito abatement measures must comply with all federal, State and local laws, ordinances, and regulations concerning vector control. Below are frequent types of vector control used but are not limited to the following:

1. **Adulticiding.** The ground or aerial spraying of insecticides to kill adult mosquitoes.
2. **Larviciding.** The application of chemicals, including methoprene briquettes, by ground or aerial to kill mosquito larvae or pupae.
3. **Breeding Habitat Removal/Alteration.** The modification of potential breeding habitat to make it unsuitable for mosquito breeding or to facilitate larval control. This includes draining or removing standing water in close proximity to homes, schools, sheltering facilities, and businesses.
 - a. Efforts may include increased dewatering through the pumping of existing drainage systems.
 - b. Dissemination of information (e.g., inserting flyers with resident's water bills, public service announcements, or newspaper campaigns) to direct residents to remove the mosquito breeding habitat.

D. Federal Assistance. FEMA may reimburse applicants for eligible mosquito control measures or may provide direct federal assistance through a mission assignment. The procedure listed below should be followed:

1. The applicant provides documentation addressed in Section 8B of this policy to the State Public Health Department for evaluation.
2. Upon positive verification of a vector threat, the applicant contacts the State Emergency Management official or its primary point of contact with the Public Assistance staff, usually a Public Assistance Coordinator (PAC).



FEMA

RECOVERY POLICY – RP9523.10

3. A FEMA representative will consult with CDC regarding the applicant's written request.

4. Following consultation with CDC, FEMA will provide assistance, as appropriate, based on FEMA's eligibility parameters.

E. Eligible Costs.

1. FEMA will only reimburse for the increased operating cost for mosquito abatement. This is calculated by comparing the disaster related costs to the last three years of expenses (whether through force account or use of contractors) for the same period.

2. The description of the type of mosquito management and duration of application are required to establish the eligible scope of work.

3. FEMA will assist in generating equipment rates if the applicant cannot produce their own.

4. Costs for information dissemination as outlined in Section C.3.(b) of this policy may be reimbursed upon verification of expenses.

F. Consultation with CDC. FEMA will consult with the CDC Division of Vector-Borne Infectious Diseases to evaluate a State's request for assistance under this policy.

IX. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch)

X. SUPERSESSON: This policy supersedes all previous guidance on this subject.

XI. REVIEW DATE: Five years from date of publication.

//signed//

John R. D'Araujo, Jr.
Director of Recovery

¹ Webster's II New Riverside University Dictionary; copyright 1994 by Houghton Mifflin Company.

² Joseph M. Conlon, Technical Advisor, American Mosquito Control Association.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.11

I. TITLE: Hazardous Stump Extraction and Removal Eligibility

II. DATE: May 15, 2007

III. PURPOSE:

Establish criteria used to reimburse applicants for removing eligible hazardous stumps from public or, where authorized, private property.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication. It is intended for all personnel involved in the administration and execution of the Public Assistance Program, including applicants.

V. AUTHORITY:

Sections 403 and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, as amended.

VI. BACKGROUND:

Public Assistance regulations authorize reimbursement for the removal of debris from public and private land when it is in the public interest. Such removal is in the public interest when it is necessary to: eliminate immediate threats to life, public health and safety, or eliminate immediate threats of significant damage to improved public or private property; or to ensure economic recovery of the affected community to the benefit of the community at large. Trees that are uprooted during a disaster event such that all or part of their roots are exposed may pose an immediate threat to public health and safety.

VII. POLICY:

A. When a disaster event uproots a tree or stump (i.e., 50% or more of root ball is exposed) on a public right-of-way, improved public property or improved property owned by certain private nonprofit organizations, and the exposed root ball poses an immediate threat to life, public health and safety, FEMA may provide supplemental assistance to remove, transport, dispose, and provide fill for the root cavity of an eligible uprooted tree or stump. The Federal Emergency Management Agency (FEMA) will reimburse applicants reasonable costs for this type of work only when uprooted stumps are more than 24 inches in diameter (measured two feet from the ground), with the consensus of the Applicant and the State, and is approved in



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.11

advance by FEMA, using the attached Hazardous Stump Worksheet.

1. If it is necessary to remove an uprooted stump before it can be inspected by FEMA because it poses a threat that must be dealt with immediately, the applicant must submit documentation, to FEMA including photographs, that establishes its location on public property, specifics on the threat, stump diameter measured two feet up the trunk from the ground, quantity of material to fill the hole, and any special circumstances.

2. FEMA will reimburse applicants for extraction, transport and disposal of stumps with a diameter of 24 inches or smaller at the unit cost rate for regular vegetative debris, using the attached Stump Conversion Table, as such stumps do not require special equipment.

3. FEMA will reimburse applicants at the unit cost rate (usually cubic yards) for normal debris removal for all stumps, regardless of size, placed on the rights-of-way by others (i.e., contractors did not extract them from public property or property of eligible Private Non Profit organization). In such instances, applicants do not incur additional cost to remove these stumps because the same equipment that is used to pick up "regular" debris can be used to pick-up these stumps.

4. If an applicant incurs additional costs in picking up large stumps (over 24 inches in diameter) from rights-of-way, it should complete the Hazardous Stump Worksheet and present documentation to FEMA in advance for consideration.

5. Stumps with less than 50% of their root ball exposed should be cut flush at ground level and the cut portion included with regular vegetative debris.

6. Straightening or bracing of trees is eligible for reimbursement if it is less costly than removal and disposal. Applicant must provide a cost analysis showing cost effectiveness.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSSION: This policy supersedes Recovery Policy Number 9523.11, Hazard Stump Removal and Extraction Eligibility dated May 6, 2006.

X. REVIEW DATE: Three years from the date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

Stump Conversion Table

Diameter to Volume Capacity

The quantification of the cubic yards of debris for each size of stump in the following table was derived from FEMA field studies conducted throughout the State of Florida during the debris removal operations following Hurricanes Charley, Frances, Ivan and Jeanne. The following formula is used to derive cubic yards:

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root Ball Diameter}^2 \times 0.7854) \times \text{Root Ball Height}]}{46656}$$

0.7854 is one-fourth Pi and is a constant.

46656 is used to convert cubic inches to cubic yards and is a constant

The formula used to calculate the cubic yardage used the following factors, based upon findings in the field:

- Stump diameter measured two feet up from ground
- Stump diameter to root ball diameter ratio of 1:3.6
- Root ball height of 31"

Stump Diameter (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
6	0.3	46	15.2
7	0.4	47	15.8
8	0.5	48	16.5
9	0.6	49	17.2
10	0.7	50	17.9
11	0.9	51	18.6
12	1	52	19.4
13	1.2	53	20.1
14	1.4	54	20.9
15	1.6	55	21.7
16	1.8	56	22.5
17	2.1	57	23.3
18	2.3	58	24.1
19	2.6	59	24.9
20	2.9	60	25.8
21	3.2	61	26.7
22	3.5	62	27.6
23	3.8	63	28.4
24	4.1	64	29.4
25	4.5	65	30.3
26	4.8	66	31.2
27	5.2	67	32.2
28	5.6	68	33.1
29	6	69	34.1
30	6.5	70	35.1
31	6.9	71	36.1
32	7.3	72	37.2
33	7.8	73	38.2
34	8.3	74	39.2
35	8.8	75	40.3
36	9.3	76	41.4
37	9.8	77	42.5
38	10.3	78	43.6
39	10.9	79	44.7
40	11.5	80	45.9
41	12	81	47
42	12.6	82	48.2
43	13.3	83	49.4
44	13.9	84	50.6
45	14.5		



FEMA

RECOVERY POLICY - RP9523.12

I. TITLE: Debris Operations – Hand-Loaded Trucks and Trailers

II. DATE: May 1, 2006

III. PURPOSE:

To describe the criteria the Federal Emergency Management Agency (FEMA) will use to reimburse applicants for eligible debris removal accomplished with trucks and trailers loaded physically by hand, rather than with mechanical equipment.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication. It is intended for all personnel involved in the administration and execution of the Public Assistance Program, including applicants.

V. AUTHORITY:

Sections 403 and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, as amended.

VI. BACKGROUND:

A. Debris removal companies under contract with local governments have frequently supplemented their vegetative debris removal operations by hiring subcontractors who modify their trucks and trailers by extending sidewalls with plywood or other materials to increase the vehicle's load capacity. Because of the tenuous nature of these improvements, operators typically load these vehicles physically by hand. The inefficiencies associated with loading these trucks or trailers by hand, instead of using mechanical equipment, effectively negates the increased capacity advantages of these vehicles. Hand loading cannot achieve compaction levels comparable to mechanically loaded vehicles. Further, the unit cost for transporting debris is based on mechanical loading of trailers and trucks.

B. FEMA performed studies throughout the State of Florida following the four devastating hurricanes in 2004 and determined that a mechanically-loaded vehicle had a weight-to-volume ratio at least twice that of hand-loaded vehicles. In other words, vehicles of the same measured capacity that were loaded by mechanical equipment and reasonably compacted carried at least



FEMA

RECOVERY POLICY - RP9523.12

twice the volume of debris as those loaded physically by hand. FEMA has therefore determined it is not reasonable to reimburse applicants - for hand-loaded vehicles and mechanically loaded vehicles - at the same rate.

VII. POLICY:

A. Debris monitors located at temporary or final debris disposal sites will reduce the observed capacity of each hand-loaded truck or trailer load by 50% because of the low compaction achieved by hand-loading. For example, if a 40 cubic-yard (CY) hand-loaded truck or trailer arrives at a debris management or disposal site, and it appears to be 100 percent full, the actual quantity of debris in the truck or trailer will be recorded as 20 CY $\{(40 \text{ CY} / 2) * 100\}$. In the same manner, if the truck or trailer appears half full, the load will be recorded as 10 CY $\{(40 \text{ CY} / 2) * 50\}$. The maximum amount recorded for a hand-loaded vehicle will be 50% of its measured capacity.

B. FEMA will reimburse applicants on the basis of capacities calculated in VII-A.

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch)

IX. SUPERSESSION: Not applicable.

X. REVIEW DATE: Three years from the date of publication.

//signed//

David Garratt
Acting Director of Recovery
Federal Emergency Management Agency



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

I. TITLE: Debris Removal from Private Property

II. DATE: July 18, 2007

III. PURPOSE:

This policy describes the criteria that the Federal Emergency Management Agency (FEMA) will use to evaluate the eligibility of debris removal work from private property under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403(a)(3)(A), 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5173, 42 U.S.C. 5192, and 44 CFR 206.224.

VI. BACKGROUND:

A. Sections 403(a)(3)(A) and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, respectively, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal.

B. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR 206.224 establish the requirement that debris removal be in the “public interest” in order to be eligible for reimbursement. “Public interest” is defined as being 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



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

3. ensure economic recovery of the affected community to the benefit of the community-at-large.

C. Generally, debris removal from private property following a disaster is the responsibility of the property owner. However, large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large. In these cases, the State or local government may need to enter private property to remove debris to: eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved property; or ensure economic recovery of the affected community to the benefit of the community-at-large. In these situations, debris removal from private property may be considered to be in the public interest and thus may be eligible for reimbursement under the Public Assistance Program (44 CFR 206.224).

VII. POLICY:

A. Definitions.

1. Disaster-generated debris: Any material, including trees, branches, personal property and building material on public or private property that is directly deposited by the disaster.

2. Improved property: Any structure, facility, or equipment that was built, constructed, or manufactured. Examples include houses, sheds, car ports, pools, and gazebos. Land used for agricultural purposes is not improved property (44 CFR 206.221(d)).

3. Legal responsibility: A statute, formally adopted State or local code, or ordinance that gives local government officials responsibility to enter private property to remove debris or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).

4. Private property: Land and structures, to include contents within the structures, built on land that is owned by non-governmental entities (44 CFR 206.224(b)).

5. Private road: Any non-public road for which a subdivision of the State is not legally responsible to maintain. Private roads include roads owned and maintained by homeowners associations, including gated communities, and roads for which no entity has claimed responsibility. Local police, fire, and emergency medical entities may use these roads to provide services to the community (44 CFR 206.224(b)).



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

B. Approval for FEMA Assistance. FEMA will work with states affected by a disaster to designate those areas where the debris is so widespread that removal of the debris from private property is in the “public interest” pursuant to 44 CFR 206.224, and thus is eligible for FEMA Public Assistance reimbursement on a case-by-case basis.

1. Any State or local government that intends to seek reimbursement to remove debris from private property within a designated area will, prior to commencement of work, submit a written request for reimbursement to, and receive approval from, the Federal Coordinating Officer (FCO). The written request will include the following information:

- a. Public Interest Determination (44 CFR 206.224(a)):
 - i. Immediate Threat to Life, Public Health, and Safety Determination. The basis of a determination by the State, county or municipal government's public health authority or other public entity that has legal authority to make such a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety; or
 - ii. Immediate Threat to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris is cost effective. The cost to remove the debris should be less than the cost of potential damage to the improved property in order for the debris removal to be eligible; or
 - iii. Ensure Economic Recovery of the Affected Community to the Benefit of the Community at Large Determination. The basis of the determination by the State, county, or municipal government that the removal of debris from commercial properties will expedite economic recovery of the community-at-large. Generally, commercial enterprises are not eligible for debris removal.

- b. Documentation of Legal Responsibility (44 CFR 206.223(a)(3)).

A detailed explanation documenting the requesting State or local government's authority and legal responsibility at the time of disaster to enter private property to remove debris, and confirmation that all legal processes and permission requirements (e.g., right-of-entry) for such action have been satisfied.

- i. The eligible applicant requesting assistance must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to remove disaster-related debris from private property. Codes and ordinances must be germane to the condition representing an immediate



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants do not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).

ii. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety must be independent of any expectation, or request, that FEMA will reimburse costs incurred for private property debris removal. In addition, legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.

c. Authorization for Debris Removal from Private Property (44 CFR 206.223(a)(3)). Confirmation that a legally-authorized official of the requesting applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to remove/reduce threats to life, public health, and safety threat via debris removal.

d. Indemnification (44 CFR 206.9). The requesting entity indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

2. The FCO will approve or disapprove in writing each written request submitted by the State or local government for FEMA to designate areas eligible for private property debris removal. After receiving approval from the FCO, the State or local government may begin identifying properties and the specific scope of work for private property debris removal activities and apply for supplemental assistance through the Public Assistance Program.

C. Duplication of Benefits (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the debris removal work accomplished on each piece of private property.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

1. When debris removal from private property is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the costs of debris removal from private property.

2. If FEMA discovers that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding that the property owners received from other sources.

D. Eligibility of Debris Removal Work from Private Property (44 CFR 206.224(b)).

1. Eligible debris removal work from private property includes removal of:
 - a. Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.
 - b. Disaster-generated debris obstructing primary ingress and egress routes to improved property.
 - c. Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way.
 - i. Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criterion: more than 50% of the crown is damaged or destroyed; the trunk is split or broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.
 - ii. Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.
 - d. Debris created by the removal of disaster-damaged interior and exterior materials from improved property.
 - e. Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)
 - f. Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, provided that the



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

removal of the debris is the legal responsibility of an eligible applicant, on the basis of removing an immediate threat to life, public health, and safety.

2. Ineligible debris removal work on private property includes the removal of:

- a. Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas.
- b. Debris on agricultural lands used for crops or livestock.
- c. Concrete slabs or foundations-on-grade.
- d. Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

E. Debris Removal from Commercial Property. The removal of debris from commercial property is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal. However, in some cases as determined by the FCO, the removal of debris from private commercial property by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).

Industrial parks, golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property with respect to Public Assistance funding.

F. Environmental and Historic Review Requirements. Eligible debris removal activities on private property must satisfy environmental and historic preservation compliance review requirements as established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Recovery Policies 9523.13 and 9523.14, dated October 23, 2005, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.15

I. TITLE: **Eligible Costs Related to Evacuations and Sheltering**

II. DATE: April 6, 2007

III. PURPOSE:

This policy identifies the expenses related to State and local emergency evacuation and sheltering activities that are eligible for reimbursement under the *Category B, Emergency Protective Measures* provisions of FEMA's Public Assistance program, following an emergency or major disaster declaration.

IV. SCOPE AND AUDIENCE:

This policy applies to all emergencies and major disasters declared on or after the publication date of this document.

V. AUTHORITY:

Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act) and implementing regulations at 44 CFR Part 206.

VI. BACKGROUND:

States and local governments that receive evacuees from areas declared an emergency or major disaster may seek reimbursement for eligible sheltering and evacuation-support costs in accordance with mutual aid reimbursement protocols, through the affected and supported state(s). See 44 CFR § 206.223(a)(2).

VII. POLICY:

A. State and local governments may conduct sheltering operations directly, or may contract with other sheltering providers for such services, including mutual aid agreements. Eligible costs may be reimbursed for the time the facility is actively used to shelter disaster victims.

B. This policy recognizes two distinct forms of sheltering, as follows:

1. *Congregate Shelter*. Any private or public facility that provides contingency congregated refuge to evacuees, but that day-to-day serves a non-refuge function. Examples include schools, stadiums, and churches.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.15

2. *Transitional Shelter*. Any private or public facility that, by design, provides a *short-term* lodging function and an increased degree of privacy over a congregate shelter. Examples include hotels, motels, and cruise/berthing ships.

C. **Congregate Sheltering**. Eligible Category B *congregate* sheltering costs may include, but are not limited to, the *reasonable* costs for:

1. Facilities.

- Minor modifications to buildings used for congregate sheltering, if necessary to make the facility habitable.
- Facility lease or rent (at the market rate; loss of revenue is not eligible).
- Utilities, such as power, water, and telephone.
- Generator operation (but not purchase).
- Shelter safety and security.
- Shelter management.
- Phone banks for disaster victims, if essential and necessary.

2. Supplies and Commodities. Eligible items are those needed for, and used directly on, the declared disaster, and are reasonable in both cost and need. Examples include:

- Cots.
- Food and water.
- Linens/blankets/pillows.
- Personal comfort kits (e.g., shampoo, soap, toothpaste, toothbrush, etc.).
- Towels/washcloths.
- Televisions or radios (1 per 50 shelterees; basic CATV service is eligible).
- Washers/dryers (1 each per 50 shelterees).

3. Pay for Regular Employees. If the regular employees of an applicant perform duties in direct support of congregate sheltering operations, any overtime pay related to such duties is eligible for reimbursement. However, the straight-time pay of these employees is not eligible.

4. Applicant-Owned Equipment. The use of applicant-owned equipment (such as buses or other vehicles) to provide eligible evacuation or sheltering support will generally be reimbursed according to the FEMA Schedule of Equipment Rates (does not include operator labor).



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.15

5. Emergency Medical Services.

a. For the purposes of screening the health of shelter residents, assessing and treating minor illnesses and injuries, and making referrals (e.g., calling 911), congregate shelters may be staffed with emergency medical technicians, paramedics, nurses, or physicians. The number of medical staff will vary according to the size and type of shelter population. Special needs shelters will require higher-skilled medical staff (e.g., registered nurses) than a general population shelter.

b. The following costs related to the provision of emergency medical services in a congregate sheltering environment may be eligible for reimbursement:

- First aid assessment.
- Provision of first aid, including materials (bandages, etc.).
- Provision of health information.
- Special costs of caring for individuals with chronic conditions.
- Supervision of paid and volunteer medical staff.
- Prescriptions required for stabilizing the life of an evacuee/shelteree (supply not to exceed 30 days).
- Medical staff for emergency and immediate life stabilizing care, including mental health and special needs evacuee populations.
- Public Information Officer.
- Social Worker.

c. The costs of triage, medically necessary tests, and medications required to stabilize an evacuee/shelteree patient for transportation to a hospital or other medical facility may be eligible. The PA applicant should not seek reimbursement for these costs if underwritten by private insurance, Medicare, Medicaid or a pre-existing private payment agreement. Long-term treatments are not eligible, in accordance with FEMA Recovery Policy 9525.4.

d. The costs of transporting an evacuee/shelteree patient to a hospital or other medical facility may be eligible.

e. If congregate shelter medical staff determine that an evacuee/shelteree requires immediate medical or surgical attention, and requires transportation to a hospital or other medical facility for necessary and emergency life sustaining treatment not available at the shelter, the costs associated with such evacuee/shelteree transportation, diagnosis, testing and initial treatment are eligible. Eligible outpatient costs are limited to:



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.15

(1) Local professional ambulance transport services to and from the nearest hospital equipped to adequately treat the medical emergency.

(2) Physician services in a hospital outpatient department, urgent care center, or physician's office, and related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests for the period of time that the evacuee/shelteree is housed in congregate sheltering.

f. Vaccinations administered to protect the health and safety of congregate shelterees and supporting emergency workers are, for transmissible or contagious diseases, an eligible expense.

6. Transportation. Transportation of evacuees to congregate shelters is an eligible expense when the means of transportation is the most cost-effective available. Other transportation services may be provided pursuant to Section 419 of the Stafford Act.

7. Shelter Safety and Security. Additional reimbursable safety and security services may be provided *at congregate shelters*, based upon need. Police overtime costs - associated with providing necessary, additional services at congregate shelters - are eligible for reimbursement.

8. Cleaning and Restoration. The costs (to the Applicant) to clean, maintain, and restore a facility to pre-congregate shelter condition are eligible.

9. Animal Shelters. Generally, congregate sheltering facilities do not allow household pets (except service animals assisting people with disabilities), due to health and safety regulations. Eligible animal shelter costs include costs associated with the provisions of rescue, shelter, care, and essential needs (e.g., inoculations) for evacuee and rescued household pets and service animals, to include veterinary staff for emergency and immediate life-stabilizing care. Exhibition or livestock animals are not eligible for animal sheltering.

D. **Transitional Sheltering**. Transitional sheltering, if authorized, will be implemented and managed directly by FEMA, through a contract agent. *FEMA will not reimburse State or local governments for providing transitional sheltering to displaced disaster victims*. Accordingly, eligible Category B *transitional* sheltering costs are limited to the following:

1. Transportation. The following transportation costs are eligible for reimbursement:



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.15

a. One-time transportation of evacuees from congregate sheltering to transitional shelters is an eligible expense, when the means of transportation available is the most cost-effective.

b. Other transportation services will be provided pursuant to Section 419 of the Stafford Act.

2. Pay for Regular Employees. If the regular employees of an applicant perform duties related to provision 1 above, any overtime pay related to such duties is eligible for reimbursement. However, the straight-time pay of these employees is not eligible.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes all previous policy and guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.17

I. TITLE: Emergency Assistance for Human Influenza Pandemic

II. DATE: March 31, 2007

III. PURPOSE:

Establish the types of emergency protective measures that are eligible under the Public Assistance Program during a Federal response to an outbreak of human influenza pandemic in the U.S. and its territories.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403 (42 U.S.C. 5121-5206) and 502 (42 U.S.C. 5192) respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and 44 Code of Federal Regulations (CFR) §206.225(a)(3)(i).

VI. BACKGROUND:

A. The severity of the next human influenza pandemic cannot be predicted, but modeling studies suggest that the impact of a pandemic on the United States could be substantial. In the absence of any control measures (vaccination or drugs), it has been estimated that in the United States a “medium-level” pandemic could cause 89,000 to 207,000 deaths, 314,000 to 734,000 hospitalizations, 18 to 42 million outpatient visits, and another 20 to 47 million people being sick. Over an expected period of two years, between 15% and 35% of the U.S. population could be affected by an influenza pandemic, and the economic impact could range between \$71.3 and \$166.5 billion. This effect does not include members of the general population that may have to miss work to care for ill family members, potentially raising the population affected by an influenza pandemic to 55% during the peak weeks of community outbreak (Department of Health and Human Services, Centers for Disease Control and Prevention, Pandemic Flu: Key Facts, January 17, 2006).



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.17

B. An influenza pandemic differs from other public health threats, in that:

- A pandemic will last much longer than most public health emergencies, and may include “waves” of influenza activity separated by months (in 20th century pandemics, a second wave of influenza activity occurred 3 to 12 months after the first wave).
- The numbers of health-care workers and first responders available to work is expected to be reduced. This population will be at high risk of illness through exposure in the community and in health-care settings.
- Resources in many locations could be limited, depending on the severity and spread of an influenza pandemic.

C. Assumptions:

1. Three conditions must be met for a pandemic to begin:
 - a. A new influenza virus subtype must emerge, for which there is little or no human immunity. (For example, the H5N1 virus (bird flu) is a new virus for humans. It has never circulated widely among people, infecting more than 200 humans, but killing over half of them.)
 - b. It must infect humans and cause illness; and:
 - c. It must spread easily and sustainably (continue without interruption) among humans.
2. There will be large surges in the number of people requiring or seeking medical or hospital treatment, which could overwhelm health services.
3. High rates of worker absenteeism will interrupt other essential services, such as emergency response, communications, fire and law enforcement, and transportation, even with Continuity of Operations Plans in place.
4. Rates of illness are expected to peak fairly rapidly within a given community, because all populations will be fully susceptible to an H5N1-like virus.
5. Local social and economic disruptions may be temporary, yet have amplified effects due to today’s closely interrelated and interdependent systems of trade and commerce.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.17

6. A second wave of global spread should be anticipated within a year, based on past experience.

7. All countries are likely to experience emergency conditions during a pandemic, leaving few opportunities for international assistance, as seen during natural disasters or localized disease outbreaks. Once international spread has begun, governments will likely focus on protecting domestic populations.

VII. POLICY:

A. The following Emergency Protective Measures (Category B) may be eligible for reimbursement to State and local governments and certain private non-profit organizations:

1. Activation of State or local emergency operations center to coordinate and direct the response to the event.
2. Purchase and distribution of food, water, ice, medicine, and other consumable supplies.
3. Management, control, and reduction of immediate threats to public health and safety.
4. Movement of supplies and persons.
5. Security forces, barricades and fencing, and warning devices.
6. Emergency medical care (non-deferrable medical treatment of disaster victims in a shelter or temporary medical facility and related medical facility services and supplies, including emergency medical transport, X-rays, laboratory and pathology services, and machine diagnostic tests for a period determined by the Federal Coordinating Officer).
7. Temporary medical facilities (for treatment of disaster victims when existing facilities are overloaded and cannot accommodate the patient load).
8. Congregate sheltering (for disaster victims when existing facilities are overloaded and cannot accommodate the patient load).
9. Communicating health and safety information to the public.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.17

10. Technical assistance to State and local governments on disaster management and control.

11. Search and rescue to locate and recover members of the population requiring assistance and to locate and recover human remains.

12. Storage and internment of unidentified human remains.

13. Mass mortuary services.

14. Recovery and disposal of animal carcasses (except if another federal authority funds the activity – e.g., U.S. Department of Agriculture, Animal, Plant and Health Inspection Service provides for removal and disposal of livestock).

B. Eligible Costs. Overtime pay for an applicant's regular employees may be eligible for reimbursement. The straight-time salaries of an applicant's regular employees who perform eligible work are not eligible for reimbursement. Regular and overtime pay for extra-hires may be eligible for reimbursement. Eligible work accomplished through contracts, including mutual aid agreements, may be eligible for reimbursement. Equipment, materials, and supplies made use of in the accomplishment of emergency protective measures may be eligible.

C. Ineligible Costs. Ineligible costs include the following:

1. Definitive care (defined as medical treatment or services beyond emergency medical care, initiated upon inpatient admissions to a hospital).

2. Cost of follow-on treatment of disaster victims is not eligible, in accordance with FEMA Recovery Policy 9525.4 – Medical Care and Evacuation.

3. Costs associated with loss of revenue.

4. Increased administrative and operational costs to the hospital due to increased patient load.

5. Rest time for medical staff. Rest time includes the time a staff member is unavailable to provide assistance with emergency medical care.

6. Because the law does not allow disaster assistance to duplicate insurance benefits, disaster assistance will not be provided for damages covered by insurance. The PA applicant



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.17

should not seek reimbursement for these costs if underwritten by private insurance, Medicare, Medicaid or a pre-existing private payment agreement.

Note: Ineligible costs remain ineligible even if covered under contract, mutual aid, or other assistance agreements.

D. Coordination with Emergency Support Function (ESF). Coordination among ESFs 3, 5, 6, 8, 9, 11, and 14 will be required.

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch).

IX. SUPERSESSION: This policy supersedes all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP-9523.18

INTERIM

I. TITLE: Host-State Evacuation and Sheltering Reimbursement

II. DATE: July 18, 2007

III. PURPOSE:

To establish the procedures for reimbursing host-States for the cost of evacuation and sheltering support that they provide to impact-States when requested to provide such support by the impact-State or FEMA.

IV. SCOPE AND AUDIENCE:

This guidance is applicable to host-State evacuation and/or sheltering provided in support of impact-States upon agreement with the impact state or FEMA, and is effective upon the date of issuance. All FEMA personnel are directed to follow this guidance.

V. AUTHORITY:

Titles III, IV and V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§5191-5193, as amended, and implementing regulations at 44 CFR Part 206, Subparts B, G and H.

VI. POLICY:

A. Definitions:

1. **Host-State:** A state that, by agreement with an impact-State or FEMA, is providing evacuation and sheltering support to individuals from another State that has received a Presidential emergency or major disaster declaration due to an incident.

2. **Impact-State:** A state that has received a Presidential emergency or major disaster declaration.

B. Host-State Reimbursement: Pursuant to 44 CFR 206.223(a)(2), host-states providing evacuation and sheltering support to an impact-State may receive reimbursement for eligible costs through:



FEMA

DISASTER ASSISTANCE POLICY

DAP-9523.18

INTERIM

1. Existing mutual aid agreements (e.g., the Emergency Management Assistance Compact) as specified in FEMA Recovery Policy 9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*, (issued September 22, 2004), and *Mutual Aid Clarification Memorandum*, (dated March 15, 2005); OR
2. Direct reimbursement from FEMA, when an impact-State has made a request for assistance to FEMA in accordance with 44 C.F.R. 206.208 to address evacuation and sheltering needs of individuals that are beyond its ability to address in-state, and a host-State agrees to a FEMA request to provide such assistance.
 - a. When FEMA arranges for evacuation and/or sheltering support from a host-State, FEMA may provide direct reimbursement through a grant to the host-State under the declared emergency or major disaster for the impact-state. A host-State will enter into a grant agreement with FEMA that will be governed by the regulations, policies, guidance and procedures of the Public Assistance program.
 - b. Eligibility for host-State sheltering and evacuation costs will be the same criteria for eligibility established for Public Assistance Category B, Emergency Protective Measures. These criteria for eligible costs as specified in FEMA Disaster Assistance Policy 9523.15, *Eligible Costs Related to Evacuations and Sheltering*, dated April 6, 2007.
 - c. The Federal/non-Federal cost share for a grant for a host-State to evacuate and/or shelter individuals from the impact state will be the same as any other Category B cost-share established for the declared major disaster or emergency; however, the non-Federal share will be the responsibility of the impact-state, under its declaration; meaning that the host-state will be reimbursed for 100% of their eligible costs. Impact-states agree, when requesting that the Federal government assist with evacuation and sheltering, to provide the non-federal cost-share for all eligible costs incurred by any host-State under the terms of paragraph VI-B-2, above.
 - d. FEMA, through the Administrator, or his/her designee, to include the Assistant Administrator for Disaster Assistance; Regional Administrator; or Federal Coordinating Officer, will coordinate with states to determine which state(s) are available and appropriate to support the evacuation and sheltering needs of individuals from the impact-State.



FEMA

DISASTER ASSISTANCE POLICY

DAP-9523.18

INTERIM

e. States that formally agree (in advance of an incident or threat prompting an evacuation) to the following will be considered as meeting the criteria of being a host-State eligible for direct reimbursement if they also:

- i. Agree to accept evacuees via any and all modes of organized transportation (bus, aircraft, etc.), as required by the situation; and
- ii. Agree to make at least 10% of identified sheltering capacity within the State available to support impact State evacuees.

C. This policy does not alter the ability of a Governor to request an emergency or major disaster declaration from the President under the Stafford Act and existing FEMA regulations.

D. Emergency and Major Disaster declaration determinations and assistance under the Stafford Act, are made solely and exclusively by the President of the United States. This policy in no way obligates the President to either approve or disapprove any declaration request or financial assistance.

VII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

VIII. SUPERSESSION: None.

IX. REVIEW DATE: One year from the date of publication.

//signed//

Carlos Castillo
Assistant Administrator
Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP9523.19

I. TITLE: **Eligible Costs Related to Pet Evacuations and Sheltering**

II. DATE: October 24, 2007

III. PURPOSE:

The purpose of this policy is to identify the expenses related to State and local governments' emergency pet evacuation and sheltering activities that may be eligible for reimbursement following a major disaster or emergency declaration.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after its date of issuance. It is intended to be used by FEMA personnel involved in making eligibility determinations under the Public Assistance Program.

V. AUTHORITY:

Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5192; the Pets Evacuation and Transportation Standards Act (PETS Act) of 2006, P.L. No. 109-308, § 4, 120 Stat. 1725 (2006); and 44 CFR §§ 206.223(a), 206.225(a).

VI. BACKGROUND:

On October 6, 2006, the PETS Act was signed into law, amending Section 403 of the Stafford Act. Section 403, as amended by the PETS Act, authorizes FEMA to provide rescue, care, shelter, and essential needs for individuals with household pets and service animals, and to the household pets and animals themselves following a major disaster or emergency.

VII. POLICY:

A. Definitions:

1. Household Pet. A domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.19

include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.

2. Service Animal¹. Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

3. Congregate Household Pet Shelters. Any private or public facility that provides refuge to rescued household pets and the household pets of shelterees in response to a declared major disaster or emergency.

B. Eligibility. State and local governments that receive evacuees from areas declared a major disaster or an emergency may seek reimbursement for eligible pet rescue, sheltering, and evacuation-support costs.

1. State and local governments outside the designated disaster area may seek reimbursement under mutual aid protocols through the affected and supported state(s). (44 CFR § 206.223(a)(2)).

2. State and local governments are the only eligible applicants for sheltering and rescuing household pets and service animals. Contractors or private nonprofit (PNP) organizations that shelter or rescue household pets and service animals cannot be reimbursed directly as an applicant. However, contractors and PNPs can be reimbursed for sheltering and rescuing household pets and service animals through a state or local government, provided a written statement from an eligible applicant is presented in which the applicant verifies that the contractor or PNP is performing or has performed sheltering or rescuing operations on the applicant's behalf and the expenses are documented.

C. Household Pet Rescue. State and local governments may conduct rescue operations for household pets directly or they may contract with other providers for such services. Eligible costs include, but are not limited to, the following:

1. Overtime for regular full-time employees.

¹ Department of Justice, Americans with Disabilities Act (ADA), 42 USC 1201 et seq, implementing regulations at 28 CFR § 36.104.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.19

2. Regular-time and overtime for contract labor (including mutual aid agreements) specifically hired to provide additional support required as a result of the disaster.

3. The use of applicant-owned or leased equipment (such as buses or other vehicles) to provide eligible pet transportation to congregate pet shelters may be reimbursed according to 44 CFR § 206.228(1)(a) (does not include operator labor). The cost of leasing equipment for this purpose may also be eligible for reimbursement.

D. Congregate Household Pet Sheltering. State and local governments may conduct sheltering operations for pets directly, or may contract with other sheltering providers for such services. Eligible Category B congregate pet sheltering costs may include, but are not limited to, the *reasonable* costs for:

1. Facilities.

- Minor modifications to buildings used for congregate household pet sheltering, if necessary to provide increased capacity for the accommodation of shelterees' household pets.
- Facility lease or rent.
- Increase in utility costs, such as power, water, and telephone.
- Generator lease and operation (but not purchase).
- Shelter safety and security.
- Shelter management.
- Shelter and crate/cage cleaning.

2. Supplies and Commodities. Eligible items are those needed for, and used directly on, the declared disaster, and are reasonable in both cost and need. Examples include:

- Food, water, and bowls.
- Crates/Cages.
- Pet transport carriers.
- Animal cleaning tables and supplies.
- Medication for animal decontamination and parasite control to ensure that the animal is not a health threat to humans or other animals.

3. Eligible Labor. If the regular employees of an eligible applicant perform duties in direct support of congregate pet sheltering operations, any overtime pay related to such duties is eligible for reimbursement. However, the straight-time pay of these employees is not eligible. Regular-time and overtime for contract labor, including mutual aid agreements,



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.19

specifically hired to provide additional support required as a result of the disaster or emergency is also eligible for reimbursement.

4. Equipment. The use of applicant-owned or leased equipment (such as buses, trucks, or other vehicles) to provide eligible pet evacuation or sheltering support may be reimbursed according to 44 CFR §206.228(1)(a) (does not include operator labor). The cost of leasing equipment may also be an eligible expense for reimbursement.

5. Emergency Veterinary Services. For the purposes of screening the health of household pets and service animals, and assessing and treating minor illnesses and injuries, congregate pet shelters may be staffed with emergency veterinary teams. The following costs related to the provision of emergency veterinary services in a congregate pet sheltering environment are eligible for reimbursement:

- Veterinary diagnosis, triage, treatment, and stabilization.
- Provision of first aid, including materials (bandages, etc.).
- Medicine.
- Supervision of paid and volunteer veterinary staff.
- Vaccinations administered to protect the health and safety of congregate shelter and supporting emergency workers including but not limited to tetanus and hepatitis.
- Vaccinations administered to protect the health and safety of congregate shelter pets for transmissible or contagious diseases including but not limited to bordetella/kennel cough.

6. Transportation. Transportation of evacuees' household pets and service animals to congregate shelters from pre-established pickup locations is an eligible expense when the means of transportation used is the most cost-effective available.

7. Shelter Safety and Security. Additional reimbursable safety and security services may be provided at congregate pet shelters, based upon need.

8. Cleaning and Restoration. The costs (to the Applicant) to clean, maintain, and restore a facility to pre-congregate pet shelter condition are eligible.

9. Removal and Disposal of Animal Carcasses. The costs (to the Applicant) to remove and dispose of animal carcasses in a safe and timely manner and in compliance with applicable laws and regulations are eligible.



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.19

10. Cataloging/Tracking System for Pets. The reasonable costs (to the Applicant) for tracking animals at congregate pet shelters for the purposes of reuniting them with their owners are eligible.

E. **Service animals**. Service animals will be sheltered with their owners in congregate shelters.

F. **Length of Operation**. Costs of sheltering/caring for household pets will no longer be eligible for FEMA reimbursement when the pet owner transitions out of Section 403 emergency sheltering.

VIII. **ORIGINATING OFFICE**: Disaster Assistance Directorate (Public Assistance Division).

IX. **SUPERSESSION**: This policy supersedes all previous guidance on this subject.

X. **REVIEW DATE**: Three years from date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.1

I. TITLE: Welded Steel Moment Frame

II. DATE: November 5, 2007

III. PURPOSE:

To establish the eligibility of costs for inspecting, evaluating and repairing welded steel moment frames of building structures damaged by earthquakes.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance program, including applicants.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, and 44 CFR § 206.226.

VI. BACKGROUND:

A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (Stafford Act) and implementing regulations in 44 CFR § 206.228(a)(2)(ii) provide an administrative allowance (sometimes called the sliding scale) to reimburse applicants for extraordinary costs incurred when requesting, obtaining, and administering Federal disaster assistance grants. This allowance, which is based on a fixed percentage of the cost of eligible repairs, is intended to include the applicant's costs for evaluating the extent of damage to eligible facilities. The Stafford Act specifies that the cost of field inspections is part of the administrative allowance. However, the costs associated with inspecting welded steel moment frame connections seem to go beyond the type of work contemplated by the administrative allowance provision of the Stafford Act. For this reason, these costs may be eligible for reimbursement outside of the administrative allowance, as detailed in this policy.

B. FEMA recognizes the unique situation presented by the inspection of welded steel moment frame connections that potentially have brittle fractures. These connections are typically covered with architectural finishes and are occasionally protected with asbestos or other fire retardants. These coverings complicate the inspection of connections. Because of the numerous incidents of structural damage to welded steel moment frame connections caused by



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.1

the Northridge Earthquake, FEMA established a policy in order to determine the eligibility of funding for inspecting, evaluating, and repairing such damage.

C. A multi-year study of the welded steel moment frame fracture issue resulted in recommended criteria to the technical community for:

1. The evaluation of welded steel moment frame buildings affected by strong earthquake ground shaking to determine if they have been damaged, and to what extent;
2. The identification of those buildings that have been so severely damaged that they constitute a safety hazard; and
3. The repair of damaged structures such that they may be restored to long-term occupancy.

D. These results are published in *Recommended Postearthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings*, Federal Emergency Management Agency, *FEMA 352*, June 2000. *FEMA 352* is the technical basis for this policy. Free copies of this document may be obtained by calling the FEMA distribution warehouse at 1-800-480-2520 or www.fema.gov/plan/prevent/earthquake/pdf/fema-352.pdf.

VII. POLICY:

A. This policy provides eligibility criteria for the unique inspection problems posed by brittle fracture damage to welded steel moment frames. Only eligible facilities constructed with steel framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of section 2710 (g) B of the 1991 Uniform Building Code or its equivalent, are eligible for FEMA reimbursement under this policy.

B. This policy is intended to prescribe the eligibility of postearthquake damage inspection and evaluation costs pursuant to *FEMA 352*.

C. Reimbursement for Preliminary Postearthquake Assessment

1. Screening. The initial screening process described in Chapter 3.2 of *FEMA 352* will help to rapidly identify buildings that are likely to have sustained significant damage to welded steel moment frame connections, based on the probable ground motion experienced at the building site. Screening is typically performed by building department officials immediately following an earthquake to determine if a building needs further evaluation. Costs incurred in the process of Preliminary Screening are not eligible for FEMA assistance.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.1

2. Preliminary Evaluation. The preliminary evaluation method described in Chapter 3.3 of *FEMA 352* is used to determine, on a preliminary basis, whether a building has sustained either structural or nonstructural damage that results in a hazardous condition. Preliminary evaluation includes (all parenthetical references are to *FEMA 352*):

a. A general review of the building's construction characteristics to determine its structural system and vulnerable features (Section 3.3.2),

b. A visit to the building site to observe its overall condition and note obvious signs of damage (Section 3.3.3), and

c. A determination of an appropriate posting category for the building, on the basis of the preceding results and engineering judgment (Section 3.3.4). Posting categories are described by the following designations (see Table 3.2):

i. Green. Little or no damage. Poses no immediate threat.

ii. Yellow. Structural or nonstructural damage. Limited or localized safety hazard.

iii. Red. Significant damage to structural elements. Significant safety hazard.

FEMA will reimburse the costs of preliminary evaluations only when conditions resulting in the designation of Yellow or Red (as described in Table 3.2) are found.

D. Reimbursement for Detailed Postearthquake Evaluations

1. Strong Likelihood of Significant Welded Steel Moment Frame Damage. All buildings determined to have potential welded steel moment frame fractures, as identified in the preliminary assessment and designated with a Yellow or Red posting (see Table 3-2, Chapter 3), should be subjected to detailed evaluation. Eligible costs may include the reasonable evaluation of the effects of the identified significant connection damage to the future performance of the building structure. To be eligible, this evaluation should be limited to the recommendations in *FEMA 352*, Chapter 4. Generally, FEMA will not fund detailed analytical or experimental studies or Level 2 evaluations as described in *FEMA 352*, Chapter 5. Funding of such evaluations is eligible only if a Project Worksheet (PW) based on a specific scope-of-work and cost estimate is approved in advance.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.1

a. The costs of visual bottom flange connection inspections performed at locations selected in accordance with *FEMA 352*, Chapter 4, Method 2 (Inspection of a Sample of Connections) are eligible for reimbursement.

b. Section 4.4.2, Method 2 provides guidance for the inspection of a sample of the total welded steel moment frame connections in the building. If certain types of damage are discovered, additional visual inspection of bottom flange connections and/or top flange connections at locations recommended by *FEMA 352*, Chapter 4, will also be eligible for reimbursement, but only after FEMA has been informed of the frame damage already discovered, and after the PW has been modified to include the follow-on inspection.

c. A modified PW is required to authorize nondestructive testing if the visual inspections indicate a significant potential of concealed damage.

d. The eligible cost of inspecting connections includes only:

- i. Removal of necessary architectural finishes, such as plaster/drywall,
- ii. Removal of fire retardants in the inspection area of the connection,
- iii. Visual inspections, and
- iv. Nondestructive testing as appropriate, necessary and approved by FEMA. Testing may include liquid dye-penetrant testing or magnetic particle testing, but not ultrasonic testing.

2. Little Likelihood of Significant Welded Steel Moment Frame Damage. In circumstances where a building is not required to undergo a Preliminary Assessment or where a Green Posting is assigned according to Table 3-2 of *FEMA 352*, FEMA will reimburse the costs of visual inspections only for those connections where significant damage associated with the declared earthquake disaster is found. Significant connection damage is defined in *FEMA 352*, Chapter 4 as *dj* 3, where *dj* signifies connection damage index (see Table 4-1a: Connection Damage Indices).

a. Visual inspection of additional connections (at locations recommended by *FEMA 352*, following the discovery of damaged connections) will also be eligible for reimbursement, but only after FEMA has been informed of the frame damage already discovered, and a PW for the follow-on inspection has been approved. The PW may also authorize nondestructive testing if the visual inspections indicate a significant potential for concealed damage.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.1

3. No Significant Welded Steel Moment Frame Damage. Except as provided above, any costs related to inspections that do not yield discovery of significant connection damage attributable to the earthquake are not eligible for FEMA reimbursement.

E. **Reimbursement for Repairs**. Recommended repair strategies for various degrees of documented damage are found in Chapter 4.4.2.7. The cost to repair the damaged connections to their pre-earthquake design in accordance with Chapter 6 of *FEMA 352* will typically be eligible for reimbursement. Repairs to the architectural finishes and fire retardants removed in the area of the connection damage are eligible. Funding of repairs is eligible only if a PW based on a specific scope-of-work and cost estimate is approved in advance.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Recovery Division Policy 9524.1 Policy on the Eligibility of Welded Steel Moment-Frame Inspections, published on October 17, 2003, and all other previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

RECOVERY POLICY – RP9524.2

I. TITLE: Landslides and Slope Failures

II. DATE: May 23, 2006

III. PURPOSE:

To update the policy by which the Federal Emergency Management Agency (FEMA) determines the eligibility of funding for the repair of public and private nonprofit facilities affected by landslides and slope failures. This policy provides criteria to determine the eligibility of work to stabilize slopes that fail during an event that resulted in a Presidentially-declared emergency or major disaster. Stabilization is required to provide emergency protective measures or to repair or protect otherwise eligible facilities such as roads, bridges, or buildings.

IV. SCOPE AND AUDIENCE:

This policy applies to all emergencies and major disasters declared on or after the publication date of this document.

V. AUTHORITY:

This policy is written in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act) and 44 CFR Part 206.

VI. BACKGROUND:

In March 1984, FEMA issued a policy memorandum entitled *Landslide Policy Relating to Public Facilities*. The policy was updated in November 1995, and issued again in August 1999, as part of the 9500 series of policies. Subsequent disasters have revealed a need to provide additional clarification regarding the eligibility of work associated with providing emergency protective measures and making permanent repairs to eligible facilities that have been damaged or are threatened by landslides for slope failures.

VII. POLICY:

This policy addresses the eligibility of work required to stabilize a failed slope authorized under Section 403, *Essential Assistance*; Section 406, *Repair, Replacement, and Restoration of Damaged Facilities*; Section 407, *Debris Removal* and Section 502, *Federal Emergency Assistance* of the Stafford Act.



FEMA

RECOVERY POLICY – RP9524.2

A. Terms Used in this Policy

- *Landslide* describes a wide variety of processes that result in the downward and outward movement of slope-forming materials including rock, soil, artificial fill, or a combination of these.
- A *slope failure* is ground movement of relatively limited extent (tens of feet high and up to several hundred feet long) that transports earthen debris downhill by sliding, rolling, falling, or slumping. Slope failures can involve rock falls and/or debris flow (a mixture of soil, rocks, and vegetation), that deposit material at the base of a slope, or a slip-out where a portion of a facility failed and falls to a descending slope. Slope failures can occur in either natural ground or man-made fill, such as a highway embankment or canyon fill.
- *Natural Ground* is unimproved earthen material existing at its original location of formation or deposition, which has not been reworked, mechanically altered, constructed, or improved. Natural ground by itself does not constitute an eligible facility; however, it may constitute part of the integral ground supporting the facility. (See Figures 1 and 2.)
- *Integral Ground* is improved and/or natural ground upon which a facility is located and which is essential to the support, structural integrity, and utility of an eligible facility. As such, integral ground is eligible for FEMA assistance. (See Figures 1 and 2.)
- A *facility* is a publicly or privately owned building, works, system or equipment, built or manufactured, or an improved or maintained natural feature. Land used or agricultural purposes is not a facility.
- *Immediate threat* is defined in 44 CFR §206.221(c) as the threat of additional damage or destruction from an event with a 20% chance of occurrence.

B. Section 403, Essential Assistance and Section 502, Emergency Assistance

1. Pursuant to 44 CFR §206.225, FEMA may provide cost-effective emergency protective measures to eliminate or lessen an immediate threat to life, public health and safety, and to eliminate or lessen an immediate threat of additional damage to improved public or private property.
2. The Regional Director may authorize funding for post-disaster site inspections and limited geotechnical investigations to determine if the disaster created an unsafe condition that poses an immediate threat to life or improved property.



FEMA

RECOVERY POLICY – RP9524.2

3. Emergency protective measures to stabilize slopes damaged by a disaster may be eligible work. However, the work must be the least costly option and limited to measures that eliminate an immediate threat to life, public health and safety, or a threat of significant additional damage to improved public or private property as defined in 44 CFR §206.225(a)(3).

Note: Emergency work must be completed within six months of the declaration. Examples of eligible emergency protective measures might include but are not limited to:

- a. Temporary drainage measures;
- b. Temporary ground protection to better stabilize the mass (e.g., riprap, sheeting);
- c. Partial excavation at the head of a sliding mass to reduce driving force;
- d. Backfilling or buttressing at the toe of a sliding mass (e.g., gabions, rock toes, cribwalls, binwalls, soldier pile walls);
- e. Installation of barriers to redirect the debris flow; and
- f. Temporary relocation of facilities' function, when cost effective.

4. Emergency protective measures are deemed cost-effective when the value of the facility at risk exceeds or is greater than protective measure being taken. The preferred protective measure is the least costly option necessary to alleviate the threat and is consistent with sound engineering practice that will protect the public and improved property from the threat of additional damage from a landslide or slope failure.

C. Section 407, Debris Removal

1. Pursuant to 44 CFR §206.224, removal of debris resulting from landslides and slope failures is eligible work when necessary to eliminate immediate threats to life, public health and safety or significant additional damage to improved public or private property, or to ensure the economic recovery of the affected community.

2. Removal of debris flow from public rights-of-way is eligible work, as is removal of debris flow from private property when it poses an immediate threat as described in C(1) above (applicant must demonstrate legal responsibility to remove debris from private property).



FEMA

RECOVERY POLICY – RP9524.2

D. Section 406, Repair, Restoration, and Replacement of Damaged Facilities

1. **Eligible Work.** Section 406 of the Stafford Act and 44 CFR Subpart H authorize the permanent repair, restoration, or replacement of public facilities as defined in 44 CFR §206.221(h) and of eligible private nonprofit facilities as defined in 44 CFR §206.221(e). Since natural slopes or hillsides do not meet the definition of eligible facilities in the Act or the regulations, the restoration or repair of landslides and slope failure is not eligible for permanent work assistance.

2. **Determining the Scope of Work**

a. FEMA will not fund work to stabilize a slope or restore ground that is not integral to the support of an eligible facility.

b. The Regional Director may authorize post-disaster site inspections and geotechnical investigations to determine the stability of the site. If restoration of a failed slope is necessary to repair an eligible facility, the following site stability determination is required:

(1) **If the site is stable**, the cost to repair or restore the facility on its original site, including restoration of the integral ground, is eligible work.

(2) **If the site is *NOT* stable and:**

(a) **The instability was caused by the disaster** (i.e., there is no history of instability), the site is eligible for FEMA assistance, provided the work to stabilize the site is cost-effective.

(b) **The instability was *NOT* caused by the disaster** (i.e., there is evidence of historical instability), the cost to stabilize the site is the responsibility of the applicant.

3. **Alternate Projects.** If the repair, restoration, or replacement of a facility is not feasible due to soil instability, a State or local-government applicant may request an alternate project; such alternate project will be 90 percent of the federal share of the approved federal estimate of eligible costs. If eligible private nonprofit organizations elect to request an alternate project, funding will be at 75 percent of the federal share. Approval for an alternate project must be in accordance with 44 CFR §206.203(d)(2). (See Figure 3 for an example.)



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RECOVERY POLICY – RP9524.2

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch)

IX. SUPERSESSION: This policy supersedes all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Director of Recovery
Federal Emergency Management Agency



FEMA

RECOVERY POLICY – RP9524.2

Attachment A

FIGURE 1

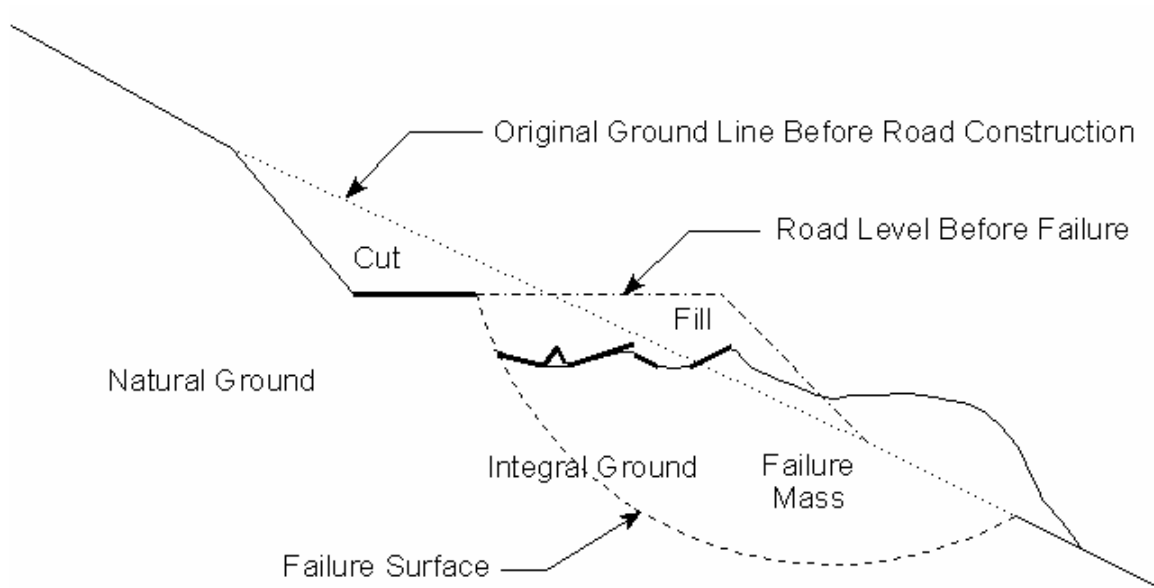


Figure 1: Slope failure in a typical cut-and-fill road section, illustrating the failure mass and the concept of integral ground beneath the facility. Restoration of integral ground in this case would constitute an eligible component of work required to repair the road, and would involve excavation slightly beyond the limits of the failure surface.



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RECOVERY POLICY – RP9524.2

Attachment B

FIGURE 2

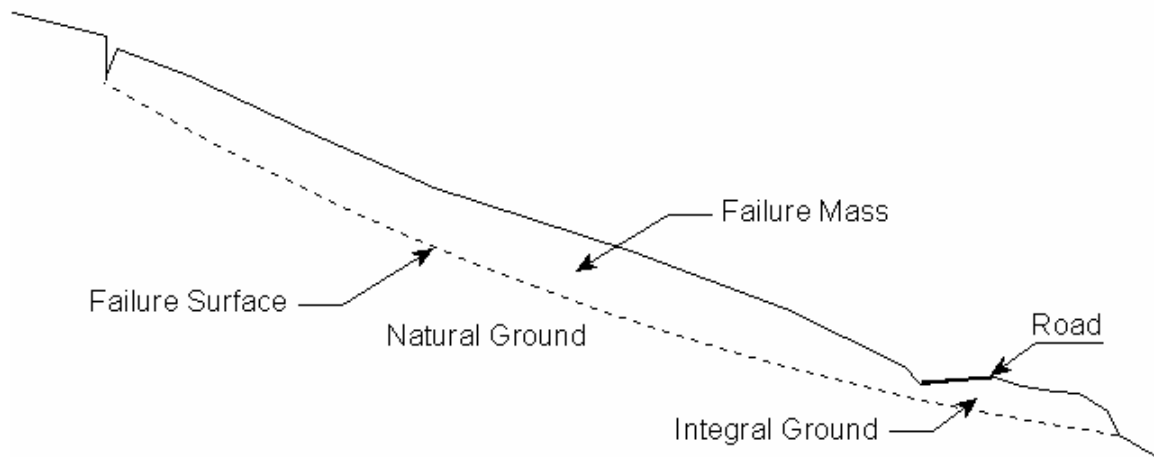


Figure 2: Failure of a large lateral extent of natural ground. While the failure mass threatens or otherwise impacts an eligible facility (the road) that portion of the natural ground integral to the support of the facility is small relative to the total failure mass of natural ground. Restoration of the large area natural ground along the failed slope would not constitute an eligible component of work.



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RECOVERY POLICY – RP9524.2

Attachment C

FIGURE 3

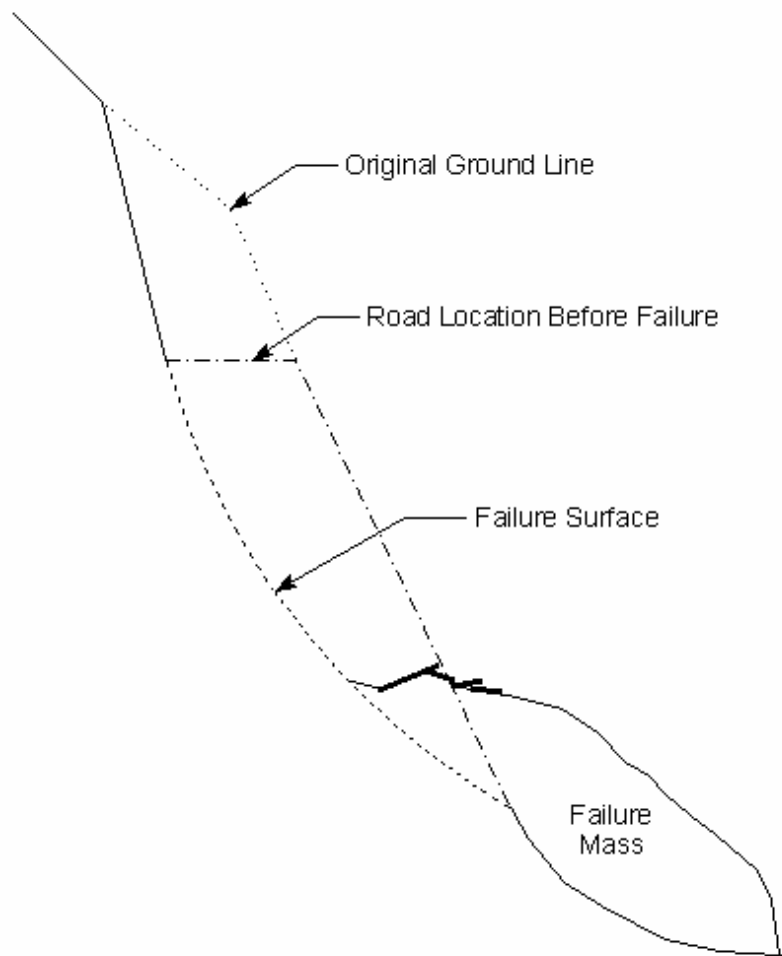


Figure 3: Failure of a slope along a road constructed by excavating into a hillside. In this case it may be more cost effective to pursue other options under the Public Assistance Program.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** August 17, 1999
2. **Response and Recovery Directorate Policy Number:** 9524.3
3. **Title:** Policy for Rehabilitation Assistance for Levees and Other Flood Control Works
4. **Purpose:** The attached policy is being renumbered to become part of the redesigned FEMA Public Assistance Policy publication system. The decision tree for flood control works also is attached.
5. **Scope and Audience:** This policy applies to all disasters and is intended for Federal Emergency Management Agency (FEMA) personnel making eligibility determinations for the Public Assistance (PA) Program.
6. **Background:** This attached policy currently is under review. However, the review will not be completed prior to the supersession of the 1996 Policy and Guidance Compendium by the new compilation of PA Program policy. Because the policy is a critical document of the PA Program, it is being temporarily renumbered while the new document is being prepared and coordinated. The revised and simplified policy will provide additional definitions and the eligibility decision tree.
7. **Policy:** The policy is attached.
8. **Supersession:** Response and Recovery Directorate Policy No. 4511.300 PO, EX, dated September 11, 1996, Policy for Rehabilitation Assistance for Levees and Other Flood Control Works, is now renumbered as Response and Recovery Policy #9524.3.
9. **Authorities:** Robert T. Stafford Disaster Recovery and Emergency Assistance Act, as amended.
10. **Originating Office:** Infrastructure Division, Response and Recovery Directorate
11. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

12. **Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors



Federal Emergency Management Agency

Washington, D.C. 20472

DATE: September 11, 1996

Response and Recovery Directorate Guidance No. 4511.300 PO, EX

TITLE: *Policy for Rehabilitation Assistance for Levees and Other Flood Control Works*

PURPOSE: This policy reiterates the *Federal Levee Policy* promulgated as a result of the Midwest Flood of 1993; however, it does change past FEMA policy regarding the emergency repair of levees and other flood control works under authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act).

SCOPE AND AUDIENCE: This policy is intended for all Federal, State and local personnel involved in the public assistance program and/or interagency levee rehabilitation task forces. This policy is different from previous FEMA levee policy in two respects. First, it requires applicants who are eligible to participate in the U.S. Army Corps of Engineers (USACE) Levee Rehabilitation Program or the Natural Resources Conservation Service (NRCS) Emergency Watershed Protection (EWP) Program, at the time of the disaster, to join the USACE program or abide by engineering and inspection requirements of the NRCS as a condition for receiving emergency repair assistance under section 403 of the Stafford Act. Second, the policy precludes FEMA from funding emergency repairs to levees that are actively participating in the USACE program. All other provisions of the previous policy remain unchanged and, therefore, continue to be effective. The new features of this policy apply to all emergencies and disasters declared on or after the effective date above.

BACKGROUND: The two Federal agencies that have primary responsibility for the repair of flood control works are the USACE and the NRCS, formerly the Soil Conservation Service. The USACE authority is contained in PL 84-99 while the NRCS authority is contained in PL 81-516 and PL 95-334. The USACE defines flood control works as "structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level." This definition includes levees, floodwalls, flood control channels, and other structures as determined by the USACE that meet the definition. The USACE does not consider structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, interior drainage, or to protect against land erosion or saltwater intrusion to be flood control works. NRCS generally follows this definition.

The USACE requires that an applicant for assistance be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster to be eligible for assistance.

An active status means that the USACE has inspected the flood control work and accepted it into its program.

- a. If an applicant/sponsor has requested an inspection prior to the flood event, and the USACE has not inspected the flood control work, and it is damaged in the flood event, then the USACE will conduct an Initial Eligibility Inspection of the flood control work. If the USACE determines that it meets all specified engineering and maintenance criteria, then the flood control work will be placed in an active status and will be eligible for USACE rehabilitation assistance under the Rehabilitation and Inspection Program.
- b. Requirements for participation in the USACE program include: (1) it must be inspected by the USACE to ensure that the flood control work meets engineering and maintenance criteria; (2) it must have a public sponsor; and, (3) it must be regularly maintained. Additionally, the required repair work must have a benefit-cost ratio greater than one, and exceed the scope of the sponsor's maintenance responsibility.

The objective of the NRCS EWP Program is to assist in relieving imminent hazards to life and property from floods and products of erosion created by natural disasters that cause sudden impairment of a watershed. Levees and other flood control works are eligible for repair under the EWP Program when there is a potential for loss of life or property without the repairs, the benefits associated with repairing the flood control work exceed the cost of repair and other flood control work-dependent costs and the owners agree to meet NRCS eligibility requirements for engineering and maintenance.

In 1986, the USACE and NRCS signed a Memorandum of Agreement to delineate areas of responsibilities for the repair of flood control works between the two agencies. The agencies agreed that NRCS would be responsible for repairing flood control works with contributing drainage areas of less than 400 square miles and the USACE would be responsible for repairing flood control works with drainage areas of greater than 400 square miles. The agreement remains in effect. Following the 1993 Midwest Floods, the Economic Development Administration (EDA) funded on a one-time basis emergency repairs to levees that protected critical infrastructure but were not active participants in either the USACE or the NRCS program. One condition of obtaining EDA funding was that the sponsor agreed to join the USACE Rehabilitation and Inspection program after the assistance was provided. The coordination on flood control works issues among Federal agencies that was implemented at the disaster field offices during the Midwest floods will be followed, when appropriate. This is accomplished by establishing an interagency task force comprised of representatives from FEMA, USACE, NRCS, U.S. Fish and Wildlife Service, Environmental Protection Agency and other agencies, if appropriate.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act. When other Federal agencies have the authority to repair facilities that are also eligible under the Stafford Act, FEMA generally defers to the other Federal agencies unless there is an immediate threat to life and property. This is codified in 44 CFR 206.226(a).

POLICY: The following states FEMA policy on levees and other flood control works. The policy was coordinated with the USACE and NRCS.

ELIGIBLE:

Emergency Work

1. Flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program; those that are eligible to join the USACE program but are not an active participant; or those that may be eligible for assistance under the NRCS EWP program may be eligible for *flood fighting activities* (e.g. sand-bagging, buttressing, adding freeboard, etc.), *debris removal and emergency repairs* (e.g. placing fill material in breached or significantly deteriorated, weakened areas of the flood control work). For the last, however, emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible. As a condition of receiving disaster assistance for emergency repairs, the applicant must agree to join the USACE program or abide by engineering and inspection requirements of the NRCS. FEMA shall limit disaster assistance for emergency repairs to flood control works on a one-time only basis. Therefore, subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) would not be eligible for disaster assistance. When emergency repairs are authorized, they are limited to restoring the original elevation of the flood control work or to an elevation designed to protect against the five-year flood event, whichever is lesser. However, FEMA may provide disaster assistance for flood fighting activities and debris removal in subsequent disasters.
2. Water control structures (including earthen levees) that are ineligible to join the USACE programs or receive assistance from the NRCS may be eligible for emergency protective measures under section 403 of the Stafford Act.
3. Dewatering of areas behind levees by breaching the levees or pumping is eligible if there is a threat to health and safety or improved property; or, if required to facilitate the initiation of a Federal repair project. Deliberate breaches made by the sponsor to accomplish such dewatering are eligible for repair.
4. The costs of removal of flood fight measures on flood control works can be eligible if such removal is necessary to eliminate a health and safety threat, to operate the flood control work as a public facility or to repair the facility.

Permanent Work

Water control structures (including earthen levees) that do not meet the USACE or NRCS definition of a flood control work and are owned by an eligible applicant may be eligible for assistance from FEMA. Examples of eligible structures include those built

for channel alignment, land reclamation, drainage and erosion control. Eligible work will be to restore the structure to predisaster condition in accordance with 44 CFR part 206. The structure must be an actively used and adequately maintained facility.

INELIGIBLE

1. Permanent repairs of flood control works that are eligible to join the USACE PL 84-99 Rehabilitation and Inspection Program, whether or not they are active participants in the program, are ineligible. 2. Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible.
2. Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible.
3. Subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) are ineligible.
4. Damages to eligible flood control works that do not meet the USACE PL 84-99 Rehabilitation and Inspection Program minimum threshold amount for permanent repair are ineligible for FEMA funding.
5. Damages that do not meet the criteria for funding for permanent repair under the NRCS EWP Program are ineligible for FEMA funding.
6. Dewatering areas behind levees for the primary purpose of drying the land is ineligible.
7. Secondary levees riverward of the primary levees are ineligible for repair unless they protect human life.
8. Increasing the height of flood control works is ineligible.

KEY WORDS: Levees, flood control works, USACE, NRCS

SUPERSESSSION: This policy supersedes the following memoranda: Memorandum dated August 26, 1993 to Federal Coordination Officers for Midwest Flood Disasters from Richard W. Krimm, Deputy Associate Director, State and Local Programs Support, subject: Federal Levee Repair; Memorandum dated October 1, 1993 to Disaster Recovery Managers and Public Assistance Officers for all Midwest Floods from Richard W. Krimm, Deputy Associate Director, State and Local Programs Support, subject: Interagency Coordination and Review of Levee Repair Projects; Memorandum dated November 23, 1993 to Regional Directors from Laurence Zensinger, Chief, Public Assistance Division, subject: Restatement of Federal Levee Policy; all other previous memoranda on this subject.

AUTHORITIES: Sections 102, 403, 406, 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended and the implementing regulations at 44 CFR part 206.

ORIGINATING OFFICE: Infrastructure Division, Response and Recovery Directorate

REVIEW DATE: September 1998

SIGNATURE:

Signed

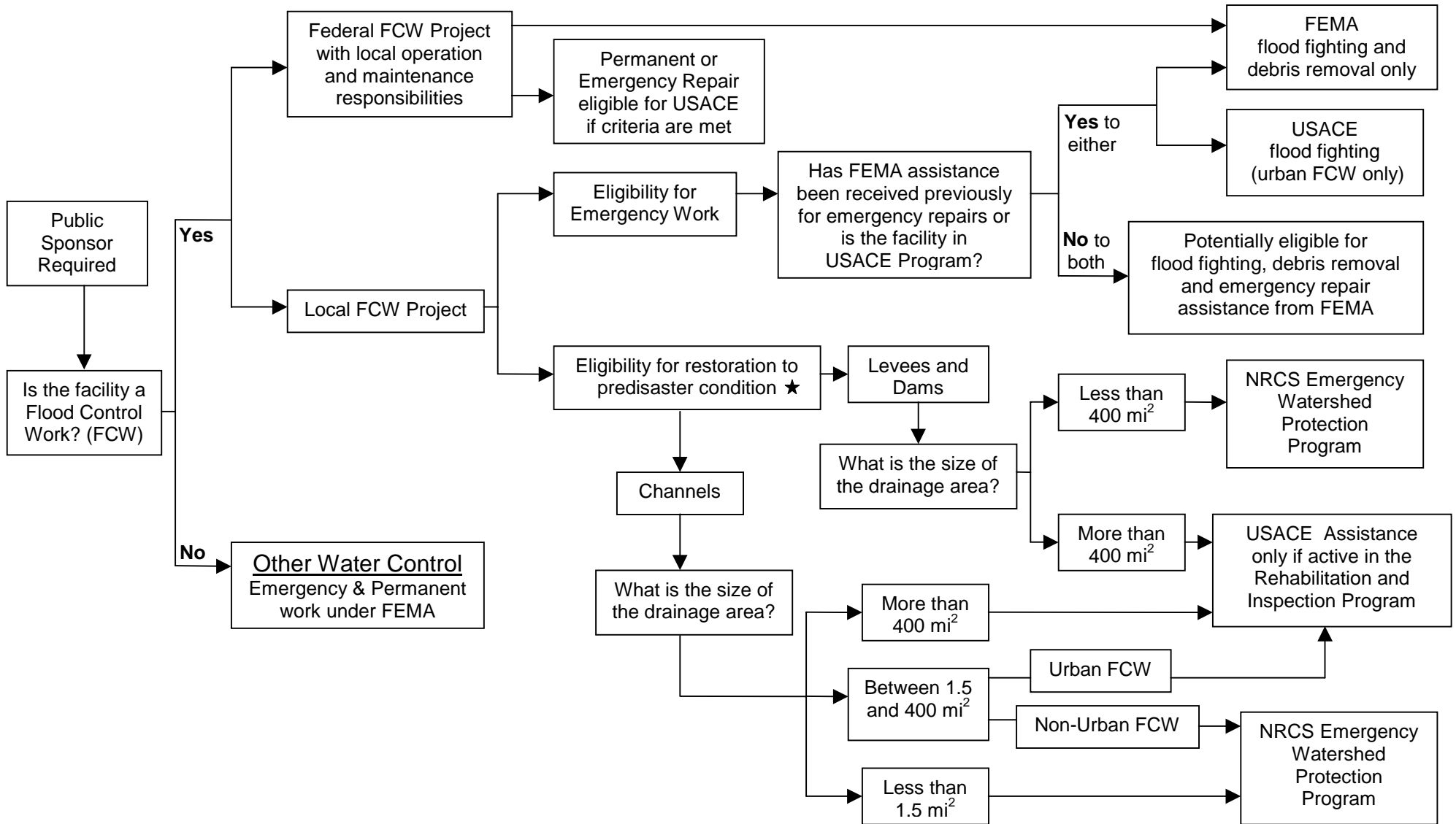
William C. Tidball
Associate Director
Response and Recovery Directorate

DISTRIBUTION: All Regional Directors and Regional Response and Recovery Directors



Flood Control Works

Eligibility for Federal Assistance in Presidentially Declared Disasters



Contact the appropriate agency on the reverse side

★ No FEMA assistance in this category

DEFINITIONS

Flood Control Works (FCW) - Structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level. They may include levees, channels, dams, and Federally authorized and constructed hurricane or shore protective structures. Structures designed and constructed to protect against salt water intrusion or tidal fluctuations are not considered FCW. This definition will be jointly interpreted for each facility by the Interagency Task Force, consisting of USACE, NRCS, and FEMA, established for each Presidentially declared major disaster.

Other (Non-flood) Water Control - Facilities built for the following purposes: Channel alignment, navigation, recreation, fish and wildlife habitat, land reclamation, interior drainage, erosion prevention or irrigation.

Flood fight - Actions taken prior to and during a flood event to save lives and provide protection for private and public facilities during the period when water is above flood stage or is predicted to be at such level within 72 hours. Examples are sandbagging, construction of temporary levees or raising height of levees.

Flood stage - The stage, established by the National Weather Service, in which flows go out of channel banks and begin to cause minor damage.

Emergency repair - Action taken to repair damaged flood control works after water level has returned to flood stage or below. When funded by FEMA, level of protection eligible for funding shall not exceed that required to protect against a flood of a five-year return frequency.

Federal Project - A flood control work authorized by Congress or by another Federal agency and turned over to a local sponsor for operation and maintenance. Works Progress Administration(WPA) projects are not Federal projects.

Urban Flood Control Work - An FCW built around or near a community and which protects public facilities, other improved property, and infrastructure.

Public Sponsor - A legal subdivision of a state or local government; special district, or other political subdivision of a State, qualified Indian tribe, and others as determined by the Federal agency for its programs.

Agricultural Levees - Works protecting only agricultural land with no improved property within are not considered facilities for the purposes of authorizing emergency protective measures.

Reimbursement - Reimbursement for any work completed by the sponsor is available only from FEMA but work must still be eligible by the FEMA policy as described in the chart.

**Federal Emergency
Management Agency (FEMA)**

FEMA Regional Office
(Boston, New York, Philadelphia,
Atlanta, Chicago, Denton, TX,
Kansas City, Denver, San
Francisco, or Bothell, WA)

**US Army Corps of
Engineers (USACE)**

Local USACE
District Commander

**Natural Resources
Conservation Service (NRCS)**

Any USDA/NRCS Office



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** September 24, 1998
2. **Response and Recovery Directorate Policy Number:** 9524.4
3. **Title:** Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1)
(The 50% Rule)
4. **Purpose:** In accordance with the Directorate's revised publications numbering system, the publication number of the policy on facility replacement has been changed from #4511.61 to #9524.4. I have reviewed the policy and determined that it remains the same.
5. **Review Date:** October 2000
6. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

Attachment: Policy on Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) (June 1, 1995)

Distribution: Regional Directors, Regional and Headquarters R&R Division Directors



Federal Emergency Management Agency

Washington, D.C. 20472

DATE: June 1, 1995

Response and Recovery Directorate Guidance No. 4511.61 E

Title: Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1)
(The 50% Rule)

PURPOSE: This guidance covers the interpretation of the provision in the FEMA Public Assistance regulations which provides for when a damaged facility is eligible for the full cost of replacement.

SCOPE AND AUDIENCE: This policy shall be applicable to all projects in all regions for which a demolition DSR for the damaged building, or a full replacement construction cost DSR for the replacement building has not yet been approved (papped.)

DESCRIPTION: The term "*disaster damage*" in 44 CFR 206.226(d)(1) (see "Authorities" below) has in certain cases in the past erroneously been interpreted as including all FEMA eligible costs, rather than just the costs related to the repair of the disaster damage *only*. The purpose of this policy guidance is to provide clarification of the application of this provision of the regulations.

GUIDANCE: *SEE ATTACHED DOCUMENT*

KEY WORDS: Public Assistance Policy, 50% rule, building replacement cost, FEMA regulations.

SUPERSESSSION: Any draft guidance or manual of practice contrary to this document that precedes the date of this document is hereby revoked and no longer valid.

AUTHORITIES: 44 CFR 206.226(d)(1): "*A facility is considered repairable when disaster damages do not exceed 50 % of the cost of replacing a facility to its pre-disaster 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.*"

ORIGINATING OFFICE: Infrastructure Support Division, Response and Recovery Directorate

REVIEW DATE: June 1997

SIGNATURE:

Signed

Richard W. Krimm
Associate Director
Response and Recovery Directorate

DISTRIBUTION: All Regional Directors, Regional R&R Division Directors, and FCOs

Guidance No. 4511.61 E

**THE 50% RULE: THE ELIGIBILITY OF FACILITIES FOR REPLACEMENT
UNDER 44 CFR 206.226(d)(1)**

The Regulation: 44CFR §206.226(d)(1):

"A facility is considered repairable when disaster damages do not exceed 50% 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."

The guidance: "Disaster damage"* in the §206.226(d)(1) determination of eligibility for a replacement facility shall include only costs for the repair of damage, and not the costs of any triggered or mandatory upgrading of the facility beyond the repair of the damaged elements (even though these upgrade costs may be eligible for FEMA funding.) Thus, the determination of eligibility of a facility for replacement will be calculated by the following fraction: The cost of repair of the disaster damage* (repair of the damaged components only, using present day materials and methods) divided by the cost of replacement of the facility** with a facility of equivalent capacity, using current codes for new construction. If this calculation is greater than 50%, then replacement is considered to give a better return on the taxpayers' investment, and is thus eligible for FEMA funding under §206.226(d)(1).

Justification: If seismic upgrade costs were to be included in the calculation towards the determination of 50% damage, then older buildings with even small amounts of damage can be found to exceed the 50% cost threshold because of the comparatively high cost of code triggers, seismic upgrading, etc. The FEMA regulation is based on the finding that when a facility is so severely damaged by a disaster that, not including code triggered upgrades, the cost to repair the damage exceeds 50% of the cost of a new building, it is often justifiable and reasonable to replace the building. When code triggered upgrade costs are included together with the costs of the repairs to the damaged elements, however, erroneous decisions to fund new buildings to replace structurally sound and lightly damaged existing facilities are likely to result.

The rationale for this interpretation is that the repair of "disaster damage" does not improve or add value to a given building, whereas code upgrading does improve and extend the useful life of a building. Since such code-required upgrade work brings the safety of an existing building up to current standards, the Stafford Act and its implementing regulations did not intend that the Federal Government be obligated to provide further funds to replace such a building entirely. This interpretation of the "50% rule" does not in any way change the current practice on the determination of costs eligible for FEMA funding. In cases where the FEMA eligible work is limited to the repair of the existing facility, FEMA funding shall continue to include not only the damage repair, but also mandatory code upgrades, if there are any. In cases where a new building has been determined to be eligible, the costs for demolition, site work, and related soft costs, etc., will continue to be eligible, as is current practice.

Examples: The following provides some examples to illustrate eligible cost determinations.

<u>Conditions</u>	<u>Eligible Costs</u>
<p>1. When damage repair does not exceed 50% of the replacement cost^{**}. <i>and</i> No upgrade trigger is pulled.</p>	<p>Repair of eligible damage[*] <i>only</i>.</p>
<p>2. Damage repair does not exceed 50% of replacement cost^{**}. <i>and</i> Whole building upgrade is triggered by an "applicable code or standard," <i>but</i> the total of the two items is <u>greater</u> than 50% but less than 100% of replacement cost^{**}.</p>	<p>Repair of eligible damage[*] <i>plus</i> mandatory upgrade cost.</p>
<p>3. Damage repair[*] does not exceed 50% of the replacement cost^{**}. <i>and</i> Whole building upgrade is triggered, <i>and</i> the <u>total</u> of the two items is estimated to be <u>greater</u> than 100% of replacement cost^{**}.</p>	<p>Repair of eligible damage[*] <i>plus</i> upgrade cost, <i>but</i> <u>the total eligible costs capped at the replacement cost^{**}.</u></p>
<p>4. Damage repair exceeds 50% of the replacement cost^{**}.</p>	<p>The building's full replacement cost^{**} (but no more than its replacement cost) is eligible.</p>

Notes:

- ★ "Damage repair" in these examples includes repair of damaged components only. The cost shall include all the work necessary to return the building to its pre-disaster condition utilizing modern materials and methods for the repairs. The calculation shall not include the costs of any triggered or mandatory upgrading of the facility, site work, or applicable soft costs (even though these costs may be eligible for FEMA funding.)
- ★★ "Replacement cost" is replacement of the same size or designed capacity and function building to all applicable codes. The calculation shall not include the costs of demolition, site work, and applicable soft costs (even though these costs may be eligible for FEMA funding).



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.5

I. TITLE: Trees, Shrubs, and Other Plantings Associated with Facilities

II. DATE: July 18, 2007

III. PURPOSE:

To define ineligible work related to trees, shrubs, and other plantings, and limited eligibility for replacement of grass and sod, associated with facilities eligible for repair and restoration.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance Program.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 – 5206, as amended, and Title 44 Code of Federal Regulations (CFR) §206, Subpart H.

VI. BACKGROUND:

This policy is intended to reduce the costs of Federal disaster assistance in a way that will not impact essential public services.

The treatment of trees and shrubs under the Public Assistance Program was discussed by the FEMA Inspector General in *Inspection Report I-01. Unintended Consequences: The High Cost of Disaster Assistance for Park and Recreational Facilities* (May 1996). The Inspector General recommended that tree and shrub replacement be excluded for “recreational facilities other than parks,” and earlier in the report he noted that there is “no documented rationale” for extending eligibility to trees and shrubs in any areas other than parks. In fact, it is not unusual for applicants to replace trees, shrubs, and other plantings in non-recreational areas after disasters, such as median strips in roadways and as landscaping for public buildings. The law and implementing regulations do not distinguish between a park and any other public building, structure or system; therefore, any revision to FEMA policy with respect to trees, shrubs, and other plantings must not only consider trees, shrubs, and other plantings in parks and other recreational facilities, but also landscaping connected with administrative buildings, utility



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.5

sites, and other sites where trees, shrubs, and other plantings are an integral and maintained portion of the entire facility.

FEMA does not contest the importance of trees, shrubs, and other plantings, especially as a mitigation measure, but rather the validity for replacement under the Public Assistance Program. While FEMA acknowledges the economic and environmental benefits of replacing trees, shrubs, and other plantings, it has been determined that not providing assistance to replace trees, shrubs, and other plantings damaged or destroyed by a disaster, will not impact essential services.

VII. POLICY:

Trees, shrubs, and other plantings are not eligible for replacement under Section 406 of the Stafford Act (Repair, Restoration, and Replacement of Damaged Facilities). Vegetative mitigation activities for the purpose of slope stabilization are reimbursable under the PA Program. Grass and sod replacement is only eligible when it is necessary to stabilize slopes and minimize sediment runoff. The replacement of grass and sod for purposes other than slope stabilization or minimization of sediment runoff is considered cosmetic and is not eligible for reimbursement.

This policy applies equally to recreational and non-recreational areas and facilities. It applies to any measure taken with respect to trees, shrubs, and other plantings, including but not limited to replacement, non-emergency removal for purposes of replacement, and remedial actions taken to abate disaster damage. It does not affect eligible debris removal and emergency measures that may be taken under Sections 403 and 407 of the Stafford Act, as amended.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Response and Recovery Directorate Policy 9524.5 dated September 24, 1998, and all previous guidance on this subject.

X. REVIEW DATE: Five years from date of publication.

//signed//
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

I. TITLE: **Collection and Individual Object Eligibility**

II. DATE: JUN 30 2008

III. PURPOSE:

This policy outlines the criteria by which the Federal Emergency Management Agency (FEMA) determines the eligibility of collections and individual objects, and the eligible work and costs related to the treatment of these collections and individual objects.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared by the President on or after its publication date. It is intended to assist FEMA personnel involved in making eligibility determinations under the provisions of the Public Assistance (PA) program, in coordination with FEMA's Office of Environmental Planning and Historic Preservation.

V. AUTHORITY:

Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended; 42 U.S.C. 5121-5207; 42 U.S.C. 5172; 44 CFR §§13.3, 206.222-206.223, 206.226, 206.250, 206.252-206.253.

VI. BACKGROUND:

A. Under 44 CFR §206.226(h) and (i), "equipment and furnishings" in an eligible facility are eligible for FEMA assistance, as are "library books and publications," to include cataloging and other work incidental to replacement.

B. 44 CFR §13.3 defines equipment as "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. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above." 44 CFR §13.3 defines supplies as "all tangible personal property other than equipment." For the purposes of this policy, the term "furnishing" refers to any tangible property other than equipment, as defined in 44 CFR §13.3.

C. Items that may be replaced with comparable items at a reasonable cost are not subject to the provisions of this policy. In some cases, this may include obtaining copies of the damaged items, or reproducing them through xerography or electronic means.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

D. Plant materials are subject to the provisions of Disaster Assistance Policy (DAP) 9524.5, *Trees, Shrubs, and Other Plantings Associated with Facilities*. Animals that are housed and/or displayed in an eligible facility and die or are otherwise destroyed as a result of a major disaster may be eligible for replacement in accordance with 44 CFR §206.226(h). See draft policy DAP9524.9, *Replacement of Animals Associated with Eligible Facilities*.

E. Relevant definitions have been adapted from the American Association of Museums (AAM), the American Association for State and Local History (AASLH), the American Institute for Conservation of Historic and Artistic Works (AIC), the American Library Association (ALA), the Institute of Museum and Library Services (IMLS), the Library of Congress, and the Society of American Archivists (SAA).

F. All references to FEMA in this policy refer to the Public Assistance Program, in coordination with the Office of Environmental Planning and Historic Preservation.

VII. POLICY:

A. Definitions

1. **Accession** is a formal process used to legally accept and record a specimen or artifact as a collection item (Malaro, Marie C. *A Legal Primer on Managing Museum Collections*, 2nd edition. Washington D.C.: Smithsonian Institution Press, 1998). It involves the creation of an immediate, brief, and permanent record utilizing a control number or unique identifier for objects added to the collection from the same source at the same time, for which the institution accepts custody, right, or title (AAM, 2005).

2. **Archives** are materials created or received by a person, family, or organization, public or private, and preserved because of the enduring value they contain, or as evidence of the functions and responsibilities of their creator; especially those materials maintained using the principles of provenance, original order, and collective control (SAA).

3. A **catalog** is a full record of information specific to an item and cross-referenced to other records and files, including identification and documentation of the material in some detail (AAM, 2005).

4. **Collections** and **Individual Objects** are artifacts, specimens, artworks, archives, public records, and other items that because of their artistic, educational, historic, legal, scientific, or social significance are often considered irreplaceable. Collections and individual objects referred to in this policy are **nonliving** (do not include animals or plant materials).



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

5. **Complete devastation or loss** refers to a state in which a disaster destroys a collection, or portion thereof, or an object in its entirety; thus, stabilization of the collection or individual object to a point where it retains its physical integrity and conveys the characteristics for which it is significant is no longer practicable or possible.

6. **Conservation** is the preservation of a collection or object for the future. Conservation activities include examination, documentation, treatment, and preventive care, supported by research (scholarly and technological, x-rays, paint sampling, etc.) and education (AIC).

7. **Culturally significant** items such as works of art and artifacts and their authenticity are, in part, defined by provenance (history of ownership) and by those characteristics including materials, design, setting, craftsmanship, feeling, and association with a place, and/or being the work of an artist of local, State, regional or national importance. Items may include those of artistic, educational, historic, legal, scientific, or social significance.

8. **Extraction/Removal** refers to removing a collection or individual object from an unstable environment, e.g., mud and humidity.

9. **Inventory** is a detailed, itemized list, report, or record of items in one's possession (American Heritage Dictionary).

10. An **institution** is a facility that stores and/or displays collections or individual objects. To be eligible for Public Assistance funding, the facility must be an eligible public or private nonprofit (PNP) facility, owned by an eligible public entity or PNP organization, in accordance with 44 CFR §206.223. See 44 CFR §206.221 for definitions of PNP facility, PNP organization, public entity, and public facility.

11. The **owner** of a collection or individual object is typically a public entity or PNP organization. The owner legally possesses, and has accessioned, inventoried, and/or cataloged the collection or individual object. **Lenders**, i.e., institutions or individuals that have lent items to a public entity or PNP organization, may be considered owners as well. In these cases, the public entity or PNP organization is the **borrower**. See definition of "responsible institution" below.

12. **Proof of ownership** may be established through the existence of a bill of sale for purchased acquisitions, through the execution of a Deed of Gift that is signed and dated by all parties for the conveyance of donations, or other appropriate methods of proving ownership.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

13. **Public records** contain information accessible to the public that were created or received by a government agency in the course of business and are preserved for future reference. Public records may include, but are not limited to, birth, death, property, trial, and court records. Public records may be significant depending on the artifactual (intrinsic), associational, evidential, informational, legal, or monetary values of the records. Other factors used to determine significance may include age, rarity, or research potential (Library of Congress).

14. The **responsible institution** is the owner, borrower, or lender legally responsible for care of a collection or individual object at the time of the disaster. Typically, the owner or borrower of the item(s) is the responsible institution. In some cases, the lender may be the responsible institution if it has retained legal responsibility for the care of the item(s). (See 44 CFR §206.223(a)(3)). The responsible institution must be an eligible public entity or PNP organization in order to apply for Public Assistance, in accordance with 44 CFR §206.223.

15. **Restoration** is a series of treatment procedures intended to return collections or objects to a known or assumed state, often through the addition of non-original material (AIC). This method of conservation often removes the aging process that has become part of the history of an artwork or artifact. Generally, restoration of collections and objects is not eligible for Public Assistance funding, but in some cases items may be returned to predisaster (though not original) condition.

16. **Special Library Collections** are typically comprised of unique, rare printed books, first editions (often author-signed), manuscripts, archives, artifacts, photos, engravings, graphics, music, and ephemera, as well as limited edition print runs of special collections of maps or other important topics. Such collections do not circulate among the public because of their rarity, fragility and importance, and are normally only available for research purposes.

17. **Stabilization** is a series of treatment measures intended to maintain the integrity of a collection or object and to minimize deterioration (AIC). It involves 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 and is generally eligible for Public Assistance funding.

B. Eligibility

1. FEMA, in consultation with grantee and the subgrantee, will determine if a collection or individual object is eligible for treatment. FEMA will determine if the collection or individual objects meet other eligibility criteria.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

2. Collections and individual objects are eligible for treatment if they are damaged as a result of a declared disaster, they are located within a designated disaster area, and the responsible institution is an eligible applicant (see 44 CFR §206.222 and 44 CFR §206.223). Damage caused by negligence (i.e., failure of the applicant to take prudent measures to prevent further damage) is not eligible for FEMA assistance, in accordance with 44 CFR §206.223(e).

3. Collections and individual objects may be in storage or on display in a public or PNP facility, and may include item(s) located outdoors, such as outdoor sculpture and public art installations. (See 44 CFR §206.223(b) and (c)).

4. FEMA will fund treatment of “special library collections,” (see definitions) but will not fund replacement of rare books, manuscripts and other fragile materials. General library books and publications are subject to the provisions of 44 CFR §206.226(i).

5. Applicants should provide documentation of collections and individual objects, including:

a. Clear title to all items. Proof of ownership is established through a bill of sale for purchased acquisitions, legal conveyance through the execution of a Deed of Gift for donations, or other appropriate methods of proving ownership.

b. Collections and individual objects should be accessioned and cataloged and/or inventoried.

c. Items on loan should be inventoried. In the case of loans, loan forms should establish legal responsibility for care of the item(s).

6. Insurance.

a. In accordance with 44 CFR §206.250(c), FEMA will offset otherwise eligible disaster-related cost reimbursements by “actual and anticipated insurance recoveries.”

b. FEMA will approve assistance only under the conditions of 44 CFR §206.252 and 44 CFR §206.253, which require the subgrantee to obtain and maintain such types of insurance as are reasonable and necessary to protect against future loss to such collections from the types of hazards which caused the major disaster.

7. The materials, equipment, and exhibition furnishings associated with the storage, display, preservation, or exhibition of collections and individual objects are eligible for FEMA assistance as “equipment and furnishings” of a facility, in accordance with 44 CFR §206.226(h).



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

These may include (but are not limited to): equipment regulating temperature or humidity; exhibit panels; models, video and audio equipment. General equipment and furnishings not essential to the collection may also be eligible for assistance under the provisions of 44 CFR §206.226(h).

C. Treatment Measures for Eligible Collections and Individual Objects. FEMA, in consultation with the grantee and the subgrantee, will determine the eligible scope of work (treatment measures) and the eligible costs (extent of compensation) that will be provided for the treatment of collections and individual objects. Treatment will be conducted by qualified conservation professionals with the appropriate specialty, in accordance with the AIC Code of Ethics and Guidelines for Practice. When non-intervention best serves to promote the preservation of the damaged items, it may be appropriate to recommend that no treatment be performed.

1. Reasonable costs associated with the development of the treatment plan for the collection or individual object are considered eligible for FEMA assistance.
2. Removing items from disaster-related conditions in which they are likely to suffer additional damage (extraction/removal) as soon as practicable is considered eligible work.
3. Work necessary to return items to a condition in which they can function in the same capacity as they did prior to the disaster (stabilization) is eligible for FEMA assistance. This includes treating damaged items through proper environmental controls (temperature and humidity), and chemical or mechanical cleaning to stabilize the items in order to prolong their existence, maintain their integrity, and minimize further deterioration from the damaging effects of the disaster.
4. FEMA in consultation with the grantee and the subgrantee, will determine if additional treatment beyond stabilization is necessary to maintain the integrity of the items and return them to their predisaster function. In some cases, costs associated with restoring an item to predisaster (but not original) condition may be eligible. For example, repairing a tear in a painting that was a direct result of the disaster may be an eligible cost, whereas costs to remove signs of aging (e.g., layers of old varnish) evident prior to the disaster would not be eligible.

D. Complete Devastation or Loss. FEMA, in consultation with the grantee and the subgrantee, will determine the extent of damage to the collections and individual objects. Collections and individual objects that have been completely destroyed by the disaster are not eligible for FEMA assistance.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.6

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Response and Recovery Policy RP9524.6 Collections and Individual Objects, dated August 17, 1999, and all previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** June 8, 2001
2. **Response and Recovery Directorate Policy Number:** 9524.7
3. **Title:** Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster
4. **Purpose:** This policy provides guidance in determining the eligibility of costs for inspection, evaluation and repair of welded steel moment frames of structures damaged by the Nisqually Earthquake.
5. **Scope and Audience:** This policy is specific to the provision of FEMA Public Assistance recovery grants for the Nisqually Earthquake (FEMA-DR-1361-WA) that occurred on February 28, 2001 in the State of Washington. It prescribes eligible and ineligible costs associated with the inspection, evaluation and repair of welded steel moment frames of structures constructed with steel framing joined by welded connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of *Section 2710 (g) B* of the 1991 **Uniform Building Code** or its equivalent. This policy is intended to guide FEMA personnel responsible for the administration of the FEMA Public Assistance Program. The provisions of this policy are effective immediately.
6. **Background:** The Robert T. Stafford Disaster Recovery and Emergency Assistance Act, as amended, ("Stafford Act") and implementing regulations in 44 CFR Part 206 provide an administrative allowance (sometimes called "the sliding scale") to reimburse subgrantees for costs incurred while requesting, obtaining and administering Federal disaster assistance grants. This allowance, which is based on a fixed percentage of the cost of eligible repairs, is intended to include the costs incurred for an applicant's evaluation of the extent of damage to eligible damaged facilities. FEMA's policy is that there generally is no reimbursement separate from the allowance for costs incurred in the search for damage conducted by an applicant.

However, FEMA has made an exception to that policy in recognizing the unique situation presented by the inspection of welded steel moment frame connections that potentially can have brittle fractures. These connections typically are covered with architectural finishes and occasionally are protected with asbestos or other fire retardants. These coverings add complexity to an inspection of such connections. Because of the numerous incidents of structural damage to welded steel moment frames (WSMF) caused by the Northridge Earthquake, it was necessary to establish a policy by which FEMA would determine the eligibility of funding for inspection, evaluation and repair of this damage.

A multi-year study of the welded steel moment frame fracture issue has resulted in recommended criteria to the technical community for (a) evaluation of steel moment frame buildings affected by strong earthquake ground shaking to determine if they have been damaged, and to what extent; (b) identification of those buildings that have been so severely damaged that they constitute a significant safety hazard; and (c) repair of damaged structures such that they may safely be restored to long term occupancy. These results are published in **Recommended Post-earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings**, Federal Emergency Management Agency, FEMA 352, July 2000. FEMA 352 provides the technical base for this policy.

The revision of RR #9524.1, Welded Steel Moment Frame Policy, August 17, 1999, will be made following FEMA's normal coordination procedure. That policy was based on FEMA 267, *Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Moment Frame Structures*, August 1995, which is now out-of-date. The revision of RR #9524.1 will replace the recommendations of FEMA 267 with those of FEMA 352.

This Interim Policy is being issued at this time because the revision of RR Policy #9524.1 will take too long to be responsive to the Nisqually Earthquake recovery and because FEMA 352 provides the best current technical information.

FEMA has identified two potential cost impacts caused by the publication of FEMA 352. These impacts are a consequence of the changes between FEMA 267 and FEMA 352 and do not reflect changes in policy. The potential cost impacts are assessed below:

First. Physical indications that require the search for damaged welded moment frame connections are similar in FEMA 267 and FEMA 352 but not identical.

- The number of buildings to be inspected may decrease slightly because FEMA 267 used local ground accelerations equal to or greater than 0.20 g whereas FEMA 352 uses local ground accelerations equal to or greater than 0.25 g.
- However, the number of buildings to be inspected may also increase slightly because FEMA 352 dropped the condition of permanent interstory drift and change in building period, and added local Modified Mercalli Intensity condition.

Second. In the selection of the number of connections to be inspected in the search for damaged connections, the minimum number of connections has been increased slightly. However, whenever significantly damaged connections are found, FEMA 352 recommends that, for an exterior moment frame, 9 additional connections rather than 4 additional connections be inspected, and, for an interior moment frame, 13 additional connections rather than 12 additional connections be inspected. For a severely damaged building the change in cost will be small, but for a minimally damaged building the cost increase may be significant.

The currently published national policy on welded steel moment frame buildings (RR #9524.1) included a discussion of the use of mitigation measures under Section 406 of the Stafford Act. That topic is not being addressed in either the planned revision to

RR #9425.1 or in this interim policy for the Nisqually Earthquake recovery. Instead, proposed mitigation measures for welded steel moment frame buildings, as all other public assistance grant program mitigation measures, will be evaluated under the provisions of RR #9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act).

7. **Policy:** Only eligible facilities constructed with steel framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of Section 2710 (g) B of the 1991 **Uniform Building Code** or its equivalent, are eligible under this Policy.

A. Inspection Reimbursement Under Section 406 of the Stafford Act

- 1) Preliminary post-earthquake assessment. The preliminary post-earthquake assessment described in FEMA 352, Chapter 3, leads to a building posting as Green, Yellow or Red. Section 3.2 provides conditions that are used to determine if the building needs to undergo a preliminary evaluation. If the conditions of Section 3.2 allow it to be classed as unlikely to have experienced significant damage, building inspections and evaluations are the responsibility of the owner and eligibility for reimbursement is provided in accord with item 3, below. However, if the building may have experienced significant damage, the visual inspections and preliminary evaluation described in Section 3.3 will be eligible for disaster recovery reimbursement through a Project Worksheet (PW). Section 3.3 provides a checklist of indications of potential damage that leads to evaluations requiring posting of the building as Green, Yellow or Red. Section 3.3.3.4 delineates the numbers and locations of welded moment connections requiring visual inspection for the preliminary evaluation.
- 2) Strong likelihood of significant welded steel moment frame damage. This is to be determined as indicated by Yellow or Red postings based on the evaluation of damage to welded moment connections described in FEMA 352, Section 3.3.4. As provided through a PW, FEMA will reimburse the costs of visual bottom flange connection inspections performed at locations selected in accordance with FEMA 352, Chapter 4, Method 2. Section 4.4.2 (Method 2) provides guidance for the inspection of a sample of the total welded moment frame connections in the building. If certain types of damage are discovered, additional visual inspection of bottom flange connections and/or top flange connections at locations recommended by FEMA 352, Chapter 4 (after the initial discovery of damaged connections) will also be eligible for reimbursement, but only after FEMA has been informed of the frame damage already discovered, and after the PW has been modified to include the follow-on inspection. The modified PW also may authorize nondestructive testing if the visual inspections indicate a significant potential of concealed damage. The eligible cost of inspecting connections includes only:
 - Removal of necessary architectural finishes such as plaster/drywall
 - Removal of fire retardants in the inspection area of the connection.
 - Visual inspections.

- Nondestructive testing only as appropriate, necessary and approved. Testing may include liquid dye-penetrant testing or magnetic particle testing, but not ultrasonic testing.

3) Little likelihood of significant welded steel moment frame damage.

If either of the following conditions exist:

- a building was not required to undergo a preliminary evaluation (based on FEMA 352, Section 3.2), or
- a Green posting was assigned to a building (based on damage to welded moment connections as described in FEMA 352, Section 3.3.4.3, Table 3-2: Postearthquake Condition Designations), then FEMA will reimburse the costs of visual inspections only for those connections where significant damage associated with the declared earthquake disaster is found. Significant connection damage shall be as defined in FEMA 352, Chapter 4 (Table 4-1a: Connection Damage Indices), for $d_j \geq 1$.

Visual inspection of additional connections (at locations recommended by FEMA 352, following the discovery of damaged connections) will also be eligible for reimbursement, but only after FEMA has been informed of the frame damage already discovered, and a PW for the follow-on inspection has been approved. The PW may also authorize non-destructive testing if the visual inspections indicate a significant potential for concealed damage.

- 4) Except as provided above, any inspections performed that do not yield discovery of significant connection damage attributable to the earthquake will not be eligible for FEMA reimbursement.

B. Evaluation Reimbursement. Eligible reimbursable costs will include reasonable evaluation of the effects of the identified significant connection damage on the future performance of the building structure. To be eligible, this evaluation should be limited to that which is in accordance with FEMA 352, Chapter 4 recommendations. Generally, FEMA will not fund detailed analytical or experimental studies or Level 2 evaluations as described in FEMA 352, Chapter 5. Funding of such evaluations is eligible only if a PW based on a specific scope-of-work and cost estimate is approved in advance.

C. Repair Reimbursement

- 1) The cost to repair the damaged connections to their pre-earthquake condition in accordance with the suggested repair strategies of FEMA 352, Chapter 6 may be eligible for reimbursement. Repair of the architectural finishes and fire retardants removed in the area of the connection damage repair is eligible. Funding of repairs is eligible only if a PW based on a specific scope-of-work and cost estimate is approved in advance.
- 2) FEMA 352 provides recommendations, not requirements.

8. References:

- *Recommended Post-earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings*, Federal Emergency Management Agency, FEMA 352, July 2000.
- RR Policy #9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act), dated August 13, 1998.

9. Supersession: None

10. Authorities: Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended and 44 CFR 206

11. Originating Office: Infrastructure Division, Response and Recovery Directorate

12. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Director, Region X; Response and Recovery Division Director, Region X; Federal Coordinating Officer/Disaster Recovery Manager, FEMA-DR-1361-WA.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.8

I. TITLE: Eligibility for Permanent Repair and Replacement of Roads on Tribal Lands

II. DATE: JUL 24 2007

III. PURPOSE:

This policy provides guidance on eligibility for the permanent repair and replacement of roads on American Indian and Alaska Native Tribal lands under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after August 30, 2006. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance program. This policy applies only to Federally-recognized Indian Tribal Governments. It does not apply to other Tribal Governments, e.g., State-recognized Tribes or Alaska Native Corporations.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172; 44 CFR §206.223 and 206.226; and Federal Register: January 12, 1999 (Vol. 64, No. 7), Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments.

VI. BACKGROUND:

Many road systems on American Indian and Alaska Native Tribal lands are owned and/or maintained by the Department of the Interior, Bureau of Indian Affairs (BIA). However, BIA has no authority to provide for the permanent repair and replacement of roads damaged by a major disaster. This policy enables FEMA to provide Public Assistance funding for the permanent repair and replacement of all roads on American Indian and Alaska Native Tribal lands, regardless of their status with BIA, that meet the eligibility criteria in 44 CFR §206.223 and 206.226. This policy also clarifies the legal responsibility criteria under 44 CFR §206.223(a)(3) as it relates to Tribal governments.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.8

VII. POLICY:

A. Definitions. For the purposes of this policy, the following definitions apply:

1. Indian Tribe means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally-Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

2. Indian Tribal Government is the recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* The shortened name, Tribal Government, is used throughout this policy.

3. "Trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in land, title to which is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation. Collectively referred to as "trust lands," for the purposes of this policy.¹

B. Eligibility.

1. Due to the sovereign status of American Indian and Alaska Native Tribes, Tribal Governments meet the legal responsibility criteria under 44 CFR §206.223(a)(3) for all public roads on Tribally-owned land. Roads on U.S. Government "trust lands" are the sole responsibility of BIA absent other agreement.

2. BIA has no specific authority to provide for the permanent repair and replacement of roads damaged by a major disaster. Therefore, the restrictions in 44 CFR §206.226(a) relating to other Federal agency programs do not apply.

3. This policy only applies to programs related to BIA because of the requirement under Federal case law that Federal agencies interpret their regulations for the benefit of Indian Tribes.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate, Public Assistance Division.

¹25 U.S.C. Sec. 2201(4), as amended.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.9

I. TITLE: Replacement of Animals Associated with Eligible Facilities

II. DATE: AUG 18 2008

III. PURPOSE:

This policy provides guidance for determining the eligibility of the replacement of animals that may be considered “equipment and furnishings” associated with disaster-damaged eligible public or private nonprofit (PNP) facilities.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5172, 44 CFR §13.3, and 44 CFR §206.226.

VI. BACKGROUND:

A. 44 CFR §206.226(h) states, “If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.” 44 CFR §13.3 defines equipment as “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. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.” 44 CFR §13.3 defines supplies as “all tangible personal property other than equipment” as defined in 44 CFR §13.3. For the purposes of this policy, the term “furnishing” refers to any tangible property other than equipment, as defined in 44 CFR §13.3.

B. The replacement of laboratory animals is addressed in Disaster Assistance Policy DAP9525.16, *Research-related Equipment and Furnishings*. This policy does not conflict with or supersede guidance found in DAP9525.16, *Research-related Equipment and Furnishings*.

C. Animals are not subject to DAP9524.6, *Collection and Individual Object Eligibility* (commonly referred to as “the Collections Policy”). The Collections Policy describes specific



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.9

eligibility criteria, eligible work and costs related to the treatment (rather than replacement) of culturally significant collections and individual objects that are considered irreplaceable.

D. Other costs related to animals may be eligible for reimbursement under section 403 of the Stafford Act. These eligible costs include those related to the disposal of animals that die or are otherwise destroyed as a result of a disaster (disposal of animals must meet the requirements of all applicable local, State, Federal and international regulations and laws). In addition, costs related to actions taken to save the lives of animals and protect the property of eligible facilities may be eligible for reimbursement.

VII. POLICY:

A. Definitions

1. **Animal:** Any living or dead member of the animal kingdom, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part thereof. (See definition of “fish or wildlife” in 16 U.S.C. §1532(8).)
2. **Museum:** A facility that preserves and exhibits a documented collection of artistic, historic, scientific or other objects. See DAP9521.2, *Private Nonprofit Museum Eligibility*, for eligibility criteria for PNP museums.
3. **Police Animal:** A dog or a horse employed for the purpose of aiding in law enforcement. (See definition of “police animal” in 18 U.S.C. §1368(b).)
4. **Rehabilitation Facility:** A facility that primarily provides diagnosis and treatment for the rehabilitation of injuries, disabilities, or illness. (Consistent with the definition of “comprehensive outpatient rehabilitation facility” in 42 U.S.C. §1395x(cc)(2).) PNP rehabilitation facilities are eligible for Public Assistance per 44 CFR §206.221(e)(5).
5. **Rescue Dog:** A dog that is trained, certified, and employed for the purpose of search, rescue, and/or remains detection.
6. **Taxidermy Specimen:** An animal that has been preserved and mounted in a lifelike representation.
7. **Zoo:** Any facility, maintained under the care of a Doctor of Veterinary Medicine, in which live animal(s) are kept for public exhibition or education. (Adapted from the definition of “zoological park” in 9 CFR §93.100.) **Aquariums** and wildlife or zoological parks may meet this definition.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.9

B. Eligibility

1. Animals owned by an eligible applicant that were, at the time of the major disaster, housed and/or exhibited in an eligible facility, and were destroyed or damaged beyond recoverable or re-employable utility as a result of that major disaster, may be eligible for replacement in accordance with 44 CFR §206.226(h). These animals may include, but are not limited to:

- a. Police animals and trained and certified rescue dogs.
- b. Animals in museums, zoos, or publicly owned nature centers.
- c. Taxidermy specimens located in an eligible facility.
- d. Animals used by rehabilitation facilities as part of diagnosis or treatment.

2. Animals on loan to an eligible facility at the time they are destroyed as a result of a major disaster must be the legal responsibility of an eligible applicant, in accordance with 44 CFR §206.223(a)(3). The applicant will be asked to provide documentation that establishes legal responsibility.

3. Replacement of destroyed animals will be based on a documented pre-disaster inventory of animals.

4. Equipment and furnishings associated with housing and/or exhibiting animals may be eligible for Public Assistance, in accordance with 44 CFR §206.226(h).

5. An animal may not be eligible for replacement if, because of its aesthetic, ecological, educational, historic, or scientific significance and/or local, State, regional, national or international importance, a comparable animal is not available for purchase at a reasonable cost.

C. Costs

1. Purchases must comply with all applicable local, State, Federal and international regulations and laws.

2. Eligible costs include the replacement of an animal comparable to the destroyed animal. The estimated cost to replace an animal is based on a reasonable cost to purchase a comparable animal. FEMA will typically determine cost reasonability through market surveys.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.9

3. If an applicant captures a replacement animal from the wild, reasonable costs associated with that acquisition are eligible. Eligible costs may not exceed the estimated cost of purchasing a comparable animal.

4. The costs associated with the acquisition of a donated animal are eligible, such as costs to transport the animal to the eligible facility. Eligible costs associated with the acquisition of a donated animal may not exceed the estimated cost of purchasing a comparable animal. When a destroyed animal is replaced through a donation of a comparable animal, the costs associated with the **purchase** of another comparable animal are **not** eligible for reimbursement.

5. The costs associated with acquiring an animal on loan are eligible for reimbursement. These animals would not be considered “temporary replacements” in terms of Public Assistance. Rather, loans are a common method of acquiring animals for zoos and the acquisition of an animal on loan would be considered a replacement in lieu of the purchase of a comparable animal. Eligible costs may not exceed the estimated cost of purchasing a comparable animal.

6. If an eligible applicant requests, and the Grantee approves, other than in-kind replacement of animals, funding will be limited to the estimated cost to replace the destroyed animal(s) from the eligible facility’s pre-disaster inventory of animals. The applicant will be required to maintain documentation to ensure that funds were used to restore the pre-disaster function of the animals.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This is a new policy.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.1

I. TITLE: **Post-Disaster Property Tax Reassessment**

II. DATE: DEC 12 2007

III. PURPOSE:

To define the ineligibility of costs associated with real property reassessments for reimbursement under the Federal Emergency Management Agency's (FEMA) Public Assistance Program, following an emergency or major disaster declaration.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for FEMA personnel involved in making eligibility determinations under the Public Assistance Program.

V. AUTHORITY:

Sections 403, 406, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 – 5206, as amended, and Title 44 Code of Federal Regulations (CFR) §206.223.

VI. BACKGROUND:

Following disasters, State and local governments may reassess real property values within their jurisdictions. Some applicants have sought reimbursement of the costs of these activities from FEMA under the Stafford Act. They have asserted that the reassessments were eligible for reimbursement because they were: (1) the result of the disaster; (2) the properties were located in the designated disaster areas; and (3) the reassessments were the legal responsibility of the applicants [44 CFR §206.223(a)].

In addition to meeting these criteria, an eligible item of work must be authorized in the Stafford Act and the remaining provisions of the regulations. Specifically, the reassessment of the property is not authorized under Section 403 or 502 of the Stafford Act in that it is not essential to meeting an immediate threat to life or property resulting from a major disaster or emergency. Such activity also is not connected with permanent restoration of facilities authorized under Section 406 of the Act.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.1

VII. POLICY:

The Stafford Act does not authorize the reimbursement of costs associated with the reassessment of real property. Therefore, the costs associated with the post-disaster reassessment of property values are not eligible for reimbursement.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes RP9525.1 dated November 30, 1998, and all previous guidance on this subject.

X. SIGNIFICANCE DETERMINATION: This policy is neither significant nor economically significant under Executive Order 12866, as amended.

XI. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP 9525.2

I. TITLE: Donated Resources

II. DATE: April 9, 2007

III. PURPOSE:

Establish the criteria by which applicants will be credited for volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work – Categories A and B.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance (PA) Program.

V. AUTHORITY:

Sections 403(a) and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 – 5206, as amended, and Title 44 Code of Federal Regulations (CFR) §13.24, and OMB Circular A-87.

VI. BACKGROUND:

In some disasters, individuals and organizations donate volunteer labor, equipment, and material. The Federal government is not required to credit the value of "in-kind" contributions toward cost share arrangements. However, FEMA has determined that the value of "in-kind" contributions by third parties may be credited toward the calculation of the non-Federal share for eligible emergency work following declared disasters.

VII. POLICY:

Donated resources used on eligible work that is essential to meeting immediate threats to life and property resulting from a major disaster may be credited toward the non-Federal share of grant costs under the PA program. Donated resources may include volunteer labor, donated equipment and donated materials.



FEMA

DISASTER ASSISTANCE POLICY

DAP 9525.2

A. Eligibility. Donated resources are eligible to offset the non-Federal share of eligible Category A and B costs if they meet the following criteria:

1. The donated resources must be documented by a local public official or a person designated by a local public official. The documentation must include a record of hours worked, the work site, and a description of work for each volunteer, and equivalent information for equipment and materials. Regional Administrators may establish alternate documentation requirements when required by an extraordinarily demanding situation.

2. The donated resources must apply to emergency work that has been organized by an eligible applicant and is eligible under the PA program. Examples include, but are not limited to:

- a. Removing eligible debris.
- b. Filling and placing sandbags.
- c. Donating equipment to raise or reinforce a levee.
- d. Donating materials, such as rocks or sand.
- e. Search and rescue when part of an organized search and rescue operation.
- f. Professional safety inspections.
- g. Mass food and shelter for victims, when not the mission of the organization.

3. The donated resources must be documented on one or more Project Worksheets (PWs).

B. Value of Resources. 44 CFR 13.24 addresses how donated resources are to be valued. The following instructions are based on that part of the CFR:

1. **Volunteer Labor:** The value of volunteer labor is discussed in 44 CFR 13.24 (c) (1). The rate placed on volunteer labor should be the same rate (plus reasonable fringe benefits) ordinarily paid for similar work within the applicant's organization. Premium rates will not be used. If the applicant does not have employees performing similar work, the rate should be consistent with those ordinarily performing the work in the same labor market. To determine the value of volunteer labor, the labor rate should be multiplied by the total number of volunteer labor hours. Credit may be given for volunteer labor in any field reasonably required for emergency work, including the work of volunteer equipment operators.

2. **Donated Equipment:** To determine the value of donated equipment, determine the number of hours that each piece of donated equipment was used and multiply it by the applicable applicant's or FEMA's Equipment Rate, whichever is lower. The out-of-pocket cost



FEMA

DISASTER ASSISTANCE POLICY

DAP 9525.2

to operate the equipment may be claimed as a donation for credit under this policy unless it is included in a reimbursed equipment rate.

3. **Donated Materials:** Only materials donated by third party entities are eligible for credit. Typical donated materials include sand, dirt, and rocks, and other materials associated with flood-fighting activities. To determine the value of donated materials, use the current commercial rate for such material based on previous purchases or information available from vendors. Materials donated from other Federal agencies may not be included.

C. Calculations. The following guidance is to be used for calculation purposes:

1. "Total project cost" means the out-of-pocket costs (labor, materials, and contracts) plus the value of donated resources (limited to the maximum allowed, as provided in the next paragraph).

2. The maximum credit allowed for donated resources is calculated by dividing the non-Federal cost share percentage by the Federal cost share percentage (e.g., 25%/75% = .333 and 10%/90% = .111) and multiplying that factor by the out-of-pocket expenses for a particular PW or multiple PWs. When multiple PWs are going to be used for emergency work, the donations credit (with documentation listing each applicable emergency work PW) may be placed on one "credit" PW after all emergency work is completed.

3. The documented donations credit (not to exceed the maximum credit allowed for donation) is to be entered on the PW as a line item of the project cost. Any excess credit may be distributed to other emergency work PWs but may not exceed the maximum allowable credit for each PW.

D. Limitations.

1. The donations credit is capped at the non-Federal share of emergency work (Category A and Category B) so that the Federal share will not exceed the actual out-of-pocket cost. Any excess credit can be credited only to other emergency work for the same applicant in the same disaster. The value of excess donated resources cannot be credited toward another applicant, toward other State obligations, or toward permanent work.

2. A State may claim credit for the value of donated resources only according to the disaster cost-share agreement for the non-Federal share of cost for the eligible work. Credit for donated resources may not be applied for any work performed during a 100% Federally-funded period because the non-Federal share for that period would be zero.



FEMA

DISASTER ASSISTANCE POLICY

DAP 9525.2

3. Reasonable logistical support for volunteers doing eligible work may be considered an eligible cost or donations credit by the Regional Administrator.

4. Donated resources submitted for credit toward the non-Federal share may not be from another Federal grant or from other Federally funded sources.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Response and Recovery Directorate Policy 9525.2, dated August 17, 1999, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.3

I. TITLE: **Duplication of Benefits – Non-Government Funds**

II. DATE: **JUL 24 2007**

III. PURPOSE:

This policy clarifies the duplication of benefit issues related to grants and cash donations from non-Federal third parties for emergency and permanent work under the Public Assistance Program and the Fire Management Assistance Grant Program. Disaster Assistance Policy DAP9525.2, Donated Resources, addresses donated labor, equipment, and materials.

IV. SCOPE AND AUDIENCE:

This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program and the Fire Management Assistance Grant Program. It is applicable to all eligible emergency and permanent work done under Public Assistance Program grants, and all eligible emergency work done under Fire Management Assistance Grant Program grants.

V. AUTHORITY:

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, Section 312; 44 CFR 13.24, 206.226(a), and 204.62(a).

VI. BACKGROUND:

A. Communities and private non-profit institutions often look for assistance from the general public, private institutions, and Federal and State agencies to help rebuild their infrastructure following a disaster. This assistance may come in the form of donations, insurance proceeds, volunteer work, or grants. With multiple entities providing assistance, it is possible for different sources to allocate funds to repair the same project. This action may constitute a duplication of benefits.

B. Section 312 (a) of the Stafford Act, as amended states that no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source. The use of Federal and/or State funds granted for the same purpose clearly constitutes a duplication of benefits. Grant or cash donations provided by a third party also may constitute a duplication of benefits.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.3

C. Part 13.24 of 44 CFR allows, but does not require, applicants to use the credit of third party donations, such as cash and grants, designated solely for eligible work, to reduce the non-Federal share of project costs. Designated third party funding that is not used towards reducing the non-Federal share will be considered a duplication of benefits and will be used to reduce total project cost.

VII. POLICY:

A. Grants and cash donations designated for specific eligible work.

1. Grants and cash donations from non-Federal sources designated for the same purpose as Federal disaster funds generally are considered a duplication of benefit. However, these funds may be used for the non-Federal cost-share. All costs to be applied to the non-Federal cost-share must be for eligible work under the program.

2. If the grants and cash donations from non-Federal sources designated for specific eligible work exceed the amount of the non-Federal obligation, they should be used to reduce the total project cost. FEMA headquarters will provide the methodology for calculating the adjusted project cost and adjusted Federal and non-Federal share.

B. **Grants and cash donations not designated for specific eligible work.** Unless otherwise prohibited, grants and cash donations received for unspecified purposes (e.g., "for disaster recovery/relief efforts"), or for work not eligible for FEMA assistance, do not constitute a duplication of benefits.

C. **Insurance.** Disaster assistance will not be provided for damages covered by insurance. Disaster assistance provided by FEMA is intended to supplement assistance from other sources; therefore, insurance proceeds should be an applicant's first alternative for disaster assistance. For further guidance, refer to Disaster Assistance Policy Fact Sheet DAP9580.3, Insurance Considerations for Applicants.

D. The retention of duplicated funds is illegal. Duplicated funding received from FEMA must be returned to FEMA (Section 312).



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.3

VIII. **RESPONSIBLE OFFICE:** Disaster Assistance Directorate (Public Assistance Division).

IX. **SUPERSESSION:** This policy supersedes Recovery Policy RP9525.3 Duplication of Benefits - Non-Government Funds, published October 30, 2000.

X. **REVIEW DATE:** Three years from date of publication.

/signed/

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.4

I. TITLE: **Emergency Medical Care and Medical Evacuations**

II. DATE: **JUL 16 2008**

III. PURPOSE:

This policy identifies the extraordinary emergency medical care and medical evacuation expenses that are eligible for reimbursement under the *Category B, Emergency Protective Measures* provision of the Federal Emergency Management Agency's (FEMA) Public Assistance Program following an emergency or major disaster declaration.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all emergencies and major disasters declared on or after the date of publication of this policy. It is intended for FEMA and State personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5170b and 5192, respectively, and Title 44 of the Code of Federal Regulations (CFR) § 206.225.

VI. BACKGROUND:

A. Sections 403 and 502 of the Stafford Act authorize Federal agencies to provide assistance, including emergency medical care, essential to meeting immediate threats to life and property resulting from a major disaster or emergency, respectively. When the emergency medical delivery system within the designated disaster area is destroyed or severely compromised by a disaster event, assistance for emergency medical care and medical evacuations of disaster victims from eligible public and private nonprofit hospitals and custodial care facilities is available to eligible Public Assistance applicants through Public Assistance grants, Direct Federal Assistance (DFA), or a combination of both.

B. When the State and local governments lack the capability to perform or contract for eligible emergency medical care or medical evacuation work, they may request Direct Federal Assistance from FEMA. Usually, FEMA will task the appropriate Federal agencies via mission assignments to perform the requested emergency work.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.4

FEMA may task the Department of Health and Human Services to provide emergency medical assistance when requested by the State.

VII. POLICY:

A. Definitions

1. **Cost-to-charge ratio:** A ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges.
2. **Durable medical equipment:** Equipment prescribed by a physician that is medically necessary for the treatment of an illness or injury, or to prevent a patient's further deterioration. This equipment is designed for repeated use and includes items such as oxygen equipment, wheelchairs, walkers, hospital beds, crutches, and other medical equipment.
3. **Emergency Management Assistance Compact:** A mutual aid agreement and partnership between states in which disaster-impacted states can request and receive reimbursable assistance from other member states.
4. **Emergency medical care:** Medical treatment or services provided for injuries, illnesses and conditions caused as a direct result of the emergency or declared disaster, and which require immediate medical treatment or services to evaluate and stabilize an emergency medical condition. Emergency medical care may include care provided during transport under a medical evacuation and stabilization of persons injured during evacuation.
5. **Operating costs:** Costs of personnel, equipment, and supplies required to operate a facility, and costs of the facility itself.

B. Eligible Applicants. Eligible applicants may include State and local governments and private nonprofit organizations or institutions which own or operate a medical or custodial care facility, such as a publicly-owned or private nonprofit hospital or nursing home (44 CFR 206.221, and 206.222). Private for-profit medical service providers are not eligible applicants for Public Assistance. However, some costs associated with for-profit providers may be eligible for Public Assistance when contracted for by an eligible applicant.

C. Eligible Emergency Medical Care Costs. Eligible applicants may be eligible to receive Public Assistance funding for the extraordinary costs associated with providing temporary facilities for emergency medical care of disaster victims when existing facilities are overwhelmed. Costs associated with emergency medical care should be reasonable and customary for the emergency medical services provided. Where applicable, FEMA may rely on



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.4

Medicare's cost-to-charge ratio to determine the reasonableness of costs. Eligible costs will be limited to a period of up to 30 days from the date of the emergency or disaster declaration, or as determined by the Federal Coordinating Officer.

1. Eligible costs include, but are not limited to, the following:
 - a. Overtime for regular full-time employees performing eligible work.
 - b. Regular time and overtime for extra hires specifically hired to provide additional support as a result of the emergency or declared disaster (See FEMA Recovery Policy RP9525.7, *Labor Costs – Emergency Work*, for information related to eligible labor costs while performing emergency work).
 - c. Transport of disaster victims requiring emergency medical care to medical facilities, including EMS and ambulance services.
 - d. Treatment and monitoring of disaster victims requiring emergency medical care, including costs for:
 - i. Triage, medically necessary testing, and diagnosis.
 - ii. First aid assessment and provision of first aid, including materials (bandages, etc.).
 - iii. Prescription assistance limited up to a one-time 30-day supply for acute conditions and to replace maintenance prescriptions.
 - iv. Durable medical equipment.
 - e. Vaccinations for disaster victims and emergency workers, including medical staff.
 - f. Provision of health information.
 - g. Temporary tents or portable buildings for treatment of disaster victims.
 - h. Leased or purchased equipment for use in temporary facilities. (See FEMA Recovery Policy RP9523.3, *Provision of Temporary Relocation Facilities*, for information related to the eligibility of costs associated with leasing and purchasing temporary facilities).
 - i. Security for temporary facilities.
2. Ineligible costs include the following:
 - a. Medical care costs incurred once a disaster victim is admitted to a medical care facility on an inpatient basis.
 - b. Costs associated with follow-on treatment of disaster victims beyond 30 days of the emergency or disaster declaration.
 - c. Increased administrative and operating costs to the hospital due to increased or anticipated increased patient load.
 - d. Loss of revenue.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.4

3. Ineligible costs remain ineligible even if incurred under mutual aid or other assistance agreements.

4. Eligible costs of emergency medical care provided in congregate or transitional shelters are addressed in FEMA Disaster Assistance Policy DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*.

D. Eligible Medical Evacuation Costs. Disasters can so seriously threaten or cause such severe damage to eligible medical and custodial facilities that patients have to be evacuated and transported to either a temporary facility or an existing facility that has spare capacity. When an evacuation is required, there may be eligible costs incurred by an eligible applicant in the evacuation and transportation of patients, such as the use of emergency medical service personnel or ambulance services.

1. Eligible costs include, but are not limited to, the following:

a. Overtime for regular full-time employees to evacuate and assist in the transport of patients from the original facility.

b. Regular time and overtime of extra hires employed to evacuate and assist in the transport of patients from the original facility (See FEMA Recovery Policy RP9525.7, *Labor Costs – Emergency Work*, for information related to eligible labor costs while performing emergency work).

c. Equipment costs incurred in the transport of patients from the original facility.

d. Labor and equipment costs incurred during transport while returning the patient to the original medical or custodial care facility.

e. The costs of treatment of patients requiring emergency medical care, including costs for medically necessary tests, medication, and durable medical equipment required to stabilize patients for transportation.

f. Costs incurred from the activation of contracts, mutual aid agreements, or force account resources in advance of an emergency or disaster event necessary to prepare for medical evacuations in threatened areas. Eligible equipment costs include mobilization of ambulances and other transport equipment; eligible force account labor costs are limited to overtime for regular full-time employees and regular time and overtime of extra hires.

2. Ineligible costs include equipment and labor costs incurred during standby times.

E. Duplication of Benefits. FEMA is prohibited by Section 312 of the Stafford Act from approving funds for reimbursement that are covered by any other source of funding. Therefore, eligible applicants must take reasonable steps to prevent such an occurrence, and provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source of funding—including private insurance, Medicaid, or Medicare—has been



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.4

pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

F. Preparation Costs. Costs incurred in preparation for an increased patient load from an emergency or disaster, including costs of personnel, emergency medical equipment, and standby for ambulance services and emergency medical service personnel are not eligible for Public Assistance grant funding.

G. Mutual Aid. The Emergency Management Assistance Compact (EMAC) between states and other individual mutual aid agreements can be used to provide emergency medical care in an emergency or major disaster. Costs incurred through these mutual aid agreements may be eligible for Public Assistance grant funding. Reimbursement claims made by mutual aid providers must comply with the requirements of FEMA Disaster Assistance Policy DAP9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*. Public or private nonprofit medical service providers working within their jurisdiction do not qualify as mutual aid providers under DAP9523.6.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Recovery Policy RP9525.4, dated August 17, 1999, and all previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

/signed/
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** October 26, 2000
2. **Response and Recovery Directorate Policy Number:** 9525.5
3. **Title:** Americans with Disabilities Act (ADA) Access Requirements
4. **Purpose:** This policy provides guidance in determining the eligibility of costs for federally required ADA access compliance associated with Public Assistance (PA) program grants.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the PA program.
6. **Background:**
 - A. In order to eliminate discrimination against individuals with disabilities, Congress enacted the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) in 1990. Titles II and III of ADA are relevant to the PA program. 28 CFR Parts 35 and 36 provide further guidance.
 - B. 28 CFR addresses alteration to existing facilities. It defines an alteration as a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof. It further states that alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts of elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. For the purposes of this FEMA policy on the application of the PA program to post-disaster reconstruction, the phrase, "ADA relevant repair," will be used in place of the word, "alteration."
 - C. The PA program, under Sections 406 (a) and 406(e)(1) of the Stafford Act, authorizes FEMA to fund the cost of repairing, restoring, reconstructing, or replacing a public or private nonprofit facility in conformance with applicable codes, specifications and standards. This policy provides guidance on the applicability of federal ADA provisions to PA grant projects.

7. Policy:

A. New Facilities. A new facility receiving FEMA funding and constructed as a replacement facility, an improved project, or an alternate project must be designed and constructed to be readily accessible to and usable by individuals with disabilities.

1) Exceptions: There are two exceptions for a new facility.

a) For some eligible private nonprofit (PNP) applicants, exceptions are available for installation of elevators in small buildings less than three stories or less than 3,000 square feet per story. These exceptions do not apply to any publicly owned or operated facility.

b) Full compliance is not required when an entity, private or government, can demonstrate that it is structurally impractical to meet the requirements.

2) Other than the exceptions in Paragraph 7.A.1), FEMA will fund compliance with reasonable ADA requirements in a new facility. This is true even when such compliance was absent in the original facility, as long as the applicant was not cited for the violation.

3) A new facility that is funded as an improved or an alternate project is limited to the eligible funding for the original facility even though the new facility might have to comply with additional ADA requirements.

B. Existing Facilities. When ADA relevant repairs are made to any area of an existing facility, they must be done to meet the needs of disabled individuals. Only ADA relevant repairs trigger accessibility requirements; not all repairs are ADA relevant repairs.

1) ADA relevant repair: An ADA relevant repair is a repair to a damaged facility that affects or could affect the usability of the facility by the disabled (which is referred to as an "alteration" in the ADA).

a) Repairs of structural components of flooring, walls, partitions, or load-bearing elements are considered ADA relevant repairs.

b) Alterations to windows, hardware, controls, electrical outlets, and signage and repair of façades (such as dry wall, plaster, facial brick, etc.), whether interior or exterior, are not considered ADA relevant repairs.

c) Items such as normal maintenance, re-roofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not considered ADA relevant repairs unless they affect the usability of, or access to, an area containing a primary function.

- 2) Primary Function Areas. This area is where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, the meeting rooms of a conference center, and public offices providing governmental services to the public. When ADA relevant repairs are made to the primary function area of a facility, there are some special requirements and considerations:
 - a) ADA relevant repairs to the damaged primary function area must meet ADA access requirements.
 - b) When ADA relevant repairs are made to a damaged primary function area, the path of travel, and restrooms, telephones, drinking fountains and similar service facilities serving the primary function area also must be made ADA accessible to the maximum extent feasible (subject to the limitations in Paragraph 7.B.2)d)).
 - c) Path of Travel. The accessibility requirement includes a "path of travel" to access the primary function area even though these areas may not be damaged. A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the repaired primary function area may be approached, entered, and exited and which connects the repaired primary function area with an exterior approach (including sidewalks, streets, and parking areas, and other parts of the facility). The "path of travel" also includes access to the service facilities (e.g., restrooms) serving the primary function area.
 - d) Funding Limitations. Funding for providing an accessible path of travel and accessible service facilities to a repaired primary function area may not exceed 20% of the total cost associated with the repair of the primary function area.
 - i) For calculation purposes, the total costs associated with repair of the primary function area also include the repair costs of the roof, heating/air conditioning/ventilating system, mechanical rooms, janitorial closets, locker rooms, private offices directly associated with the repair of the primary function area.
 - ii) When the funding of 20% is not adequate to meet ADA accessible path of travel and service facility requirements, the ADA access must be made to the maximum extent possible with the limited funds. Limited changes should be made in the following order of priority: accessible entrance, accessible route to the altered area, at least one accessible restroom for each sex or single unisex restroom, phones, drinking fountain, and other elements such as parking, storage, and alarms. See 28 CFR 36.403(g).
- 3) Non-primary Function Areas. If ADA relevant repairs are required during the repair of parts of a facility other than the primary function areas, they must be

done to provide ADA access. However, these repairs do not trigger the "path of travel and service facility" requirements like the ADA relevant repairs to a primary function area do.

a) If ADA relevant repairs are made to *damaged* walls, stairs, corridors, restrooms, etc. that also happen to provide access to and usability of the repaired primary function area, the cost of those repairs are eligible costs as non-primary function areas and are not charged against the 20% cap.

b) The costs of these repairs to non-primary function areas will not be added to the base rate noted in Paragraph 7.B.2)d) when calculating the maximum allowance for accessibility path of travel or service facility repairs.

C. Non-damaged areas. The non-damaged areas of a partially damaged facility are not required by Federal law to be reconstructed for ADA access unless they are the "path of travel or service facility" to a repaired primary function area requiring ADA relevant repairs.

D. Legal Violations. If the applicant was notified of being in violation of an ADA law or building code prior to the disaster and was required to bring the facility into compliance, then triggered accessibility requirements related to the violation will not be eligible costs.

E. Codes and Standards.

1) ADA accessibility requirements in this policy refer to federal requirements. Costs for additional State and local ADA requirements may be eligible on a case-by-case basis if they are found reasonable. In any event, path of travel costs may not exceed 20% of the cost of repair to the primary function area.

2) The repair of existing facilities generally does not have to meet the codes and standards for ADA compliance for new construction.

F. Ineligible Repairs: If the applicant triggers ADA requirements by engaging in repairs that are not eligible for PA program funding, the cost of those ADA changes are not eligible costs under the PA grant program.

G. Historic Preservation: There are some special provisions that apply when a repair would "threaten or destroy the historic significance of qualified historic buildings and facilities." Refer to Section 504(c) of the ADA and 28 CFR 36.405 for guidance.

8. Supersession: Relevant provisions of previous public assistance policy documents.

9. References: Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 93-288 as amended; and 44 CFR 206.226(b)(3).

10. Originating Office: Infrastructure Division, Response and Recovery Directorate.

11. Review Date: Five years from date of publication.

12. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** April 22, 2001
2. **Response and Recovery Directorate Policy Number:** 9525.6
3. **Title:** Project Supervision and Management Costs of Subgrantees
4. **Purpose:** This policy provides guidance in determining the eligibility of project supervision and management activities of subgrantees.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.
6. **Background:** Subgrantees have several types of eligible supervisory and management costs that serve different purposes and need to be identified and claimed separately. Commingling of the various costs and claiming them incorrectly may result in loss of eligible reimbursement for the subgrantees. This policy clarifies the eligibility of the various project supervision and management activities and how to account for the cost. It supplements the provisions of 44 CFR 206.228 on allowable costs and RR Policy #9525.7, *Labor Costs - Emergency Work*.
7. **Policy:**
 - A. Supervision and Management of Force Account Work. Regular-time of a subgrantee's employees for direct supervision of force account employees performing eligible emergency work generally is not an eligible cost. However, the regular and overtime for the same direct supervision of force account employees performing permanent work generally is eligible. Costs are claimed on the *Project Worksheet (PW)* for each individual project being supervised. There may be instances where these costs may be included as project management costs (as described in the following paragraphs) or as part of construction unit prices. Care must be taken to prevent duplication of costs being claimed and to assure reasonableness of costs that are claimed. Some limitations on the eligibility of the costs include:
 - 1) The straight- or regular-time salaries of a subgrantee's permanently employed personnel who supervise or manage emergency work performed by the subgrantee's employees (or by contractors) are not eligible costs. (reference 44 CFR 206.228(a)(4)). (Overtime costs are eligible for eligible emergency work.)
 - 2) Labor costs of second level supervisors (and above) are ineligible unless the subgrantee can account for specific time spent on eligible permanent projects. (Generally, the labor costs of only first line supervisors of permanent work are eligible.)

- 3) In general, subgrantee expenses for administration and management activities not specifically accountable to a work project are ineligible.
- B. Project Management Activities. Project management is the oversight of an eligible project from the design phase (when necessary) to the completion of the work.
- 1) Eligible project management activities are those activities that the subgrantee would have performed in the absence of Federal funding. They include:
 - a) Direct management of projects in the concept and design stages that are being designed by a subgrantee's in-house staff, or by an architectural/engineering firm retained to analyze and design the repair or replacement of damaged facilities;
 - b) Procurement activities for architectural/engineering services and performance of work.
 - c) Review and approval of the project design regardless of who performs the design work.
 - d) Oversight:
 - i) Reasonable straight- or regular-time and overtime contractor costs are eligible costs if the subgrantee is using contractors for oversight.
 - ii) If the subgrantee is using its own regularly employed staff for oversight of emergency work, it may claim overtime costs but not straight- or regular-time costs.
 - iii) If the subgrantee is using its own regularly employed staff for oversight of permanent work, it may claim overtime costs and straight- or regular-time costs if the costs are tracked.
 - e) Comprehensive project management activities of the construction phase that may be included in an architectural/engineering contract or may be performed by a subgrantee's own staff. If a contract is used, costs are estimated using the cost curves in the *Public Assistance Guide*, FEMA 322, pages 75-79 (1999 edition). Final payment will be based on reasonable actual costs.
 - f) Construction inspection activities that are usually of a limited scope (for example, when projects do not require design). The construction inspection services may be provided by the subgrantee's own staff or a contractor. If a contract is used, the estimated fee is limited to 3% of construction costs as described in the *Public Assistance Guide*, FEMA 322, pages 79-80 (1999 edition). Final payment will be based on reasonable actual costs.
 - g) Testing and other procedures that may be mandated by State or local standards.

2) *Project Worksheets (PWs)*:

- a) Large Projects. The eligible costs will be included in the *PW* cost estimate based upon:
 - i) The actual project management cost for the specific project; or
 - ii) A reasonable percentage of the estimated construction cost when a project management contract is being negotiated but actual costs are not available. The percentage should be based upon past experience with project management contract costs for similar projects in the area.

The cost must be an actual expense that justifiably will be incurred by the subgrantee and it must be reasonable. If the subgrantee is uncertain as to the extent of project management activities to be used, an estimate should be made of the possible costs and included in the *PW*. The accounting of costs at closeout of the large project will determine final eligible cost.

- b) Small Projects. Most small projects do not require project management activities. However, project management costs may be claimed on a *PW* when they are reasonable and are based on:
 - i) The actual project management costs for each small project; or
 - ii) A single project management *PW* for a contract that includes management of multiple small projects. Each small project under the contract must be identified and the need for project management efforts justified but costs for individual projects do not have to be identified as long as the total cost of the contract is reasonable when compared to the total cost of the small projects.

A flat percentage estimate, added to each small project *PW* for project management, is not acceptable.

- C. Administrative Allowance Activities. There are activities that subgrantees may consider to be project specific, but are actually grant administration activities and, therefore, are not eligible as a project supervision and management cost. These administrative activities are those necessary in requesting, obtaining, and administering Federal disaster subgrants. Examples include identifying damage; writing *PWs*; assessing damage; attending Grantee and FEMA meetings; completing forms to request assistance; establishing files; collecting cost data; developing cost estimates; and working with the Grantee and FEMA during project monitoring, final inspections and audits. These grant administration activities are covered by the statutory administrative allowance (sliding scale) that is automatically added as a percentage of the total amount of assistance for a subgrantee when the projects are processed. The administrative allowance may not cover all costs that a subgrantee incurs performing grant administration activities but excess costs may not be claimed.

- 8. Supersession:** Memorandum from Richard W. Krimm to Regional Directors dated July 6, 1995, Subject: Inclusion of Management and Supervision Costs in DSRs. This policy updates and replaces any other previous public assistance policy documents on this subject.
- 9. Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Section 406; 44 CFR 206.228(a)(2)(ii); 44 CFR 206.228(a)(4)
- 10. References:** Public Assistance Guide, FEMA 322, dated October 1999
- 11. Originating Office:** Infrastructure Division, Response and Recovery Directorate
- 12. Review Date:** Five years from date of publication
- 13. Signature:**

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

- 14. Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors



FEMA

RECOVERY POLICY – RP9525.7

I. TITLE: Labor Costs - Emergency Work

II. DATE: November 16, 2006

III. PURPOSE:

Provide guidance on the eligibility of labor costs for an applicant's permanent, temporary, and contract employees who perform emergency work under Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended.

IV. SCOPE AND AUDIENCE:

This policy applies to all emergencies, major disasters, and fire management assistance declarations, declared on or after the publication date of this document.

V. AUTHORITY:

Sections 403, 407, 420 and 502 of the Stafford Act and 44 Code of Federal Regulations (CFR) §204.42, §206.224 and §206.225.

VI. BACKGROUND:

A. On October 14, 1993, FEMA published a regulation that made the force account labor straight-time salary for work under Section 403 and 407 ineligible under the Public Assistance Program. The 1993 regulation did not include emergency work accomplished under Section 502 (Federal Emergency Assistance) of the Stafford Act. The ineligibility of straight-time salaries for emergency work under Section 502 is included as a provision of the FEMA-State Agreement.

B. Labor (straight-time, overtime, and fringe benefits to the extent the benefits were being paid before the disaster) performed under Section 406 (permanent work) of the Stafford Act remains eligible for reimbursement.

VII. POLICY:

A. Under Sections 403, 407, and 502 of the Stafford Act, eligible emergency work labor costs are those costs incurred by an eligible applicant while performing eligible work. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel is not eligible in calculating the cost of eligible emergency work. The FEMA-State Agreement will



FEMA

RECOVERY POLICY – RP9525.7

stipulate the ineligibility of straight-time salaries and benefits of an applicant's permanently employed personnel performing emergency work (Categories A and B). For the purpose of this policy, "permanently employed personnel" will refer to those employees whose positions are already included in the applicant's budget.

B. Fixed-term employees, such as seasonally employed personnel, when covered under existing budgets and used for a disaster during the season of employment, are considered permanently employed for the purpose of cost eligibility.

C. Straight-time and overtime will be determined in accordance with the applicant's pre-disaster policies, which should be applied consistently in both disaster and non-disaster situations. For example, one applicant may define labor exceeding 8 hours a day as overtime, while another might define labor exceeding 40 hours a week as overtime. However, all costs, including premium pay, must be reasonable and equitable for the type of work being performed.

D. The actual costs of salaries and benefits for individuals sent home or told not to report due to emergency conditions are not eligible for reimbursement. Extraordinary costs for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the costs were provided for in written policy prior to the disaster.

E. The costs for contract labor, mutual aid in accordance with an existing agreement, or temporary hires needed to accomplish emergency work are eligible for reimbursement. However, straight-time salary and benefits of force account labor overseeing contractors performing emergency work are not eligible in calculating the cost of eligible emergency work.

F. The reimbursement of force account or temporary labor to backfill regular staff who are performing eligible emergency work may be eligible. Backfill cost is defined as the straight-time salary and benefits and overtime of replacement personnel who perform the regular duties of other personnel while they are performing eligible emergency work under the Public Assistance Program. There are several circumstances which affect the eligibility of the backfill employee.

1. If the backfill employee is a contract or extra hire, the cost of this extra person represents an extra cost to the applicant. Regular and overtime are eligible. If the employee is permanently employed, straight time is not eligible. Only overtime costs are eligible.



FEMA

RECOVERY POLICY – RP9525.7

2. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel, of any department, regardless of any inter-departmental agreements, are not eligible.

3. If the backfill employee is a regular employee who is called in on his/her day off (weekend or other off day), there may be an extra cost to the applicant. Regular and overtime costs may be eligible.

4. If the backfill employee is called in from scheduled leave, there should be no extra cost as the leave can be rescheduled. Only the overtime is eligible.

5. Generally, exempt employees (i.e. those who are exempt from minimum wage and overtime provisions of the Fair Labor Standards Act) are not eligible for overtime, unless specified in an applicant's pre-disaster policy.

G. Permanent employees who are funded from an external source (e.g., by a grant from a Federal agency, statutorily dedicated funds, rate-payers, etc.) to work on specific non-disaster tasks may be paid for emergency work. However, the FEMA Region is to consult with FEMA headquarters before approving payment.

H. Reimbursement of labor costs for employees performing emergency work is limited to actual time worked, even when the applicant is contractually obligated to pay for 24 hour shifts. It is not reasonable for a person to work more than 48 hours continuously without an extended rest period. Therefore, FEMA will reimburse up to 24 hours for each of the first two days, and up to 16 hours for each of the following days for emergency work. All requested hours must be for actual time worked. Standby time is not eligible under the Public Assistance Program or Fire Management Assistance Grant Program. Pre-positioning under the Fire Management Assistance Grant Program is eligible if the resources were actually used to suppress a declared fire.

I. The value of volunteers accomplishing eligible emergency work can be credited toward the non-Federal cost share of the applicant's emergency work in accordance with Donated Resources Policy #9525.2.



FEMA

RECOVERY POLICY – RP9525.7

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch).

IX. SUPERSESSION: This policy updates and replaces all relevant provisions of previous Public Assistance policy documents or guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

____//signed//____

John R. D'Araujo, Jr.
Director of Recovery



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999
2. **Response and Recovery Directorate Policy Number:** 9525.8
3. **Title:** Damage to Applicant-Owned Equipment
4. **Purpose:** This policy is to provide guidance in determining the eligibility of damage and extraordinary maintenance to applicant-owned equipment performing emergency work under severe conditions.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.
6. **Background:** The Schedule of Equipment Rates, which provides rates for applicant-owned equipment, includes parts and labor for normal maintenance and periodic equipment overhaul. It is expected that these rates would cover most damage to equipment used under emergency conditions. However, there are circumstances when equipment is used during an emergency in severe conditions such as high water or very rough terrain and damage occurs to the equipment or extraordinary maintenance is required during and/or after the emergency work. When damages cannot be reasonably avoided, funding may be eligible.
7. **Policy:**
 - A. Equipment that is damaged or requires maintenance due to routine use under normal working conditions for which it was designed is not eligible for any costs other than those designated in the FEMA Schedule of Equipment Rates or other FEMA-approved rates.
 - B. Damage that was reasonably avoidable is not eligible.
 - C. Extraordinary expenses for repairs and maintenance beyond normal for equipment operating under severe conditions in disaster operations may be eligible for reimbursement. Any request for reimbursement must meet the criteria of this policy.
 1. Severe operating conditions and certain other disaster-related damages are not taken into account in the FEMA Schedule of Equipment Rates or other FEMA-approved rates. Extraordinary costs from these causes may warrant additional disaster funding.

2. Severe conditions include operation in high water, deep sand, fire, very rough terrain, salt water, severe snowfall or in environments with widespread and massive amounts of wind-generated debris. The conditions usually occur during emergency operations and are not encountered in situations for which the equipment was designed.

D. Eligible Costs. Examples of items that could be eligible during or after operations in severe conditions include:

1. Damage caused by hitting submerged objects,
2. Damage that is caused by the disaster as a result of accomplishing emergency work, such as equipment that gets washed away when working on a breached levee or dam,
3. Cleaning of moving parts to remove foreign material that would cause damage in the equipment,
4. Fluid changes for equipment when high water operation was required,
5. Repairing or replacing tires and repairing undercarriage damage after operating in severe debris conditions left by high winds and floods when the damaged equipment is not designed to work in that environment,
6. Damage to equipment from civil unrest or terrorist activity occurring during disasters or emergencies declared by the President for reasons of civil unrest or terrorist activity, and
7. Replacement of fire hoses that were used to pump raw sewage or other contaminated liquids when the cleaning of the hoses is not possible.

E. Ineligible Costs. Equipment damaged or destroyed during use for other than its intended design and function is ineligible unless it was the only equipment available to save lives or protect property from imminent threat of harm.

Examples of specific costs that are not eligible for reimbursement include:

1. Corrosion,
2. Changing of fluids, except when required by other eligible damage or as provided in 7.D.4., and
3. Damage to equipment that is not related to performing eligible work, e.g., damages due to traffic accidents (even though en route to perform eligible emergency work), damage as the result of operator error, or vandalism.

F. Repetitive Damage. Generally, applicants operating in a high-risk environment who have failed to maintain their equipment for that environment, will not be eligible for maintenance costs that would have been avoidable under a more rigorous maintenance program.

8. Supersession: Memorandum from Dennis H. Kwiatkowski to Stephen Kempf, Jr. dated April 22, 1993, Subject: Damage to Applicant-Owned Equipment due to Coastal Environment and other relevant provisions of previous policy documents

9. Authorities: 44CFR 206.228(a)(1)

10. Originating Office: Infrastructure Division, Response and Recovery Directorate

11. Review Date: Two years from date of publication

12. Signature:

Signed

Lacy E. Suiter

Executive Associate Director

Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

I. TITLE: Section 324 Management Costs and Direct Administrative Costs

II. DATE: MAR 12 2008

III. PURPOSE:

The purpose of this policy is to identify section 324 management costs and other grant management and administrative costs that are eligible under the Public Assistance (PA) Program and to clarify the process through which grantees and subgrantees can request reimbursement for these costs.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after November 13, 2007. It is intended for personnel involved in the administration of the PA Program.

V. AUTHORITY:

Section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b, and 44 Code of Federal Regulations (CFR) Part 13, §206.207, §206.228, and Part 207.

VI. BACKGROUND:

The Disaster Mitigation Act of 2000 (P.L. 106-390) amended the Stafford Act by adding section 324 "*Management Costs*." In that section, Congress directed the Federal Emergency Management Agency (FEMA) to promulgate regulations that establish management cost rates and require that until the management cost regulation is published the associated expense percentages in section 406(f) of the Stafford Act apply to management costs. On October 11, 2007, FEMA published the *Management Costs* interim final rule (72 FR 57869) that established the management costs rates for emergencies and major disasters. The interim final rule went into effect on November 13, 2007. With publication of the interim final rule, section 406(f) of the Stafford Act, *Associated Expenses*, does not apply to disasters and emergencies declared on or after November 13, 2007.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

VII. POLICY:

A. Definitions:

1. *Chief Financial Officer (CFO)* is the senior financial FEMA representative.
2. *Direct Administrative Costs* are costs incurred by the grantee or subgrantee that can be identified separately and assigned to a specific project. (See 44 CFR §207.6(c)) In accordance with OMB Circular No. A-87, treatment of direct costs must be consistent across all Federal awards and other activities of the grantee or subgrantee. Such costs can include staff's time to conduct an initial inspection, prepare and submit a Project Worksheet (PW), and make interim and final inspections of the project.
3. *Indirect Costs* are costs a grantee or subgrantee incurs for a common or joint purpose benefiting more than one cost objective that are not readily assignable to the cost objectives specifically benefited. (See 44 CFR §207.2)
4. *Lock-in* is the amount of management cost funds available to a grantee for a particular major disaster or emergency. (See 44 CFR §207.2)
5. *Management Costs* are any indirect costs, administrative expenses, and any other expenses that a grantee or subgrantee reasonably incurs in administering and managing the PA grant that are not directly chargeable to a specific project. (See 44 CFR §207.2)
6. *Pass-through funds* are the percentage or amount of management costs that the grantee determines it will make available to subgrantees. (See 44 CFR §206.207(b)(1)(iii)(K))

B. Eligibility:

1. Only PA grantees with PA grants awarded pursuant to major disasters and emergencies declared by the President on or after November 13, 2007, are eligible to apply to FEMA for section 324 management costs.
2. FEMA will reimburse section 324 management costs on a category Z PW in an amount not to exceed 3.34 percent of the Federal share of projected eligible program costs, not including direct Federal assistance, for major disaster declarations and 3.90 percent of the Federal share of projected eligible program costs, not including direct Federal assistance, for emergency declarations. The amount of funding available for section 324 management costs cannot exceed the amount as calculated in accordance with 44 CFR §207.5(b)(4).



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

3. Requests for and documentation of section 324 management costs must comply with 44 CFR Part 207 and be addressed in the grantee's approved State Administrative Plan for PA. (See 44 CFR §206.207(b))

4. In addition to section 324 management costs, FEMA will reimburse direct administrative costs incurred by grantees and subgrantees that are properly documented and directly chargeable on a PW for a specific project. Actual costs must be reasonable for the work performed and accounted for in accordance with 44 CFR §13.22 – *Allowable Costs*. (See 44 CFR §207.6(a) and (c)) A cost cannot be assigned to a PA project as a direct administrative cost if similar costs incurred for the same purpose in like circumstances have been allocated to indirect costs.

5. Although grantees and subgrantees are responsible for the grant management and administrative requirements in 44 CFR parts 13, 206, and 207, grantees and subgrantees are not required to request section 324 management costs, nor are they required to seek reimbursement for direct administrative costs.

C. Section 324 Management Costs:

1. An approved State Administrative Plan must be on file with FEMA before PA grants will be approved. (See 44 CFR §206.207(b)(3))

2. The grantee must amend its State Administrative Plan to include procedures for determining the reasonable amount or percentage of section 324 management costs that it will pass-through to the subgrantee, as well as closeout and audit procedures before FEMA will obligate any section 324 management costs. (See 44 CFR §207.4(c) and §207.7(b)) It is entirely up to the State to determine how much if any management costs it will pass-through to the subgrantee. FEMA has not established any minimum or maximum for what constitutes a reasonable amount.

3. If a State and Native American Tribe both serve as grantees, then each is eligible for section 324 management costs. (See 44 CFR §207.2)

4. The CFO determines the lock-in amount for section 324 management costs at 30-35 days (preliminary lock-in), six months (interim lock-in), and 12 months (final lock-in) from the date of the declaration. (See 44 CFR §207.5(b))

- a. The lock-in amount is 100 percent Federally funded.
- b. The lock-in amount is capped at \$20 million for a single declaration, unless the CFO approves an exception. (See 44 CFR §207.2 and §207.5(d))



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

c. The CFO informs the Regional Office of the lock-in amount and the Regional Office informs the grantee of the lock-in amount.

5. In order to receive section 324 management costs funding, the grantee must request it upon notification of the preliminary lock-in (initial funding request) and upon notification of the final lock-in (final funding request). (See 44 CFR §207.7(c) and (f)) The grantee may request interim funding upon notification of the interim lock-in (interim funding request). (See 44 CFR §207.7(e))

6. The grantee will submit its initial section 324 management costs funding request to the Regional Administrator using a PA PW. Upon receipt of the PW and in accordance with 44 CFR §207.7(b) and (c), the Regional Office will obligate 25 percent of the estimated lock-in amount. (See 44 CFR §207.5(b)(1) and 44 CFR §207.6(c)) To simplify processing and tracking, *Standard Project 853- Section 324 Management Costs* has been established in the National Emergency Information Management System (NEMIS) and the Emergency Management Mission Integrated Environment (EMMIE). The PW will be processed under category Z.

7. The grantee must abide by the requirements of 44 CFR §207.7(d). The grantee must submit documentation no later than 120 days after the date of the declaration to support costs and activities for which the projected lock-in amount will be used.

- a. The documentation must include:
- i. A description of activities, personnel requirements, and other costs for which the grantee will use section 324 management costs funding throughout the disaster;
 - ii. The grantee's plan for expending and monitoring the funds provided and ensuring sufficient funds are budgeted for grant closeout; and
 - iii. An estimate of the reasonable percentage or amount of pass-through funds the grantee will make available to subgrantees, including the basis, criteria, or formula for determination.

b. In extraordinary circumstances, the grantee may request to submit the required documentation after 120 days. The request for additional time must be made to the Regional Administrator within the 120-day period. The Regional Administrator will respond to the time extension request within 30 days.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

c. The Regional Office will approve or reject the documentation for eligible costs and activities within 30 days of receiving it.

d. If documentation is rejected, the grantee will have 30 days from the date of the rejection letter to resubmit it for reconsideration and approval. The Regional Office will not obligate the balance of the section 324 management costs lock-in until the grantee's documentation is approved.

8. If the grantee can justify a bona-fide need for an interim obligation at six months, the grantee may submit a request to the Regional Administrator. An interim obligation will not exceed 10 percent of the six-month lock-in amount. The grantee will submit written justification, including a version/amendment of the section 324 management costs PW, to the Regional Administrator. The Regional Administrator will forward his/her recommendation to the CFO for approval. (See 44 CFR §207.5(d) and §207.7(e))

9. After notification of the final lock-in amount, the grantee must submit a final section 324 management costs request, including a version/amendment of the section 324 management costs PW, to the Regional Administrator. The Regional Office will make the final obligation of the remaining lock-in funding. (See 44 CFR §207.7(f)) The grantee should drawdown these funds in accordance with 44 CFR §13.21 - *Payment*.

10. Final payment of section 324 management costs is based on actual costs incurred.

11. The grantee can submit a written request to the Regional Administrator to change the amount of the lock-in or the cap, or the time at which lock-in amount is determined. The Regional Administrator will forward his/her recommendation to the CFO for approval. (See 44 CFR §207.5(d))

12. The grantee can expend section 324 management costs funds for allowable costs for a maximum time of (See 44 CFR §207.8(b)(1) and (2)):

- a. Eight years from the date of a major declaration, or 180 days after the latest performance period of a non-management cost PA PW, whichever is sooner.
- b. Two years from the date of an emergency declaration, or 180 days after the latest performance period of a non-management cost PA PW, whichever is sooner.

13. The grantee can submit a written justification for an extension on the period of availability to the Regional Administrator. The Regional Administrator will forward his/her recommendation to the CFO for approval. The additional time is limited to no more than



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

180 days after the expiration of any performance period extensions granted under PA for project completion of a non-management cost PA PW. (See 44 CFR §207.8(b)(3))

14. FEMA will de-obligate any funds not liquidated by the grantee in accordance with 44 CFR §13.23. (See 44 CFR §207.8(b)(3))

15. The grantee must provide section 324 management cost quarterly progress reports to the Regional Administrator. (See 44 CFR §207.8(c))

D. Direct Administrative Costs:

1. Direct administrative costs include costs that can be tracked, charged, and accounted for directly to a specific project, such as staff time to complete field inspection and preparation of a PW. Direct costs are limited to actual reasonable costs incurred for a specific project. Such costs will be considered project costs.

2. **A grantee or subgrantee cannot direct charge costs to a PA project that are considered indirect costs for any other Federal award or activity of the grantee or subgrantee or if similar costs incurred for the same purpose in like circumstances have been allocated to indirect costs. (See OMB Circular No. A-87, Attachment A.) Indirect costs are considered to be eligible section 324 management costs.**

3. If a project is completed when the PW is prepared, actual direct administrative costs (labor, equipment, or other expenses) will be included in the PW for the subgrantee and the grantee's direct administrative costs will be included in separate category Z PW (see D.7). The summary of the actual costs will be attached to the PW.

4. If a project is not completed when the PW is prepared, an estimate of direct administrative costs that can be separately identified to the project will be included in the PW. An estimate of direct administrative costs, such as labor and equipment costs and other expenses, will be attached to the PW. These estimated costs cannot be based on a percentage of project costs.

5. Direct administrative costs are cost-shared at the prevailing cost-share rate for the declaration. They are cost-shared because they are part of a specific project.

6. Subgrantee:

a. The following text should be entered into each project's scope of work to describe the subgrantee's direct administrative costs:



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

“The subgrantee is requesting direct administrative costs that are directly chargeable to this specific project. Associated eligible work is related to administration of this PA project only and in accordance with 44 CFR §13.22. These costs are treated consistently and uniformly as direct costs in all Federal awards and other subgrantee activities and are not included in any approved indirect cost rates.”

- b. The following **line item cost code** should be entered in the project cost:
“9901 - DIRECT ADMINISTRATIVE COSTS (SUBGRANTEE)”
- c. Final payment of direct administrative costs on large projects will be based on actual costs incurred, in accordance with 44 CFR §206.205(b).
- d. Final payment of direct administrative costs on small projects will be paid to the grantee upon approval, in accordance with 44 CFR §206.205(a).

7. Grantee:

- a. The grantee may document its direct administrative costs on a separate category Z PW for each project. The grantee will not claim direct administrative costs for multiple individual projects on a single category Z PW.
- b. Each direct administrative cost category Z PW will use the **Standard Project 854-Direct Administrative Costs (Grantee)**.
- c. The scope of work should include the subgrantee’s name, PA ID number, and cross-reference to the associated work project PW.
- d. The following text should be entered into the project’s scope of work:

“The grantee is requesting direct administrative costs that are directly chargeable to this specific project. Associated eligible work is related to administration of this PA project only and in accordance with 44 CFR §13.22. These costs are treated consistently and uniformly as direct costs in all Federal awards and other grantee activities and are not included in any approved indirect cost rates.”

- e. The following **line item cost code** should be entered in the project cost as a lump sum costs: “9902 - DIRECT ADMINISTRATIVE COSTS (GRANTEE)”
- f. Final payment of direct administrative costs on large projects will be based on actual costs incurred, in accordance with 44 CFR §206.205(b).



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.9

g. Final payment of direct administrative costs on small projects will be paid to the grantee upon approval, in accordance with 44 CFR §206.205(a).

h. A category Z PW with an estimate less than \$1,000 is not eligible.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (PA Division)

IX. SUPERSESSION: Not applicable.

X. ADDITIONAL INFORMATION: Copies of this policy, the Management Costs interim rule, all public comments received, and additional information may be found on the docket for the Management Costs rulemaking. The docket can be found at www.regulations.gov under Docket ID: FEMA-2006-0035.

XI. REVIEW DATE: This policy will be reviewed, but will not automatically terminate, 3 years from date of publication or upon publication on the Management Costs final rule.

signed

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** April 22, 2001
2. **Response and Recovery Directorate Policy Number:** 9525.11
3. **Title:** Payment of Contractors for Grant Management Tasks
4. **Purpose:** This policy is to provide guidance on the eligibility of costs when a Grantee or subgrantee employs contractors to manage the Public Assistance (PA) Program in place of Grantee or subgrantee employees.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication of this policy. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the PA Program.
6. **Background:**
 - A. Most Grantees and subgrantees have the personnel capacity to respond to a disaster. The personnel are either located within the emergency management office or they are available from other state agencies or local government departments. However, some State, Tribal, and local governments are finding it necessary to outsource work as their resources continue to shrink. Several have indicated an interest in using contracts and similar instruments to secure a workforce to administer or assist with the PA Program.
 - B. This new policy recognizes the trend toward Grantee use of contractors for grant management work and streamlines the payment procedures by defining the contract costs as eligible under "State Management Administrative Costs" *PW* (also known as the Grantee Management Cost Project Worksheet or Management *PW*). Under previous procedures, Grantees have been denied management contractors' expenses for overtime, travel and per diem. In the past, FEMA treated the contractor expenses as though they were Grantee employee expenses and held that all overtime, travel and per diem expenses were covered by the "Statutory Administrative Costs" allowance (also known as the Grantee's Administrative Allowance or sliding scale).

FEMA will no longer treat the contractors as State employees and all eligible contractor costs will be reimbursable through the State Management Administrative Costs. Therefore, all reasonable contractor costs, including overtime, travel and per diem, will be allowed as State Management Administrative Costs. There is no similar provision for subgrantees because all of their grant management and administrative costs are required by statute to be considered under the Statutory Administrative Costs allowance (also known as the subgrantee's Administrative Allowance or sliding scale).

- C. The term "State Management Administrative Costs" is used in 44 CFR 206.228(a)(3). The paragraph permits the payment of some Grantee costs. This includes the payment of some Tribal government costs when the Tribal government is operating as the Grantee.
- D. The criteria for allowable State Management Administrative Costs are included in Office of Management and Budget (OMB) Circular A-87.
- E. In the course of research on the subject of payment of contractor assistance in Grantee management tasks, FEMA determined that it, incorrectly, had been providing a Statutory Administrative Costs allowance on State Management Administrative Costs *PWs*. The statutory definition of "associated expenses" and the use of OMB Circular A-87 as the guidance for paying State Management Administrative Costs preclude adding the Statutory Administrative Costs allowance onto the State Management Administrative Costs *PW*. While the sum typically is not large, it still should be deducted manually from a NEMIS generated *PW*, if it is included.
- F. The Disaster Mitigation Act of 2000 provides for the establishment of management cost rates that will include "any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project...." When those rates are published, appropriate portions of this policy will be superseded.

7. Policy:

- A. Grantee. Reasonable costs of contractors performing eligible Grantee functions in managing the Public Assistance Program are eligible as State Management Administrative Costs.
 - 1) The eligible Grantee management functions are identified in 44 CFR 206.228. They include expenses such as costs associated with the preparation of *PWs*, project applications, reports, audits, and related field inspections.
 - a) Reasonable regular time, supplies, materials and equipment costs of contractors necessary to manage the Public Assistance Program in accordance with the regulations and State or Tribal Public Assistance Administrative Plan are eligible as State Management Administrative Costs. Since only reasonable costs will be eligible, the States and Tribes are encouraged to negotiate cost rates and contract duration with FEMA prior to disaster declarations and prior to the hiring of contractors.
 - b) The contractor's expenses for overtime work, per diem and travel are eligible as a direct charge of State Management Administrative Costs. They are not considered a part of Statutory Administrative Costs.

- 2) In order for any significant amount of contractor assistance to be used in a disaster, the basic State or Tribal Public Assistance Administrative Plan must assess State or Tribal capability to manage an infrastructure disaster recovery grant and must acknowledge any potential need for a significant level of contractor assistance. In addition, the amendments to the State or Tribal Public Assistance Administrative Plan for each disaster (submitted in accordance with 44 CFR 206.207(b)) must include all proposed uses of contractors as part of the staffing plan for that disaster. The staffing plan must identify specific contractor functions, cost rates, and contract duration. It also must include Grantee staffing at a reasonable level, and provide for sufficient Grantee staffing to assure adequate contractor oversight and program management. The contractor's expenses will not be an eligible cost unless FEMA approves the staffing plan and finds it reasonable.
 - 3) Contracts must adhere to the requirements of 44 CFR 13.36.
 - 4) For the purposes of this policy in distinguishing between Grantee employees and contractors, a Grantee employee is any person directly employed by the Grantee (i.e., the Grantee executes payroll deductions for benefits and taxes). The employees may be regular full time, regular part time or extra hires for management purposes. The employees may be from another State agency or department. Regardless of their employment source, such employees will be subject to this policy as Grantee employees.
 - 5) The State Management Administrative Costs *PWs* are not part of the base for calculating additional Grantee Statutory Administrative Costs (also known as the Administrative Allowance or sliding scale). The *PW* designation for Management *PWs* covering Grantee management and contractor costs is category Z, code 852.
 - 6) Grantee costs associated with developing work plans for contractors or managing contractor work are eligible State Management Administrative Costs.
- B. Subgrantee. The costs of subgrantee contractors performing subgrantee functions in managing and administering the Public Assistance grants are to be paid from the subgrantee's Administrative Allowance.
- C. Project Management. Eligible project management costs directly related to specific eligible projects can be included in the *PWs* for the eligible projects.
- D. Multiple Tasks - Single Contractor. In very rare cases, the same contractor may be employed to perform grant management functions for the Grantee, and also perform subgrantee administrative or construction management functions. In such cases, there must be separate contracts, or the costs for each function must be clearly delineated in the contract and separated in the billing and payment process. Separate contracts generally will be the clearest basis for separating costs. Contractors on one contract may not oversee their own work performed under another contract, nor oversee other work which may create a conflict of interest situation.

E. Contractor costs for performing management duties of the Grantee will be approved using a State Management Administrative Costs *PW*. Contractor costs for performing management and administrative duties of the subgrantee are covered in the subgrantee's Statutory Administrative Costs. Construction management costs either will be approved using a separate *PW* or be part of a construction *PW*.

8. Supersession: This policy updates and replaces relevant provisions of previous public assistance policy documents.

9. Reference: Office of Management and Budget Circular A-87.

10. Authorities: Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Section 406; 44 CFR 206.44, 206.207 and 206.228.

11. Originating Office: Infrastructure Division, Response and Recovery Directorate.

12. Review Date: Five years, except for the provisions that will be superseded with the implementation of Section 324 ("Management Costs") of the Disaster Mitigation Act of 2000.

13. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

14. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.12

I. TITLE: *Disposition of Equipment, Supplies and Salvageable Materials*

II. DATE: JUL 14 2008

III. PURPOSE:

This policy provides guidance on disposition of equipment and supplies purchased and certain materials salvaged, by Grantees and subgrantees.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance (PA) Program, including applicants.

V. AUTHORITY:

44 CFR Part 13, Subpart C – Post-Award Requirements, §§13.32 and 13.33, and Subpart D – After-the-Grant Requirements.

VI. BACKGROUND:

There may be instances after a disaster when a Grantee or subgrantee will not have sufficient equipment and supplies to respond to a Presidentially-declared disaster in an effective manner. While the Federal Emergency Management Agency (FEMA) may provide funding for the purchase of needed equipment and supplies, the Grantee or subgrantee may be required to compensate FEMA for the fair market value of the cost of the equipment and unused supplies when the items are no longer needed for a disaster. Equipment already owned by Grantees and subgrantees or purchased without Federal funds is reimbursed at FEMA equipment rates when used for eligible purposes.

VII. POLICY:

A. Definitions

1. Cost Share is the percent of eligible project costs that FEMA will fund.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.12

2. Current Fair Market Value is the value of equipment and supplies determined by selling them in a competitive market or by 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 by the Grantee or subgrantee for disaster operations regardless of when actual disposition takes place. Current fair market value will be determined by FEMA and may be based on Grantee or subgrantee research and recommendation.

3. Equipment is defined in 44 CFR §13.3 as 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.

4. Supplies are defined in 44 CFR §13.3 as all tangible personal property other than equipment.

B. Equipment and Supplies

FEMA will reimburse Grantees and subgrantees through a project worksheet (PW) for purchasing supplies and equipment that are necessary to respond to a disaster. The items must be needed for, and used directly on, the disaster for which funding was provided. Generally, reimbursement will be made without an estimated fair market salvage value deducted on the PW. (Exception: If the subgrantee concurs, the salvage value can be estimated and deducted on the original PW in order to reduce tracking records and additional administrative work.)

C. Disposition of Equipment and Supplies

Pursuant to 44 CFR §§13.32(e) and 13.33(b) and the following guidelines, disposition of equipment or residual unused supplies purchased by a Grantee or subgrantee with a current fair market value exceeding \$5,000 requires compensation to FEMA when the items are no longer needed for the current operation of the PA Program or another federally sponsored program or project.

1. Disposition by a State Grantee. Pursuant to 44 CFR §13.32(b), States will dispose of equipment purchased for disaster operations under the PA Program in accordance with State laws and procedures. Equipment that is no longer needed for disaster operations may be used by States for other federally sponsored programs or projects, provided that FEMA is informed of this use.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.12

2. Disposition by Non-State Grantees and Subgrantees.

a. Pursuant to 44 CFR §13.32(e)(2), non-state grantees and subgrantees disposing of equipment with a current per unit fair market value in excess of \$5,000 are required to compensate FEMA its share of the current market value no later than program grant closeout of the disaster.

b. Pursuant to 44 CFR §13.32(e)(1), non-state grantees and subgrantees disposing of equipment with a current per unit value less than \$5,000 may retain, sell or otherwise dispose of it with no further obligation to FEMA.

D. Equipment Leasing

1. Leasing equipment is an eligible method of obtaining equipment to perform eligible work without the administrative burden of disposition requirements.

2. Leasing costs should be reasonable and total leasing costs should not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

3. For equipment leased through the PA grant process: Even though a long-term lease may cost as much as purchasing the same equipment, the subgrantee is required to compensate FEMA if the subgrantee purchases the equipment instead of leasing it.

4. If the subgrantee purchases equipment outside of the PA grant process, the subgrantee may be reimbursed for the eligible use of equipment using FEMA equipment rates. If the subgrantee holds a lease-purchase agreement, the following applies:

a. Reimbursement to the subgrantee is made at FEMA equipment rates based upon usage. However, if a subgrantee completes the eligible work prior to obtaining ownership through the contract, the subgrantee can request supplemental funding for the difference between the FEMA equipment rate that the subgrantee was paid and the higher lease cost that the subgrantee actually incurred for the equipment.

b. If the subgrantee obtains ownership through the lease-purchase contract, there is no requirement to compensate FEMA.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.12

E. Disposition of Salvageable Materials

Subgrantees must dispose of salvageable materials at a fair market value and the revenue must be cost shared with FEMA. The Federal cost share in disposition and salvage revenue is the same as its participation in the original cost. Disasters often result in large amounts of debris that may have a market value. With the exception noted in VII. C(2), revenue from debris must be used to reduce the project cost. Some of the materials that can be expected to be marketable are timber debris, mulched debris, and scrap metals.

1. Reasonable cost for administering and marketing the sale of the salvageable materials is allowed to be recouped by the subgrantee from the fair market value.

2. To reduce contract costs, subgrantee 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 this is the method of award, there is no salvage value to be recouped at the end of the project.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes RP9525.12, dated August 29, 2000, and all previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

/signed/

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP9525.13

I. TITLE: **Alternate Projects**

II. DATE: **AUG 22 2008**

III. PURPOSE:

This policy provides guidance on allowable uses and limitations of alternate project funds when restoration of the original damaged facility is not in the best interest of the public.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172(c), and 44 Code of Federal Regulations (CFR) §206.203(d), 44 CFR §206.204, and 44 CFR §206.226.

VI. BACKGROUND:

When an applicant determines that the public welfare would not be best served by restoring a damaged facility or its function, the applicant may request approval of an alternate project from FEMA through the Grantee. Applicants receive Federal funding based on a percentage of the Federal cost share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility. Section 609 of the Security and Accountability For Every Port Act of 2006 (SAFE) (P.L. 109-347) amended section 406 (c)(1) of the Stafford Act by changing the contribution for alternate projects for public facilities from 75 to 90 percent of the Federal share of the eligible costs. 42 U.S.C. 406(c)(1)(A). There was no change to the contribution of 75 percent of the Federal share for alternate projects for Private Non-Profit facilities. 42 U.S.C. 406(c)(2)(A).

An "alternate project" is different from an "improved project." An improved project restores the facility and maintains its function or maintains the function in another existing or new facility. See 44 CFR 206.203(d)(1). Conversely, the application of eligible funding to repair or expand other public facilities, or construct a new-use facility, or purchase capital equipment or perform hazard mitigation measures unrelated to the original facility, would be considered



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

alternate projects. Section 206.203(d)(2) of Title 44 CFR describes the basic requirements for alternate projects. This policy discusses applications of the regulation.

VII. POLICY:

The following policy guidelines provide detail on alternate project funding uses and limitations.

A. The applicant may request approval of an alternate project from FEMA through the Grantee when an applicant determines that the public welfare would not be best served by either restoring a damaged facility or by restoring the function of a damaged facility. Either one of the two conditions must be met. See 44 CFR 206.203(d)(2).

B. The proposed alternate project must be a permanent project that benefits the general public. See 44 CFR 206.203(d)(2).

C. A damaged facility whose repair costs were used for an approved alternate project may be eligible for future Public Assistance funding provided that the Applicant funded and performed the repairs to the original damaged facility.

D. Funds may be used to repair or expand other selected facilities, to construct new facilities, purchase equipment, or to fund hazard mitigation measures in accordance with other provisions of this policy.

E. FEMA expects the proposed alternate project to serve the same general area that was being served by the originally funded project.

F. The FEMA Regional Administrator must approve all alternate projects prior to the start of construction. See 44 CFR 206.203(d)(2)(v).

G. The proposal must include a description of the project, including the project location, an estimate of costs, a schedule of work, including a starting date for work, and a targeted completion date, and the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental review, hazard mitigation, protection of wetlands, and insurance. 44 CFR 206.203(d)(2)(v). Historic and any other legal considerations should also be identified. The applicant should identify the source of funding for projects when the cost estimate for the alternate project is greater than the eligible alternate project funding.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

H. Alternate projects must be completed based on existing regulatory time frames established in 44 CFR 206.204. The Region can approve time extensions under extenuating circumstances.

I. Funding for alternate projects:

1. Public facilities. Eligible costs for Public facilities are 90% of the approved Federal share of the project estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal cost share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Project Estimate of Eligible Damage

 x.75 – % of Federal Cost Share

\$ 75,000 – New Project Amount

 x.90 – of Federal Cost Share

\$ 67,500 – Maximum Grant Amount

Applicant must spend at least \$75,000 on the approved alternate project to receive \$67,500. The Federal grant is capped at this amount.

If the applicant spends less than the new project amount, then the Federal cost share would be 75% of the actual amount spent.

2. Private non-profit facilities (PNP). Eligible costs for PNPs are 75% of the approved Federal share of the project estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Project Estimate of Eligible Damage

 x.75 – % of Federal Cost Share

\$ 75,000 – New Project Amount

 x.75 – of Federal Cost Share

\$ 56,250 – Maximum Grant Amount

Applicant must spend at least \$75,000 on the approved alternate project to receive \$56,250. The Federal grant is capped at this amount.

If the applicant spends less than the new project amount, then the Federal cost share would be 75% of the actual amount spent.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

In both cases, the eligible repair/replacement costs include the costs of meeting the requirements of 44 CFR 206.226. Projects must also meet the basic requirements outlined in 44 CFR 206.203(d)(2).

J. Mitigation Projects: The types of mitigation projects that may be approved for alternate project funds are very broad. The following guidelines are provided:

1. Mitigation measures may mitigate potential damages to a facility that would be eligible for funding under section 406 of the Stafford Act. However, the funding cannot duplicate any other mitigation funding.

2. Mitigation measures may be of the same type as would be eligible for funding under section 404 of the Stafford Act (the Hazard Mitigation Grant Program), if they meet a need for:

a. Governmental services and functions in the area affected by the major disaster, in the case of government applicants, (Stafford Act, section 406(c)(1)(B)(iii)), or

b. Eligible PNP's services and functions in the area affected by the major disaster (Stafford Act, section 406(c)(2)(B)(iii)).

3. The mitigation measure does not have to mitigate the same type of damage that was caused by the disaster and does not have to be for the same type of disaster.

K. Multiple Use of the Funds: Alternate project funds from a single project do not have to be used on a single project. Alternate project funds from multiple projects may be pooled or divided.

1. Alternate project funds can be divided and used on multiple projects to repair, expand, mitigate, or construct a facility that would be an eligible facility under the Public Assistance Program. (Stafford Act, section 406(c)(1)(B), (2)(B)).

2. Alternate project funds may be used across all permanent work categories (such as expanding an existing building or replacing a sewer line). Some potentially eligible examples include:

a. Upgrading a substandard undamaged road that is subject to repeated flooding, in order to better serve the general public and reduce the repetitive flood damage.

b. Upgrading a facility to mitigate future disaster damage whether or not the facility was damaged by the event. Upgrades might range from something as simple as hurricane clips or bracing, to a large project.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

c. Relocating, as a mitigation measure, undamaged facilities such as roads and utilities that are subject to repetitive damage.

d. Demolishing an outdated maintenance building (non-emergency work) and using the funds to construct a new water treatment plant at the same location.

e. Abandoning a county bridge and using the funds to build a new county maintenance shop.

f. Increasing the capacity of a new building. For example, adding a wing to an existing building being repaired.

g. Using funds eligible to repair a transportation administration building to acquire and renovate a building to serve as a school for the arts.

h. Purchasing pieces of equipment (such as scientific equipment, telecommunications switches, fire trucks, vehicles, etc.) that exceed \$5,000 per unit, and have a useful life of a year or more.

L. Insurance must be obtained and maintained on vehicles, buildings and building contents in an amount equal to the alternate project funding. See 44 CFR 206.203(d)(2)(v).

M. In accordance with applicable standards of safety, a facility that is not repaired, replaced, or sold must be rendered safe and secure or demolished. See 44 CFR Part 206, Subpart M.

N. Limitations: Ineligible Uses of Alternate Funds:

1. Repayment of debts.
2. Meeting budget shortfalls.
3. Creating a new community plan that extends beyond the alternate project building (e.g., a new master plan for a school, university, or hospital campus).
4. Landscaping projects.
5. The purchase of supplies, furniture, and equipment costing less than \$5,000 per unit (considered an operating expense).



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DISASTER ASSISTANCE POLICY

DAP9525.13

6. The funds may not be used to pay the non-federal share of any project, nor any operating expenses. See 44 CFR 206.203(d)(2)(v).

7. Construction of a facility that would not be eligible for Public Assistance Program funding in a subsequent disaster.

8. Buy-outs (i.e., acquisition of property for open space as a mitigation measure).

O. The value, or anticipated fair market value, of salvaged materials from the original facility (less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure) should be an adjustment on the Project Worksheet (PW) that has been written for the repair of the original project. Regardless of what the applicant decides to do with the original project after accepting the alternate funding option, the salvage issue should be resolved in the original PW.

P. Alternate Projects must satisfy compliance review requirements as established by 44 CFR Parts 9 and 10 and all other applicable Federal environmental and historic preservation requirements. In accordance with Section VII of this policy, an applicant must ensure that the original damaged facility does not create an imminent and substantial endangerment to human health or the environment like causing the release of hazardous pollutants or becoming a hazard to human health, safety and welfare in a future flooding event. The decision of the applicant regarding the future status of the original facility, including abandonment or applicant-funded demolition, is not a major Federal action under the National Environmental Policy Act (NEPA), an undertaking under Section 106 of National Historic Preservation Act (NHPA), or a Federal action under the Section 7 Interagency Coordination requirements of the Endangered Species Act (ESA) and does not require independent environmental and historic preservation compliance review by FEMA. However, the applicant is legally and financially responsible for compliance with any other applicable Federal, State, Tribal, or local requirements, including responding to and mitigating for releases of hazardous pollutants.

Q. The proposed alternate project is subject to FEMA environmental and historic preservation review. FEMA will be responsible for the administrative costs for conducting the environmental and historic preservation review and assessments. The applicant will be responsible for the costs of implementing any mitigation/treatment measures or costs associated with the alternate project at the new site.

R. The applicant must provide FEMA any information concerning the planned action(s) for the original site as soon as such plans are available. In the event that plans for the original site are available and reasonably likely to be implemented FEMA may require the applicant to



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

consult with agencies including the State Historic Preservation Officer or Tribal Historic Preservation Officer (SHPO/THPO), Fish and Wildlife Service, National Marine Fisheries, or U.S. Army Corps of Engineers as condition for the approval of the alternate project to identify if the planned action will adversely affect a protected historic or environmental resource. The applicant must consider the agency's recommended measures to avoid, minimize, treat, or otherwise address any adverse impacts to the identified resource. The applicant will be responsible for all costs associated with implementing these measures.

S. Any action of the applicant using FEMA funds at the original site, such as demolition, is an undertaking under Section 106 of NHPA, a major Federal action under NEPA, and a Federal action under the Section 7 Interagency Coordination requirements of ESA and requires FEMA's environmental and historic preservation review before it can begin. FEMA may evaluate the alternate project and the action at the original site separately if they have independent utility, the approval of one action does not foreclose alternatives for the other, and the approval of one action does not justify or commit FEMA to the other action.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Recovery Policy 9525.13, Alternate Projects, published July 31, 2001 and any other previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

/signed/

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

RECOVERY POLICY – RP9525.14

I. TITLE: Public Assistance Grantee Administrative Costs

II. DATE: November 7, 2006

III. PURPOSE:

Describe the appropriate use of the state statutory administrative allowance authorized in Section 406(f)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all open major disasters and emergencies on or after the date of publication of this policy. The policy applies to all Federal and State Public Assistance Program personnel.

V. AUTHORITY:

Section 406(f) of the Stafford Act, 44 CFR §206.228, and 44 CFR Part 13, Subpart C – Post-Award Requirements and Subpart D – After-the-Grant Requirements.

VI. BACKGROUND:

Section 406(f)(2) of the Stafford Act authorizes payment of 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 expenses of such employees, but not including pay for regular time of such employees....” The use of the statutory administrative allowance (sliding scale) is addressed in FEMA’s regulations at 44 CFR §206.228 (a)(2)(i), Statutory Administrative Costs, Grantee. The regulations further stipulate, at 44 CFR §206.228 (a)(3)(i), State Management Administrative Costs, Grantee, that (except for items listed in the statutory administrative costs section), other administrative costs shall be paid in accordance with 44 CFR §13.22. Collectively, these regulatory provisions clearly require that a cost item be either a *statutory administrative cost* or a *state management cost*, but not both. Accordingly, this policy is issued to clarify the use and documentation requirements for Grantee statutory administrative allowance costs and state management administrative costs.



FEMA

RECOVERY POLICY – RP9525.14

VII. POLICY:

A. A State may claim FEMA eligible administrative cost items consistent with its approved Public Assistance State Administrative Plan. Costs will be categorized as either statutory administrative allowance costs {44 CFR § 206.228 (a)(2)(i)} or state management administrative costs {44 CFR §206.228 (a)(3)(i)}, but not both.

B. Categories of Cost:

1. Overtime pay (which includes compensatory time), per diem, and travel expenses for State employees conducting eligible Public Assistance Grant Management work are only eligible as *statutory administrative allowance costs*.

2. Straight-time salaries of State employees and other management costs approved by the Disaster Finance Center are eligible as *state management administrative costs* (Category Z).

3. Straight-time and overtime salaries, per diem and travel expenses of contractors hired by a state to assist with administering Public Assistance grants may be eligible as *state management administrative costs* (Category Z), per FEMA Recovery Policy 9525.11. Contractors' costs must be captured on separate project worksheets.

C. Statutory administrative allowance costs are not cost-shared; they are 100% federally funded. State management administrative costs (Category Z) are cost-shared at whatever prevailing cost-share rate is in effect for the particular disaster.

D. Statutory administrative allowance costs are limited, and based on the total federal share of obligated Public Assistance funds. If the overtime costs, per diem, and travel expenses for a State's regular employees:

1. Exceed the available statutory administrative allowance amount, the State may *not* claim the excess costs as management administrative costs on a project worksheet.

2. Are less than the available statutory administrative allowance amount, the State must return to FEMA any unused amount of statutory administrative funds at project closeout.

E. When requesting state management cost items on a project worksheet, the State must verify that it has not claimed the same cost items as statutory administrative allowance costs.



FEMA

RECOVERY POLICY – RP9525.14

F. The State must retain records detailing how and when state management administrative costs and statutory administrative allowance costs are spent. States must not draw funds in excess of their immediate cash needs.

G. Prior to grant closeout, the State must submit a Financial Status Report (Standard Form 269, 269A, or FEMA Form 20-10) and explain, in item #12–Remarks, the amounts expended for both the state management administrative costs and the statutory administrative allowance costs. FEMA recommends that grantees provide the breakout of statutory administrative costs and state management administrative costs on a quarterly basis on their financial status reports.

H. At grant closeout, the State must document its actual administrative costs claimed for the Public Assistance Grant Program and provide those records for FEMA’s review prior to closeout. FEMA will de-obligate any unused amount of the statutory administrative allowance costs that was not spent on overtime pay, travel, or per diem expenses for state employees. FEMA will also reconcile, at grant closeout, the state management administrative costs.

I. This policy will be superseded upon publication of the final management cost regulation pursuant to Section 324 of the Stafford Act.

VIII. ORIGINATING OFFICE: Recovery Division (Public Assistance Branch).

IX. SUPERSESSION: This policy supersedes all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

//signed//
John R. D’Araujo, Jr.
Director of Recovery



Federal Emergency Management Agency

Washington, D.C. 20472

DATE: July 11, 2000

Response and Recovery Directorate Policy No. 9640
Response and Recovery Directorate Policy No. 9525.15

TITLE: Disaster Recovery Operations: Telecommunications Support Lines for States

PURPOSE: The purpose of this directive is to establish policy regarding the Federal Emergency Management Agency's (FEMA) financial support for States administering the Individual and Family Grant (IFG) Program, Infrastructure Support (IS) and Mitigation (MT) Programs in the area of telecommunications equipment such as T-1 LAN/WAN connections.

SCOPE and AUDIENCE: The implementation of this policy is a national mandate to be followed by all Federal Emergency Management Agency (FEMA) and State disaster recovery managers including FEMA and State agency employees administering the IFG, IS, and MT programs. This policy is applicable to all major disasters and emergencies declared by the President for Individual Assistance, Public Assistance and Hazard Mitigation Programs.

DESCRIPTION: The National Emergency Management Information System (NEMIS) is an evolving agency-wide system of hardware, software, telecommunications and applications software that provides a new technology base to FEMA and its partners to perform the emergency management mission. The NEMIS system includes the Human Services (HS) module, the Infrastructure Support (IS) module, the Mitigation (MT) module, the Emergency Support (ES) module, and the Emergency Coordination (EC) module, and is now being used to process all disasters. NEMIS electronic interface remote access mechanisms include the options of T-1 LAN/WAN connection, modem dial-up using PC anywhere, and Internet access. Use of T-1 LAN/WAN connections by remote NEMIS users directly affects their performance from receiving applicant information transmissions to eligibility processing, mission completion, and customer service. Supporting the use of T-1 LAN/WAN connections is expensive and one of the issues that this computer-based process has raised is the extent to which FEMA will support the installation and maintenance of the high quality data transmission T-1 lines for States. Presently FEMA both provides T-1 support to State disaster recovery operations when they process in Disaster Field Offices (DFO), and installs T-1 lines at any State-identified processing location for an indefinite period of time. This practice is extremely costly and this policy memorandum will clarify FEMA's position with respect to what costs FEMA will incur and what FEMA expects the States to bear in the installation and maintenance of T-1 LAN/WAN connections for State-administered disaster programs.

INDIVIDUAL AND FAMILY GRANT PROGRAM POLICY: When State processing operations are co-located in the DFO, FEMA will incur all T-1 LAN/WAN connection installation and maintenance costs for up to 180 days from the date of declaration (IFG Grant Award Activity Period), including any extensions granted by FEMA to extend the timeframes of the program or, until the DFO closes, whichever come first. Once the DFO closes or the 180 days have expired, FEMA will disconnect all T-1 LAN/WAN connections. At this point the State can either incur the cost of installing a T-1 line at the DFO or the newly identified State processing location, or can choose to communicate remotely via modem dial-up. *Please note:* Costs incurred by the State in installing and maintaining T-1 LAN/WAN connections are eligible costs under the IFG Program's State administrative costs allowance as mandated by Section 411 (d), *Administrative Expenses*, Robert T. Stafford Disaster Relief and Emergency Assistance Act. The allowance of these costs is authorized in FEMA's Federal regulations at 44 CFR Part 13.22, *Allowable Costs*, and the associated requirements of Office and Management and Budget (OMB) Circular A-87, *Cost Principles for State and Local Governments*.

When State processing operations are not co-located in the DFO, FEMA will incur all T-1 LAN/WAN connection installation and maintenance costs for up to 180 days from the date of declaration (IFG Grant Award Activity Period), including any extensions granted by FEMA to extend the timeframes of the program. After the 180 days have expired, FEMA will disconnect all T-1 LAN/WAN connections. At this point the State can either incur the cost of installing a T-1 line at their processing location or can choose to communicate remotely via modem dial-up. *Please note:* Costs incurred by the State in installing and maintaining T-1 LAN/WAN connections are eligible costs under the IFG Program's State administrative costs allowance as mandated by Section 411 (d), *Administrative Expenses*, Robert T. Stafford Disaster Relief and Emergency Assistance Act. The allowance of these costs is authorized in FEMA's Federal regulations at 44 CFR Part 13.22, *Allowable Costs*, and the associated requirements of Office and Management and Budget (OMB) Circular A-87, *Cost Principles for State and Local Governments*.

Questions on the IFG policy should be directed to Charles D. Robinson, Chief, Program Guidance and Implementation Branch, Human Services Division, at (202) 646-4262 or Sharon A. Hordesky at (202) 646-2778

INFRASTRUCTURE SUPPORT POLICY: Generally, when a Disaster Field Office is established FEMA installs T-1 lines to support program operations. If State program operations are performed in a State facility, FEMA will incur all T-1 LAN/WAN installation and maintenance costs for up to 180 days from the date of declaration. After 180 days, FEMA will disconnect all T-1 LAN/WAN connections, unless the State requests and FEMA approves an extension. The State may request an extension of the FEMA T-1 service in writing to the Disaster Recovery Manager (DRM) at least 30 days prior to the planned termination of service. FEMA will consider the number of current and projected users, actual time logged into the system and which functional areas of NEMIS the State uses in evaluating a State's request for extension of the T-1 service.

When the T-1 service is terminated, the State can either incur the cost of installing a new T-1 line or choose to communicate remotely via modem dial-up. Dial up access to NEMIS is normally set up to use toll free phone lines. If the State incurs reasonable expenses for remote access to the Infrastructure module of NEMIS, the costs are reimbursable on a State Grant Management Project Worksheet.

Questions on the IS policy should be directed to James A. Walke, Engineering Branch Chief, at (202) 646-2751 or Alex Burns at (202) 646-4550.

MITIGATION POLICY: The Mitigation Directorate will issue T-1 Line policy guidance under separate cover.

KEY WORDS: T-1 LAN/WAN connections, 180 days, NEMIS, modem dial-up, Individual and Family Grant Program, IFG State administrative costs, Infrastructure Support, Mitigation.

SUPERSESSION: N/A

AUTHORITIES:

- *The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended by Public Law 100-707.*
- *44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and,*
- *Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.*

ORIGINATING OFFICE: Human Services Division, Response and Recovery Directorate

REVIEW DATE: June 2003

SIGNATURE: SIGNED 7-11-00
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

DISTRIBUTION: Human Services Officers, FEMA Regions I-X,
Caribbean and Pacific Area Divisions Chiefs,
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Office of the General Counsel
Office of Emergency Information and Media Affairs
Office of Congressional and Legislative Affairs
Office of the Inspector General



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.16

I. TITLE: **Research-related Equipment and Furnishings**

II. DATE: MAY 4 2007

III. PURPOSE:

Establish the research-related equipment and furnishings associated with disaster-damaged private nonprofit (PNP) or public facilities that are eligible for reimbursement under the Federal Emergency Management Agency's (FEMA) Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 – 5206, as amended, and Title 44 Code of Federal Regulations (CFR) §206.226.

VI. BACKGROUND:

A. 44 CFR §206.226(h) states, “[i]f equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items,” and 44 CFR §206.226(i) states, “[r]eplacement 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.”

B. 44 CFR §13.3 defines equipment as “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. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.” 44 CFR §13.3 defines supplies as “all tangible personal property other than equipment” as defined in 44 CFR §13.3.

C. In some cases an eligible applicant for Public Assistance may conduct an active research program as part of their institutional mission. The applicant is typically a higher education institution, a medical school, or a hospital—both public and non-profit—often conducting



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.16

biomedical research. Damaged items belonging to the applicant often support ongoing education of undergraduate and graduate students, or serve critical functions related to patient care. Such items often include laboratory animals, reagents, specimen collections, research records, or highly specialized types of laboratory equipment.

VII. DEFINITIONS:

A. **Furnishing**: For the purposes of this policy, the term “furnishing” means any tangible property other than equipment, as defined in 44 CFR part 13.3.

B. **Laboratory Animals**: Laboratory animals are a common type of medical research furnishing that are often listed under the “supplies” category in applications for grants and cooperative agreements with Federal agencies like the National Institutes of Health (NIH). Laboratory animals may be surgically or chemically altered, or may be genetically manipulated to enhance characteristics that allow investigators to pursue specific research projects within the laboratory.

C. **Laboratory Equipment**: Tools and instruments for which the primary purpose is to conduct scientific or scholarly research. Such equipment is typically operated under the close supervision of technically trained personnel, and may include common items or items specifically designed for use in a particular research program.

D. **Reagents**: A reagent is a substance used in biomedical research to detect a component, to measure a component, to prepare a product, or to develop photographs because of its chemical or biological activity. Some reagents are very common, and hence are commercially available for purchase from several sources. Examples include blood plasma and flesh tissue.

E. **Specimen**: A portion or quantity of material for use in testing, examination, or study.

F. **Specimen Collections**: A repository of specimens related to biomedical, marine, or agricultural research.

G. **Research Records**: Information or data associated with the research process that is collected and preserved through a variety of means, including correspondence files, project files, grant applications, technical reports, research reports, master lists, signed consent forms, and information sheets for research subjects.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.16

VIII. POLICY:

A. **General Eligibility.** Eligible Public Assistance applicants conducting active research programs, and that have incurred damages to their facility as a result of a declared major disaster, may be eligible for Public Assistance grant funding for replacement or repair of facilities and the equipment and/or furnishings contained within. The cost of performing research itself is not eligible for Public Assistance grant funding. Because research is not identified as an eligible PNP service under 44 CFR §206.221(e), an active research program must support an educational or medical function in order for the facilities, equipment and/or furnishing to be eligible.

B. **Laboratory Animals.**

1. When laboratory animals used in an active research program are destroyed or damaged as a result of a major disaster, eligible costs associated with the replacement of laboratory animals include, but are not limited to the replacement cost of a laboratory animal that is as genetically close as possible to, but does not exceed the genetic progression of the lost animal, and can be reasonably procured commercially. If an identically genetic animal is not available, the eligible cost will be based on a readily procured animal that is as genetically close as possible to the original animal.

2. Ineligible laboratory animal costs include:

a. The cost of reproducing a new animal with all the characteristics of the lost animal to re-establish the research.

b. The cost of using a laboratory to perform a breeding program to advance benchmark stock to the genetic changes lost due to the event.

c. The cost associated with surgery required to replace a surgically altered animal.

d. The cost associated with the replacement of a laboratory animal when an animal of similar genetic characteristics can be obtained at no cost from other researchers or institutions.

3. If an eligible applicant requests flexibility in replacing laboratory animals other than in exact kind and number, FEMA may offer the applicant the option to cap the cost of the inventories of laboratory animals damaged or destroyed. The applicant is required to maintain documentation for funding drawdown purposes and for audits, to show how the funds were expended to restore the research animal function or program affected by the event. Such funds



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.16

may not be used on other programs unaffected by the event, or to initiate a new line of research activity independent of the affected program.

C. **Reagents.** The number of units of each reagent eligible for replacement will be equal to the number actually lost, or to the number necessary to restore the basic research activity, whichever is less. Reimbursement will be based on purchase prices from commercial sources. The replacement of reagents that are so unique that they are considered an outcome of a research program are not eligible for Public Assistance grant funding.

D. **Specimen Collections.** A specimen collection that supports the educational or medical function of an institution may be considered a furnishing. Public Assistance grant funding is available to replace a representative, but not necessarily a whole portion of the collection, for a broad array of specimen types. The specimen types must be available for purchase from commercial sources, and must support an on-going educational or medical research program.

E. **Research Records.** Eligible applicants may undertake efforts to recover medical or research records, including stabilization efforts in the immediate aftermath of the event, followed by long-term restoration and recovery.

1. Eligible activities associated with the recovery of research records include, but are not limited to:

- a. Recovery of damaged hard copies, including labor and materials, such as bags, boxes, and containers.
- b. Stabilizing the damaged hard copies, such as through freeze-drying.
- c. Sanitizing the damaged hard copies.
- d. Photocopying or scanning damaged hard copies in order to re-establish files, including labor and materials, such as new folders and paper.
- e. Recovering data from water damaged computer hard-drives.

2. Ineligible activities include:

- a. Establishing new information databases by performing additional tests.
- b. Manually re-entering into new computers test data that was lost in damaged computers.



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.16

- c. Scanning re-established hardcopy files into computers to create digital files.
- d. Deciphering photocopies of damaged hard copies.

F. Laboratory Equipment. Research-related laboratory equipment may be eligible for repair or replacement when damaged as a result of a declared event, if the affected equipment was in active use at the time of the disaster.

1. The lesser cost of repair or replacement will be the eligible cost. In comparing the cost of repair to the cost of replacement, all aspects of accomplishing the repair must be considered, including availability of parts, timeliness of receipt of parts, timeliness in making the repair, performance dependability, available warranties, shipping and handling costs, and overall timeliness of returning the equipment to service.

2. When not repairable, or the repair is more expensive than replacement, FEMA will approve the cost of replacement with used items that are approximately the same age, capacity, and condition. Replacement of an item with a new item may be approved only if a used item is not reasonably available (e.g., within a reasonable cost, time, and distance). The replacement, whether new or used, should be as close to the original equipment capacity and condition as reasonably available. When applicable, salvage value and trade-in discounts should be deducted from the estimated replacement costs.

G. Relocation and Storage. Costs associated with the temporary relocation and storage of research-related equipment and furnishings following a disaster may be eligible for Public Assistance grant funding.

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

X. SUPERSESSION: This policy supersedes all previous guidance on this subject.

XI. REVIEW DATE: Three years from date of publication.

//signed//

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP9526.1

I. TITLE: Hazard Mitigation Funding Under Section 406 (Stafford Act)

II. DATE: JUL 30 2007

III. PURPOSE:

Provide guidance on the appropriate use of hazard mitigation discretionary funding available under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206. This will ensure national consistency in the use of Section 406 mitigation funds and promote measures that reduce future loss to life and property, protect the federal investment in public infrastructure and ultimately, help build disaster resistant communities.

IV. SCOPE AND AUDIENCE:

This policy applies to all disasters declared after publication of this document. It is intended to guide all personnel responsible for the administration of the FEMA Public Assistance Grant Program.

V. AUTHORITIES AND REFERENCES:

Section 406 (e) of the Stafford Act and Title 44 Code of Federal Regulations (CFR) §206.226.

VI. BACKGROUND:

A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides FEMA the authority to fund the restoration of eligible facilities that have sustained damage due to a Presidentially declared disaster. Section 406 of the Stafford Act contains a provision for the consideration of funding additional measures (further described in 44 CFR §206.226) that will enhance a facility's ability to resist similar damage in future events.

1. In providing discretionary authority for the addition of hazard mitigation measures to permanent work restoration, Congress recognized that during the repair of damaged components of facilities there would be a unique opportunity to prevent recurrence of similar damage from future, similar disaster events. Such measures are in addition to any



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

measures undertaken to comply with applicable codes and standards, although such compliance, itself, could be considered a form of mitigation.

2. Section 406 hazard mitigation funding and Section 404 hazard mitigation funding are distinct. Section 406 is applied on the parts of the facility that were actually damaged by the disaster and the mitigation measure provides protection from subsequent events. The mitigation work must be cost effective and be reasonably performed as part of the work or measure which will reduce the potential for damage to a facility from a disaster event. Sometimes, a combination of Section 406 and 404 funding may be appropriate, where Section 406 hazard mitigation funding is used to provide protection to the parts of the facility that were damaged and Section 404 hazard mitigation funding is used to provide protection to the undamaged parts of the facility. In these instances, the application for Section 404 hazard mitigation funding must be submitted in a timely manner, consistent with State and local hazard mitigation plans, and approved by the State Hazard Mitigation Officer.

3. FEMA may provide discretionary hazard mitigation funding under Section 406 of the Stafford Act. FEMA, Grantee and subgrantee's interests in disaster resistance must be balanced with the supplemental nature of disaster assistance and FEMA's obligation for the prudent stewardship of Federal disaster funds.

4. Only FEMA is authorized to interpret and implement the Stafford Act and regulations issued pursuant to the Stafford Act. Accordingly, only FEMA has the authority to determine which hazard mitigation measures it will fund. The Stafford Act and applicable regulations do not authorize State or local building officials or agencies to determine the amount of hazard mitigation funding FEMA will contribute to a project.

VII. POLICY:

A. Section 406 provides discretionary authority to fund mitigation measures in conjunction with the repair of the disaster-damaged facilities. These opportunities usually present themselves during the repair efforts. The mitigation measures must be related to eligible disaster-related damages and must directly reduce the potential of future, similar disaster damages to the eligible facility. This work is performed on the parts of the facility that were actually damaged by the disaster and the mitigation measure provides protection from subsequent events. Exceptions to this provision will be reviewed on a case-by-case basis.

B. Mitigation measures must be determined to be cost-effective. Any one of the following means may be used to determine cost-effectiveness:



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

1. Mitigation measures may amount to up to 15% of the total eligible cost of the eligible repair work on a particular project.

2. Certain mitigation measures (see Appendix A) determined cost-effective, as long as the mitigation measure does not exceed 100% of the eligible cost of the eligible repair work on the project.

3. For measures that exceed the above costs, the Grantee or subgrantee must demonstrate through an acceptable benefit/cost analysis methodology that the measure is cost-effective. FEMA's Benefit Cost Analysis (BCA) software provides appropriate benefit/cost analysis methodologies. You can obtain the software from FEMA by contacting the BCA helpline at 1-866-222-3580, e-mail (bchelp@hhs.gov), or the applicable FEMA Regional Office. Alternative benefit/cost methodologies will only be considered acceptable if the Grantee or subgrantee receives and submits written approval from the FEMA Regional Office and FEMA Headquarters prior to the submission of the mitigation proposal. The benefit/cost analysis will be based on a comparison of the total project cost to the total cost of the following benefits: 1) damage to the facility and its damaged contents, 2) emergency protective measures required as a result of that damage, and 3) temporary facilities required due to the damage.

C. If a facility has Section 406 hazard mitigation funding included in the approved scope of work (SOW) and the subgrantee wishes to restore the facility to its pre-disaster condition and function without the Section 406 hazard mitigation SOW, then the subgrantee must request a change of SOW prior to completion of the project. Section 406 hazard mitigation funds must be de-obligated when the subgrantee does not use the funds as approved in the SOW.

D. Proposed hazard mitigation projects must be approved by FEMA prior to funding. They will be evaluated for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. In addition, the evaluation must ensure that the mitigation measures do not cause a negative impact to the facility's operation, surrounding areas, or susceptibility to damage from another hazard.

E. The costs of meeting applicable codes/standards in accordance with 44 CFR § 206.226 (d) and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

F. When the cost of proposed replacement material for a damaged component is more than the original material, the proposed material must be shown to be cost effective.

G. There may be no duplication in hazard mitigation funding between Sections 404 and 406. Therefore, the Grantee and subgrantee must be able to identify specific hazard mitigation work that will be accomplished with funding through Section 406. Section 404 funding may not duplicate that work, although Section 404 may be additive and accomplished on Section 406 facilities. The appropriate split on a project between funds under Sections 404 and 406 is a FEMA decision. Sections 404 and 406 funding cannot be used to meet the non-federal cost share of the other grant.

H. Funds recommended for mitigation measures may be approved for an improved project if the original facility and its function will be restored and the mitigation work is still needed, is technically feasible, and will be performed as part of the overall project. Facilities eligible for replacement under 44 CFR 206.226(f) - *Repair vs. replacement* are not eligible for mitigation measures.

1. If mitigation measures are approved for the repair of a disaster-damaged facility and the subgrantee requests an improved project which will instead involve the replacement of the facility, on the same site or an alternate site, the cost of the mitigation measures is not eligible.

2. The cost of mitigation measures approved under Section 406 for the repair of a facility may not be applied towards an Alternate Project.

I. Early in a disaster the FEMA and State PA Officers, in consultation with the Hazard Mitigation Group Supervisor, should issue a Memorandum of Understanding outlining how 406 mitigation will be addressed for the disaster, including what measures will be emphasized, making linkages to codes and standards and availability and integration of other mitigation programs.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy updates and replaces RP9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act), published August 13, 1998.

X. REVIEW DATE: Five years from date of publication.

/signed/

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP9526.1

Appendix A

POTENTIAL MITIGATION MEASURES THAT ARE PRE-DETERMINED TO BE COST EFFECTIVE

The following potential mitigation measures (reference: paragraph VII.B.2) are determined to be cost-effective if they:

- do not exceed 100% of project cost,
- are appropriate to the disaster damage,
- will prevent future similar damage,
- are directly related to the eligible damaged elements,
- do not increase risks or cause adverse effects to the property or elsewhere,
- are technically feasible for the hazard and location, and
- otherwise meet requirements stipulated in this policy, including environmental, historic, and mitigation planning considerations.

This list will continue to be evaluated and will evolve over time as new information becomes available.

I. General:

A. Drainage/crossings and bridges

1. Drainage structures - When drainage structures are destroyed, replacing the structure with multiple structures or a larger structure. Sizing of replacement culverts can be made using in-place state/local drainage criteria (nomographs). However, structures need to be considered with regard to a total drainage system and should not be upgraded without a watershed hydrology study with an emphasis on downstream effects and NFIP regulations.

2. Culverts – Where the alignment of culverts is inconsistent with streams flowing through them (because it has been blown-out), realign or relocate the culverts to improve hydraulics and minimize erosion. However, realignment of structures must be considered in regard to a total drainage system and shall not be replaced without a hydrology study with an emphasis on downstream erosion effects.

3. Headwalls and wing walls - Installation to control erosion.

4. Low-water crossings – When bridges are destroyed and where traffic counts are low, replacing bridges with carefully placed low-water crossings.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

5. Gabion baskets, riprap, sheet-piling, and geotextile fabric installation - Installation to control erosion.

6. Roadways – Where roadways shoulders are damaged by overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric.

7. Restraining cables on bridges - Installation of cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes. Also, where bridges have been damaged or destroyed when girders, beams and decking system are displaced by storm surges or earthquakes, install girder and deck uplift tie-downs to prevent their displacement from the substructure.

B. Sanitary and storm sewer systems

1. Access covers - When feasible, access covers can be elevated to the hydraulic grade line. There are a number of devices that prevent infiltration into access holes.

2. Sewer lines – Repair, lining or encasement of damaged sections to prevent infiltration or structural collapse.

3. Pump stations –

a. Equipment or controls in a pump station that are subject to damage from the 100- year flood can be elevated. Pump station buildings can be dry flood-proofed.

b. Installation of camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

c. Pump stations – If pumps and their attached motors are damaged by storm water inundation, replace them with submersible or inline pumps as appropriate.

d. Pump stations – If pump station equipment is damaged as a result of inundation resulting from power failure, install switches, circuit isolation and/quick connect capability to facilitate rapid connection of backup power.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

C. Wastewater treatment plants

1. Elevation of equipment and controls that can be elevated easily.
2. Dry or wet flood-proofing of buildings.

D. Potable water

1. Well systems –

- a. Reduction of infiltration and subsequent contamination of the aquifer.

Methods include casing the well or raising the elevation of the well head.

- b. Elevation of controls, mechanical equipment, or electrical service associated with use of the well to protect them from flood damage.

2. Raw water intakes - Buttressing to prevent damage from erosion, scour and flood debris.

3. Water treatment plants –

- a. Elevation of equipment and controls that can be elevated easily.

- b. Dry flood-proofing.

E. Electric power distribution

1. Pad-mounted transformers - elevating above the base flood elevation.
2. Using multiple poles to support transformers.
3. Anchoring or otherwise protecting fuel tanks from movement in a disaster.
4. Replacing damaged poles with higher-rated poles, of the same or different material such as replacing wood poles with precast concrete or steel.
5. Adding guy wire or additional support to power lines.



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DISASTER ASSISTANCE POLICY

DAP9526.1

6. Removing large diameter lines from poles.

7. Providing looped distribution service or other redundancies in the electrical service to critical facilities.

F. Above ground storage tanks

1. Strengthening or stiffening base connections.

2. Installation of self-initiating disconnects and shut-off valves between tanks and distribution lines to minimize damage and leaks.

G. Underground pipelines - Installation of shut-off valves so that damaged sections of pipeline can be isolated.

II. Buildings:

A. General effects of flood damage –

1. Buildings substantially damaged under NFIP regulations - Repair, dry flood-proofing, or elevation so they are protected to meet minimum NFIP regulations. If the building is replaced, rather than repaired, minimum NFIP requirements are generally in place as codes and standards in participating communities and are applicable in both repair and replacement situation. Section 406 mitigation should be considered in those cases where these standards either fall short or provide no protection against other hazards.

2. Buildings not substantially damaged under NFIP regulations - If technically feasible, dry flood-proofing. Electrical panels, machinery rooms, emergency generators can be elevated above the BFE or dry flood-proofed. If dry flood-proofing is not feasible, these buildings should be wet flood-proofed.

B. Roofs - Because the failure of a roof covering can lead to extensive damage to contents and operation, damaged roofing should be evaluated to determine cause of failure.

1. Low slope roofs - Replacement of the entire roof with a roof covering with a secondary membrane and a fully adhered roof covering, such as modified bitumen. Mechanically fastened insulation or membranes are not acceptable.



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DISASTER ASSISTANCE POLICY

DAP9526.1

2. Roof-mounted equipment should be attached to a foundation that will resist expected wind forces.
 3. Hurricane clips - Hurricane clips for use in high-wind areas.
 4. Roofs – When roof damages are due to wind pressure beneath soffits and overhangs, strengthen the soffit and overhang material and means of attachment to prevent wind pressure adversely affecting the roofing system.
 5. Roofs – When there is roof system damage or water intrusion due to damage to roof opening such as hatches and skylights strengthen the openings or the windows to avoid future damage.
 6. Roofs – For gable roofs damaged by wind, replace the gable end-framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.
- C. Shutters** - In areas subject to hurricane winds, shutters are appropriate in the following areas:
1. All damaged windows on critical facilities such as hospitals.
 2. The lower floors of buildings with damaged windows most likely to be struck by debris.
 3. Damaged windows of buildings with very high value contents that can be damaged by water (such as libraries and document centers).
 4. Damaged windows of buildings subject to debris from nearby ballasted roofs, metal buildings, manufactured homes or other structures likely to fail and result in debris.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

D. Anchoring –

1. Anchoring of mechanical and electrical equipment in critical facilities.
2. For small ancillary buildings that have sustained damage and/or have caused damage to other facilities, anchor the buildings to foundations to prevent toppling or becoming missile hazards.

E. Flexible piping - Installation of flexible piping at pipe/conduit connections to equipment to accommodate expected movement in an earthquake.

F. Bracing –

1. Bracing of and large diameter pipes and electrical lines to meet seismic loads.
2. Bracing non structural interior walls and partitions.
3. Bracing parapets, anchoring veneer or cladding, and bracing other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake.

G. Replacement of glass - Replacement of glass with impact-resistant material.

H. General Buildings –

1. Buildings – Where spread footings have been undercut by scour, underpin footings.
2. Siding – if siding has been damage by wind, replace with a stronger siding with stronger attachments to the wall sheathing and structure.
3. Venting – Where there has been water damage caused by water intrusion through venting systems, replace the vents with rain and water resistant vents.

I. Doors and Windows –

1. Where damage has resulted from wind and water intrusion around weather stripping on doors and/or windows, upgrade the weather stripping to prevent water infiltration.



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

2. Where damage has been caused by wind-induced failure of doors, replace the doors with stronger units. This applies to the door frame, door, hinges and lock hardware. Both entry and garage doors should be considered.

J. Miscellaneous Structures –

1. Marine Piers – If marine piers ramps that attach to decking have been damaged by storm-surge uplift and buoyancy, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

2. Signage – If sign panels and their supports have failed, replace with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

3. Gutters and Downspouts – If damaged by either wind and/or water, upgrade the gutter and downspout system to directing water away from the structure and preventing interior or basement water damage.

/signed/
Carlos J. Castillo
Acting Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.1

I. TITLE: **Seismic Safety – New Construction**

II. DATE: November 21, 2007

III. PURPOSE:

This policy provides guidance for determining the seismic requirements established in the Earthquake Hazards Reduction Act of 1977, the Stafford Act and E.O. 12699 that affect Public Assistance Program funding eligibility for new building construction.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Earthquake Hazards Reduction Act of 1977, P.L. 95-124, as amended, 42 U.S.C. §§7701-7709; Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (Stafford Act), 42 U.S.C. §5172; Executive Order 12699, as amended; 44 CFR §206.226(d).

VI. BACKGROUND:

A. Seismic hazards pose a serious threat throughout much of the United States. The Earthquake Hazards Reduction Act of 1977 and the National Earthquake Hazards Reduction Program (NEHRP) recognize this threat and require federal preparedness and mitigation efforts. In furtherance of NEHRP, on January 5, 1990, the President signed Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, 55 FR 835. Executive Order 12699 specifically states that “Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 402, 403, 502, and 503 of the [Stafford Act], or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act. . . . However, this order shall apply to other provisions of the Stafford Act after a presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building.” Executive Order 12699, §3(d). Building repairs are excluded from the requirements of this Executive Order, which applies only to new buildings.

B. Pursuant to section 4(a) of Executive Order 12699, the Interagency Committee on Seismic Safety in Construction (ICSSC), through consensus procedures, is responsible to FEMA



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.1

for recommending seismic design and construction standards and practices appropriate for implementation by federal agencies. ICSSC recommends as appropriate for implementing the Executive Order those standards and practices that are substantially equivalent to or exceed the newest or next most recent edition of the *NEHRP Recommended Provisions for Seismic Regulations for New Buildings and Other Structures*. The ICSSC has recommended that the following current model codes and standards are substantially equivalent to the *2000 NEHRP Recommended Provisions* and *2003 NEHRP Recommended Provisions*:

1. International Code Council (ICC), *International Building Code and International Residential Code*, 2003 and 2006 editions.
2. National Fire Protection Association (NFPA), *NFPA 5000*, 2003 and 2006 editions.
3. American Society of Civil Engineers, (ASCE), *Minimum Design Loads for Buildings and Other Structures*, *ASCE 7-03* and *ASCE 7-05*.

VII. POLICY:

A. Pursuant to the authorities listed in section V of this policy, all construction of new buildings eligible under the Public Assistance Program must use appropriate seismic design and construction standards and practices. This includes the construction of new buildings for:

1. The replacement of seriously damaged or destroyed buildings, and
2. Alternate or improved projects.

B. Appropriate seismic standards and practices vary by location based on the probability of a seismic event occurring in a given area.

C. The cause of the declared disaster does not affect the application of seismic requirements, under Executive Order 12699, to all new federally funded or assisted building construction.

D. If FEMA funds new construction to replace a seriously damaged or destroyed building to its pre-disaster design, meeting required and reasonable seismic codes are eligible costs.

E. If the applicant requests and approval is granted for an improved or alternate project, eligible costs are limited to the approved project costs for replacing the facility to its pre-disaster design, which includes seismic upgrades to the originally designed facility. Additional costs to satisfy seismic requirements for the improved or alternate project are not eligible.



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.1

F. If a community uses a code other than those reviewed and judged equivalent by the ICSSC, FEMA will verify its equivalency based on written justification from the community.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Response and Recovery Directorate Policy 9527.1 Seismic Safety – New Construction, published on January 13, 2000, and all other previous guidance on this subject.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.

//signed//
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

I. TITLE: **Construction Codes and Standards**

II. DATE: FEB 05 2008

III. PURPOSE:

This policy provides guidance for determining eligible work based on State and local construction codes and standards as they apply to the repair and restoration of damaged facilities.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5172, and 44 CFR §206.226(d).

VI. BACKGROUND:

A. The Stafford Act authorizes FEMA to fund the repair and restoration of eligible facilities damaged in a presidentially declared disaster. Section 406(e) of the Stafford Act requires that the cost of repair and restoration be “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.))...” (42 U.S.C. §5172(e)(1)).

B. 44 CFR §206.226(d) provides that for the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of a 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;



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

3. 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;

4. Apply uniformly to all similar types of facilities within the jurisdiction of the 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.

C. The eligibility of standards requirements based on Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, are further explained in FEMA Disaster Assistance Policy DAP9527.1, *Seismic Safety – New Construction*.

VII. POLICY:

A. Definitions

1. Facility, as defined in 44 CFR §206.201(c), is “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.”

2. Standards, according to 44 CFR §206.221(i), are building requirements for the construction of facilities. Codes, specifications and standards are referred to as “codes” in this document.

3. Predisaster design, as defined in 44 CFR §206.201(h), is the size or capacity of a facility (as originally designed and constructed, or subsequently modified by changes or additions) at the time of the major disaster. It does not mean the facility *in-use* capacity at the time the major disaster occurred, but rather the most recent *design* capacity.

4. Predisaster Use: The use of the facility at the time of the disaster. If an eligible facility was being used for purposes other than those for which it was designed, eligible repairs or restoration for that facility are limited to the extent necessary to restore the immediate predisaster use of the facility, but not to a greater use or capacity than the predisaster design.

5. Upgrade: Work to predisaster design or construction that goes beyond repair.



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

B. General Provisions

1. Applicability

a. The five criteria under 44 CFR §206.226(d) apply to codes that change the predisaster construction of a facility. A code that mandates an upgrade in addition to repairs, changes the predisaster construction of a facility.

b. If FEMA determines that a code meets all five criteria, the work and associated costs, including any eligible upgrades triggered by the code, will be eligible for funding as a repair under section 406(e) of the Stafford Act.

c. If a code does not meet the five criteria, code-mandated upgrades will not be eligible, and funding will be limited to repairs necessary to bring the facility back to its predisaster design or construction. Similarly, if a code meets all five criteria, including a determination that the thresholds are reasonable, but the damages to the facility do not meet the threshold in the code, eligible funding will be limited to repairs necessary to restore the facility to its predisaster design or construction.

d. Code upgrades that are directly related to damaged elements and systems deemed ineligible pursuant to the five criteria and this policy, but which will enhance a facility's ability to resist similar damage in a future disaster, may be eligible under section 406 hazard mitigation (see FEMA Disaster Assistance Policy DAP9526.1, *Hazard Mitigation Funding under Section 406 of the Stafford Act*).

2. Code Thresholds

a. Codes may contain various types of thresholds, often referred to as "triggers," which, when reached, require that upgrade work be performed in conjunction with the repair of damaged elements. Examples of thresholds include:

i. When repair work exceeds a certain dollar cost or a certain percentage of the building's replacement cost (damage repair thresholds); or

ii. When the damage results in a loss of a certain portion of a building's structural capacity (capacity thresholds) as a result of a disaster.

b. A trigger may mandate different types of upgrades. For instance, a trigger may require that the entire structural system be upgraded or, in addition to upgrading the entire structural system, that non-structural systems (e.g., mechanical, electrical) be brought into



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

conformance with current codes for new construction.

c. FEMA will only pay for upgrade work within the same system (i.e., structural, electrical, mechanical) as the disaster-related damages. There must be a direct relationship between the upgrade work and the disaster damage, per 44 CFR §206.226(d)(1).

3. Section 406(e)(1) of the Stafford Act requires that FEMA-funded repair, restoration, or replacement of a facility be on the basis of the predisaster design, in conformity with current applicable codes, specifications, and standards. The Stafford Act does not require that FEMA provide funding to make an eligible facility meet current codes for new construction, only that FEMA must provide the assistance necessary for an applicant to undertake eligible repairs in a code-conforming manner using code-compliant methods and materials.

4. FEMA has the authority and responsibility under the Stafford Act and the regulations at 44 CFR part 206 to determine which repairs, code-mandated or otherwise, are eligible for assistance. FEMA does not generally fund code-mandated work if the code does not meet the five criteria, even though such work may be required in order to obtain a building, occupancy, environmental, or other permit.

C. Provisions of 44 CFR §206.226(d), the Five Criteria

1. Codes must apply to the type of repair or restoration required (codes for new construction and repair work are often different); in accordance with 44 CFR §206.226(d)(1).

a. Code provisions that require changes or upgrades to a facility must be based on a reasonable and technically supportable relationship to the elements damaged as a result of the disaster event.

b. If FEMA determines that a facility is eligible for replacement, funding will be based on the cost to construct the new facility according to the predisaster design of the facility, and in compliance with current codes for new construction.

c. If a facility, system or element is eligible only for repairs (structural or non-structural), funding will be limited to the repair of the disaster-related damage to the facility or element itself, and to eligible work that is reasonably related to repair of the damaged facility or element, based on codes applicable to repairs. Work to upgrade or change the configuration of systems that sustained disaster-related damages in conformance with certain code provisions will be evaluated for reasonableness on a case-by-case basis. This is true regardless of whether a building official requires the additional work, or the work is needed to obtain a building, occupancy, environmental, or other permit.



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

d. Code provisions that require upgrades to undamaged structural or non-structural elements or systems (e.g., mechanical, electrical) will generally not be eligible for FEMA funding. Such code provisions will be evaluated on a case-by-case basis, consistent with this policy, generally, and subsection VII(C)(1), specifically.

2. Codes must be appropriate to the predisaster use of the facility, as per 44 CFR §206.226(d)(2). Eligible work related to code upgrades, either for repair of damages or for new construction, will be based on the facility's predisaster design or actual use at the time of the disaster. In cases where a facility was being used for a lesser purpose than that for which it was designed, restoration will be eligible only to the extent necessary to restore the immediate predisaster use of the facility. When predisaster use is different from predisaster design, the eligible work will be based on predisaster design or use, whichever is the least costly.

3. Codes must 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, under 44 CFR §206.226(d)(3).

a. "Be found reasonable." FEMA's authority requires it to accept only reasonable claims for Public Assistance grant funding. An examination of reasonableness may involve such factors as:

- i. General reasonableness of the code and the threshold(s);
- ii. Whether the thresholds relate to the type of repair or restoration required by the damage;
- iii. Whether the codes and their thresholds are technically defensible from an engineering perspective; and
- iv. Whether the method of quantifying the damage and the cost of the work is reasonable.

For instance, the inclusion of a very low threshold in a code that would warrant a very large upgrade or reconstruction may be deemed unreasonable. Generally, mandated upgrades to lateral force levels required for new building construction are not considered reasonable when applied to repair work.

b. "Formally adopted" requires that all the requisite steps and actions have been taken by the appropriate legislative body or regulatory authority within the jurisdiction; e.g.,



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

the State or local government. The adopted code must be formally incorporated into the building code or the local ordinance. Design standards, guidelines, policies, industry practices, or other non-mandatory provisions are not acceptable. The effective date of the code must be on or before the disaster declaration date, in accordance with 42 U.S.C. §5172(e)(1). A code will be considered implemented when approved by the appropriate legislative body of the jurisdiction and made a matter of public record as required by that body.

c. FEMA does not recognize codes adopted by private non-profit organizations when determining eligible work. FEMA also does not accept codes adopted by agencies or divisions of State or local governments that are not authorized to set codes or standards applicable to all similar type facilities within the broad governmental jurisdiction of the State or local government, consistent with 44 CFR §206.226(d)(4).

4. Codes must apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility, pursuant to 44 CFR §206.226(d)(4).

a. Code provisions should apply to all similar types and classifications of facilities regardless of the entity that owns the facility. This includes all facilities, whether private or public, eligible or ineligible for FEMA assistance, in the entire governmental jurisdiction or in a particular hazard zone within that jurisdiction.

b. The phrase “similar types and classifications of facilities” refers to the type of use (e.g., hospitals, schools, bridges), or type of structural system (e.g., un-reinforced masonry, welded steel moment frame).

c. In order for FEMA to find that a code and its thresholds are uniformly applied, the threshold provision(s) must generally be triggered by the repair or restoration of facilities damaged from any cause, as well as the renovation of buildings. Code upgrade thresholds triggered by disaster-specific (e.g., earthquake, flood) damages will be evaluated on a case-by-case basis to determine if they meet the five criteria of 44 CFR §206.226(d), specifically 44 CFR §206.226(d)(3) and 44 CFR §206.226(d)(5).

5. For any code in effect at the time of a disaster, it must have been enforced during the time it was in effect, in accordance with 44 CFR §206.226(d)(5).

a. To be eligible, codes must have been enforced prior to the disaster. In the event that there has been no opportunity to enforce the codes, the Regional Administrator is authorized to determine if the enforcement criterion has been substantially met.



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

b. This criterion also requires that a code be enforced in a manner that imposes the same requirements on all projects without regard to ownership (e.g., public or private) or the funding source for the mandated repairs and upgrades. The code cannot be subject to discretionary enforcement by building or permitting officials; it must provide for uniform accountability in the event of noncompliance. FEMA may require additional documentation prior to approving funding, in order to determine whether a code has been uniformly enforced.

c. Because documents to obligate FEMA funds are frequently prepared and approved soon after a disaster, grant awards may be made to a subgrantee based upon previous enforcement of a code by the local jurisdiction and in reliance on its continued enforcement. If, subsequent to an award, this criterion is violated by the local jurisdiction, no further funding of upgrades in compliance with the code will be provided to that facility or to other facilities within the local jurisdiction.

D. Special Considerations

1. The Americans with Disabilities Act (ADA) is an applicable Federal requirement. (See Recovery Division Policy 9525.5, *Americans with Disabilities Act (ADA) Access Requirements*.)

2. Historic

a. In the case of a building listed in, or determined by FEMA to be eligible for listing in the National Register of Historic Properties, 44 CFR §206.226(f)(3) provides that if an applicable standard requires repair in a certain manner, costs associated with that code will be eligible. This is an exception to the cap on funding which states that "eligible costs shall be limited to the less expensive of repairs or replacement," 44 CFR §206.226(f)(2). This exception allows repair costs to exceed replacement costs when there is a code that requires that the building be repaired and requires that the repair be performed in a certain manner.

b. State historic building codes generally encourage code officials to allow less intrusive alternatives to the requirements of the prevailing code. Most often, they do not establish standards that require or otherwise mandate that any particular work be performed. As a result, they usually fail to meet the five criteria. However, if a State historic building code were to establish standards that require or otherwise mandate that particular work be performed, it could be considered prescriptive and would be evaluated using the five criteria.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes all previous guidance on this subject including Response and Recovery Policy 9527.2, *Interim Policy on Construction Codes and Standards for the*



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

Nisqually Earthquake Disaster and Recovery Division Policy 9527.3, Interim Policy on Construction Codes and Standards for the San Simeon Earthquake.

X. **REVIEW DATE:** Three years from date of publication.

//signed//

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Disaster Assistance Directorate



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DISASTER ASSISTANCE POLICY

DAP9527.4

Appendix A

CASE EXAMPLES

Following are case examples for the evaluation of codes using the five criteria.

Case 1: Road shoulders are damaged in a declared event. Repair to predisaster design includes back-filling, compaction and grading. The applicant states that pursuant to the local code, road repairs require construction of paved shoulders, drainage swales, and berms. Upon review of the code, FEMA determines that the code applies to new construction or the rehabilitation of an entire road, but not to the repair of discrete damaged portions of the road shoulders. This code, which would considerably improve and upgrade the predisaster design of the road shoulder, does not apply to the type of repair or restoration work required. The upgrades are thus not eligible for funding pursuant to 44 CFR §206.226(d)(1) and section VII(C)(1) of this policy.

Case 2: A building is damaged in a declared disaster and is eligible for restoration. The damaged building did not have a parking garage prior to the disaster. The applicant requests funding for the construction of a parking garage based on zoning code and other local ordinances. The parking improvements do not restore or replace damaged elements. Because the code provisions related to the parking improvements bear no relationship to the disaster repairs, they do not apply to the type of restoration required and are not eligible for funding in accordance with 44 CFR §206.226(d)(1) and section VII(C)(1) of this policy.

Case 3: A school damaged in a declared disaster is eligible for replacement. The school was constructed for use by 400 students, but had a predisaster student population of 600 students. FEMA assistance would not be available to expand the school to accommodate 600 students, in accordance with 44 CFR §206.201(h). However, if current codes required more square footage per student, the work associated with meeting that current code would be eligible for funding but would be based on the predisaster designed capacity of 400 students.

Case 4: A facility designed as a school was being used as a warehouse at the time of the disaster. Consistent with 44 CFR §206.226(d)(2) and section VII(C)(2) of this policy, it would be funded for repairs in accordance with codes applicable to a warehouse because code upgrades must be based on the predisaster use of the facility. In cases such as this where a facility was being used for a lesser purpose than that for which it was designed, eligible restoration is limited to that necessary to restore the immediate predisaster use of the facility.

Case 5: A facility was designed as a warehouse but was being used as a school at the time of a declared disaster. It was not redesigned as a school. The facility would be funded for repairs



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

in accordance with standards applicable to a warehouse rather than those applicable to the construction of a school, under 44 CFR §206.226(d)(2) and section VII(C)(2) of this policy. In this case, because the facility was never redesigned as a school, eligible work is based on the predisaster design of the facility. When predisaster use is different from predisaster design, the eligible work is based on predisaster design or use, whichever is the least costly.

Case 6: During a declared event, a culvert is washed out causing road damage. Restoring the predisaster design of the damaged road requires replacing the washed out culvert. The permit application to replace the culvert is denied by the state natural resources department, which recommends that a spanning bridge be constructed. There was no written and formally adopted standard that specifies an upgrade from culverts to spanning bridges. The decision of the state permitting official is discretionary and not based on a written, formally adopted, and implemented code. The upgrades are not eligible for funding, pursuant to 44 CFR §206.226(d)(3) and section VII(C)(3) of this policy.

Case 7: A State-owned building is damaged in a declared disaster and is eligible for restoration. A statewide code imposes seismic retrofit standards on all State-owned buildings. The code does not apply to privately owned buildings, although the local jurisdiction has authority over all facilities, both public and private. The State requests funds to upgrade the State-owned facility in compliance with the code. Because the code's upgrade requirements do not apply to all facilities within that jurisdiction, the code does not apply uniformly to all similar facilities, and upgrades are not eligible for funding in accordance with 44 CFR §206.226(d)(4) and section VII(C)(4) of this policy.

Case 8: A fire house, previously identified as one of 20 publicly owned "critical facilities" in a jurisdiction, is damaged in a disaster and is eligible for restoration. A local ordinance in the jurisdiction requires that all "critical facilities" damaged as the result of a natural disaster be upgraded to the standards applicable to new construction for essential facilities (which are considerably more stringent than for non-essential buildings). The 20 publicly owned facilities on the "critical facility" list are not similar with reference to their basic day-to-day function (they include an airport, police station, and library) and the ordinance applies only to selected buildings within a particular occupancy or use category. The ordinance does not apply uniformly to similar types of facilities within the jurisdiction. Funding for upgrades are not eligible pursuant to 44 CFR §206.226(d)(4) and section VII(C)(4) of this policy.

Case 9: Several mobile trailers were damaged as the result of a declared event. The Applicant states that local code requires that the repairs to its mobile trailers include upgrades to the foundation systems (new tie-downs). The Applicant claims that its undamaged trailers have the improved tie-down systems in compliance with the current code. An inspection of a sampling of trailers installed by the applicant prior to the earthquake reflects that none of them



FEMA

DISASTER ASSISTANCE POLICY

DAP9527.4

has the requested tie-down anchorage system. Of the mobile trailers installed after the disaster, only two have the system. The code has not been enforced; therefore, the upgrades are not eligible for funding in accordance with 44 CFR §206.226(d)(5) and section VII(C)(5) of this policy.

Case 10: Two separate disasters damaged unreinforced masonry (URM) police stations located in California and Minnesota. Both buildings are eligible for repair to predisaster condition in conformity with current codes and standards. In both buildings, a number of the URM infill panels sustained insignificant damage; the eligible repair would consist of repointing the mortar in the areas where the cracks occurred. There was also moderate damage to infill panels in both buildings; the eligible repair includes repointing the mortar and removing and replacing damaged masonry bricks with new mortar and grout. Both of the buildings also suffered heavy damage to a number of the infill panels. Due to the severity of the damage, the infill walls need to be replaced. Reinforcement may or may not be necessary to meet the requirements of a code-compliant repair. The eligible repair scope would depend upon the seismic design category of the building (varies by location), the building occupancy category and the type of soil. In this example, replacement of the heavily damaged infill panels in the California building, based upon the location, occupancy category (essential facility), and soil type (liquefiable), calls for steel reinforcement in order to meet the minimum requirements for new construction and the upgrades would be an eligible repair cost. In contrast, the eligible repair costs for the damaged infill walls in the Minnesota facility would, based upon the location, occupancy category, and soil type (stiff soil), consist of removing and replacing the entire infill wall, without steel reinforcement. In these cases, each facility was repaired in a code-conforming manner using code-compliant methods and materials, in accordance with section 406(e)(1) of the Stafford Act and section VII(B)(3) of this policy.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 8, 2000
2. **Response and Recovery Directorate Policy Number:** 9530.1
3. **Title:** Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants.
4. **Purpose:** This policy reiterates FEMA policy on the application of flood insurance reductions for underinsured or uninsured properties located in a Special Flood Hazard Area (SFHA) at the time of a disaster when a LOMA or LOMR is requested and obtained after the declaration date.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making public assistance eligibility determinations.
6. **Background:**
 - A. FEMA provides federal disaster assistance for the repair, restoration, reconstruction or replacement of certain public and Private Nonprofit (PNP) facilities that are damaged by a major disaster as defined in the Stafford Act. In the event that such a facility is damaged by flooding, FEMA is required to reduce the amount of federal assistance in accordance with the Stafford Act and implementing regulations. Specifically, Section 406(d) of the Stafford Act states that if an eligible insurable facility damaged by flooding is located in a SFHA identified for more than one year by the Director or is not covered by flood insurance on the date of such flooding, FEMA shall reduce federal disaster assistance by the maximum insurance proceeds which would have been received had the buildings and contents been fully covered by a standard flood insurance policy. Effective March 1, 1995, the maximum flood insurance coverage limit for a nonresidential building is \$500,000 and the maximum limit for contents is \$500,000.
 - B. There is an exception to this requirement which is specifically noted in the law and in FEMA regulation 44 CFR 206.252, *Insurance requirements for facilities damaged by flood*. A PNP facility which cannot be insured because it is located in a community which is not participating in the National Flood Insurance Program (NFIP) may be exempt from the reduction in Federal assistance pursuant to Sections 406(d)(2) and (3) of the Stafford Act. If the community enters into the NFIP, the PNP may receive Federal disaster assistance provided the required flood insurance is purchased (44 CFR 206.252(b)); if the community does not do so within six months of the declaration, the PNP may not receive any Federal disaster assistance.

- C. Section 406(d) of the Stafford Act requires that the amount of the infrastructure grant be reduced if a facility is located within a SFHA. A SFHA is any land area subject to a one percent or greater chance of flooding in any given year. Flood Insurance Rate Maps (FIRMs) are the official maps used to delineate the SFHAs of a community. SFHAs are designated on these maps as Zones A, AO, AH, A1-30, AE, A99, AR, AR/AO, AR/A1-30, AR/AE, AR/AH, AR/A, VO, V1-30, VE, or V (44 CFR 59.1).
- D. FEMA regulations provide a mechanism by which a community may request changes to the FIRMs (44 CFR Parts 65-70). It is, in fact, the responsibility of a community to assist FEMA in keeping a current and accurate record of floodplain boundaries whether it be based on more current information or physical changes to the floodplain or floodways. A change to an effective FIRM is reflected in a LOMA, LOMR, or a republication of the FIRM.
- 1) A LOMA removes from the floodplain a specific structure or property that was inadvertently included in the designated floodplain on a community's FIRM. The LOMA states that the structure or property was never in the SFHA. A request for a LOMA is typically submitted by an individual, and must include, among other items, a certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest adjacent grade of the structure is above the base flood elevation shown on the community's effective FIRM (44 CFR Part 70).
 - 2) A LOMR is an annotated copy of the FIRM which officially changes the floodplain boundaries along certain waterways in the community. A LOMR may be based solely on more accurate and detailed scientific or technical information or on actual physical changes to the floodplain that affect flooding conditions. Pursuant to 44 CFR 65.3, *Requirement to submit new technical data*, a community is required to submit new scientific or technical data confirming physical changes within six months after the date such information becomes available. Submission of such information is necessary in order that risk premium rates and floodplain management requirements will be based upon current data.
 - 3) FEMA will republish the FIRM when changes are too extensive to show on a LOMR.

Once issued by FEMA, LOMAs and LOMRs are incorporated into the official data or record used in all determinations concerning local floodplain development and flood insurance requirements.

- E. The intent of FEMA regulations governing insurance coverage and disaster assistance funding is to encourage individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance. FEMA meets this intent by limiting otherwise available assistance to flood-damaged structures located in a SFHA; requiring recipients of federal disaster

assistance to obtain and maintain insurance for the future; and prohibiting all future assistance for that facility if an applicant fails to meet the previous requirement.

- F. FEMA recognizes that more detailed and more accurate scientific and technical information may remove a structure from an identified floodplain. FEMA has developed an administrative procedure for amending and revising current FIRMs. Although a FIRM may identify a facility as being located in a SFHA, a LOMA or LOMR may confirm that the structure is actually excluded from the SFHA. It is not the intent of FEMA to unduly penalize an applicant in a major disaster situation whose facility is determined after-the-fact never to have been in the identified SFHA.
- G. This policy addresses how and when FEMA should consider a LOMA or LOMR obtained after a declared disaster when determining the amount of infrastructure grants.

7. Policy:

- A. FEMA will not reduce the amount of the infrastructure grant pursuant to Section 406(d) of the Stafford Act if:
 - 1) The applicant has a request for a LOMA or LOMR submitted and pending prior to the declaration, or the applicant submits a request for a LOMA or LOMR no later than six months following the declaration,
 - 2) The technical data supporting the LOMA or LOMR request reflects actual conditions that existed at the site prior to the flood event, and
 - 3) In the case of a LOMR, the request does not seek to have base flood elevations modified based on new hydrology or man-made changes.
- B. FEMA will reduce the amount of federal assistance until such a time as the applicant has informed FEMA in writing that a LOMA or LOMR has been obtained. Upon receipt of a copy of a LOMA or LOMR, FEMA may reinstate funding, provided the above parameters have been met.
- C. It is the sole responsibility of a Public Assistance applicant to request a LOMA or LOMR if it believes that a structure is not actually located in the identified SFHA as identified on the effective FIRM.
- D. Costs incurred in pursuit of a LOMA or LOMR are not eligible for reimbursement.

- 8. Supersession:** This policy updates and replaces RR #9530.1, *Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants*, dated August 17, 1999.



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** March 19, 2001
2. **Response and Recovery Directorate Policy Number:** 9550.3
3. **Title:** Interim Policy on Fire Suppression Assistance
4. **Purpose:** This revision to the Interim Policy on Fire Suppression Assistance dated April 15, 1999, is intended to clarify and broaden the Federal Emergency Management Agency's (FEMA's) policy on the eligibility of staged resources, mutual aid agreements, declaration delegation, timing of the declaration process, and emergency operations center costs.
5. **Scope and Audience:** The revisions in this policy apply to all fire suppression grants approved since January 1, 2001. This policy is intended to provide guidance for FEMA and State personnel responsible for the administration of the Fire Suppression Assistance Program.
6. **Background:** The Disaster Mitigation Act of 2000 established the Fire Management Assistance Program. The program is scheduled for implementation on October 30, 2001, one year after enactment of the Disaster Mitigation Act. Until such time as implementation occurs, the Fire Suppression Assistance Program remains effective.

In light of the forecasts for the 2001 Fire Season predicting another severe and potentially record setting fire season, we have decided to revise and reissue this policy in an effort to provide States with the fullest level of fire suppression assistance allowable under the law and FEMA regulations until implementation of the Fire Management Assistance Program. This will be a very short-lived policy, and will terminate upon implementation of the Fire Management Assistance Program. This revision to the Interim Policy will not influence the rule making for the Fire Management Assistance Program.

7. Policy:

A. Staging Resources¹

- 1) FEMA may authorize reimbursement to the State for the staging of Federal, in-State (State-owned only), out-of-State, and international resources as part of mobilization and demobilization only after a Fire Suppression Assistance Grant has been approved and the staged resources have been used in response to the approved fire incident.

¹ For the purposes of this policy, "staging" is synonymous with "prepositioning" of resources.

- 2) To receive reimbursement, the State must meet all program requirements, including the floor cost requirements. For reimbursement, all resources must have been specifically requested and staged by the State.
- 3) Reimbursement of staging costs may be eligible for up to thirty days prior to the approval of a fire or fire complex for which Federal, in-State (State-owned only), out-of-State, and international resources were staged.
 - a) Reimbursement of eligible staging costs will be limited to the actual period in which resources were staged.
 - b) Eligible staging costs will be reimbursed on the basis of reasonable costs incurred, up to a maximum of 16 hours/day for each person and 24 hours/day for equipment.
 - c) Suppression costs incurred using the staged resources on unapproved fires during this period are not eligible.
- 4) In addition to staging costs, costs for mobilization to, and demobilization from, the staging area may be eligible for reimbursement.
 - a) Demobilization may be claimed at a delayed date if deployment involved one or more approved events.
 - b) If claiming mobilization and demobilization charges at a delayed date, such charges must be claimed against the first approved fire or fire complex.
- 5) In accordance with 44 CFR Part 13, the State must maintain appropriate records to support expenditures for the staging of Federal, in-State (State-owned only), out-of-State, and international resources.

B. Mutual Aid

- 1) State reimbursement of local governmental and volunteer firefighting organizations may be eligible provided that the local governmental or volunteer firefighting organizations have pre-existing written mutual aid agreements with the State and are authorized and directed by the Incident Commander, before deployment, to participate in the incident.
- 2) The written mutual aid agreement must apply uniformly in all fire incidents where the State or Incident Commander requests local resources, regardless of whether or not the fire is likely to be approved for fire suppression assistance.
- 3) State reimbursement of local governmental and volunteer firefighting organizations also may be eligible in the absence of pre-existing written mutual aid agreements provided that the FEMA-State Agreement for Fire Suppression Assistance² contains a provision designating the State responsible for payment of

² The FEMA-State Agreement for Fire Suppression Assistance is a yearly agreement that once signed is applicable for all fire incidents approved during a calendar year. The Agreement may be amended throughout the year; however, amendments must apply uniformly to all fire incidents approved during the year.

such organizations when authorized and directed by the Incident Commander, before deployment, to participate in the fire incident.

- 4) The written mutual aid agreement or the FEMA-State Agreement for Fire Suppression Assistance must designate a State agency as the Grantee responsible for the monetary reimbursement of the local governmental and volunteer firefighting organizations.
- 5) Reimbursement of Mutual Aid Agreements.
 - a) Reimbursement of fire suppression assistance grants is based upon actual and eligible costs incurred during suppression efforts. Since FEMA recognizes the State as the Grantee under the Fire Suppression Assistance Program, local governmental and volunteer firefighting organizations must submit their expenditures to the State agency designated as Grantee for reimbursement.
 - b) If the State requests and receives reimbursement by FEMA for eligible fire suppression costs incurred by local governmental and volunteer firefighting organizations, the State agency, in its role of Grantee, must disburse payment in a manner consistent with this policy (i.e., as stipulated in written mutual aid agreement or in the FEMA-State Agreement for Fire Suppression Assistance).
 - c) When reimbursing local governmental and volunteer firefighting organizations, we may use the rates specified in written mutual aid agreements or other reasonable rates.
 - d) Reimbursement of local governmental firefighting organizations straight time and overtime will be determined according to the written policies and labor union contracts in effect prior to approval of the fire or fire complex. Such costs must be determined reasonable to be eligible for reimbursement.
 - e) Upon request, the State must be able to provide FEMA with all the documentation of services rendered and costs incurred by local governmental and volunteer firefighting organizations.

C. Timing of the Declaration Process

FEMA shall base the decision to authorize or deny fire suppression on the conditions existing at the time of the State's request for fire suppression assistance.

D. Declaration Delegation

The Executive Associate Director, Response and Recovery Directorate may delegate the declaration authority for fire suppression assistance to the Regional Director. The Regional Director may re-delegate this authority, but re-delegation is limited to the Deputy Regional Director or the Response and Recovery Division Director.

E. Payment of Emergency Operations Center Costs

We have determined that it is appropriate to reimburse the State for emergency operations center (EOC) expenses that are above normal operating costs if the EOC is considered to be a Unified Command Center used for direction and control of fighting declared fires or fire complexes, providing assistance to the management of the fire situation, tracking of fire-related costs, and coordination of the State response. FEMA will reimburse PFT State personnel for their overtime at the established cost share. Overtime costs associated with the EOC must be approved by the Regional Director.

- 8. Supersession:** This policy supercedes the April 15, 1999, Interim Policy on Fire Suppression Assistance and any documents or parts of documents on the use of fire suppression funds for pre-disaster activity, staging of resources, mutual aid, declaration delegation, and the timing of the declaration process.
- 9. Authorities:** Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act), and implementing regulations in 44 CFR Part 206.390-395.
- 10. Originating Office:** Infrastructure Division, Response and Recovery Directorate
- 11. Review Date:** This policy will terminate with the implementation of the Fire Management Assistance Program on October 30, 2001.
- 12. Signature:**

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

- 13. Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999
2. **Response and Recovery Directorate Policy Number:** 9560.1
3. **Title:** Environmental Policy Memoranda
4. **Purpose:** This policy compiles all environmental policy memoranda that have been issued by FEMA National Headquarters and makes them readily available for guidance in administering the Public Assistance Program.
5. **Scope and Audience:** These environmental policy memoranda are the ones in effect as of May 1999. They have been compiled for easy reference by Public Assistance program staff in coordinating Public Assistance grant activities involving environmental issues.
6. **Background:**
 - A. All Federal agencies are required by the National Environmental Policy Act (NEPA) to follow a specific planning process to ensure that agency decision-makers and local governments have considered the environmental consequences of Federal actions. In addition to NEPA, environmental review addresses the requirements of many associated laws and executive orders including: National Historic Preservation Act, Endangered Species Act, Clean Water Act, Clean Air Act and the executive orders on wetlands, floodplains and environmental justice. General guidance to FEMA on environmental considerations is provided by 44 CFR Part 10.
 - B. Environmental policy memoranda have been issued since 1994 by the FEMA Headquarters Environmental Officer to address specific issues.
7. **Policy:**
 - A. The attached environmental policy memoranda have been issued by FEMA National Headquarters as official guidance for the specific issues addressed in them.
 - B. Each region has a Regional Environmental Officer (REO), who is responsible for assuring that the environmental laws, executive orders, and policies are effectively implemented. The REO supports the Public Assistance Program in policy implementation and should be the primary source in the region for interpretation of environmental policy and its application to special situations.

C. The following environmental policy memoranda included as attachments are:

1. Attachment 1 – ENVIRONMENTAL POLICY MEMO #1; Categorical Exclusion (CATEX) of Projects Involving the Acquisition of Damaged Properties and Implementation of E.O. 12898 Concerning Environmental Justice; dated April 18, 1994.
 2. Attachment 2 – ENVIRONMENTAL POLICY MEMO #2; Other Federal Agency Clearance for Environmental Assessments; dated May 24, 1994.
 3. Attachment 3 – ENVIRONMENTAL POLICY MEMO #3; Policy for Projects Completed Without Environmental Review Required by the National Environmental Policy Act (NEPA); dated March 24, 1995.
 4. Attachment 4 – ENVIRONMENTAL POLICY MEMO #4; Availability and Use of the Updated List of Categorical Exclusions Published February 5, 1996, as a Revision of 44 CFR 10.8; dated February 27, 1996.
 5. Attachment 5 – ENVIRONMENTAL POLICY MEMO #5; Documentation of National Environmental Policy Act (NEPA) Categorical Exclusions (CATEX); dated June 20, 1997.
- 8. Supersession:** This policy updates and replaces relevant provisions of previous public assistance policy documents on this subject.
- 9. Authorities:** Robert T. Stafford Act Disaster relief and Emergency Assistance Act, as amended, Section 316; and 44 CFR Part 10.
- 10. Originating Office:** Infrastructure Division, Response and Recovery Directorate
- 11. Review Date:** Two years from date of publication
- 12. Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors

ATTACHMENTS (5)



Federal Emergency Management Agency

Washington, D.C. 20472

APR 18, 1994

OP

MEMORANDUM FOR: Associate Directors
FEMA Regional Directors
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs
Mitigation Division Chiefs
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)
Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #1
Categorical Exclusion (CATEX) of Projects Involving the Acquisition of
Damaged Properties; and Implementation of E.O. 12898 Concerning
Environmental Justice

The purpose of this memorandum is to provide information concerning: 1) the changes to 44 CFR Part 10 (FEMA's Environmental Regulations) as published in an interim rule in the Federal Register on Friday, January 7, 1994; and 2) FEMA policy for the implementation of E.O. 12898 which addresses environmental justice. Copies of both are attached. Effective immediately, this interim rule amends 44 CFR 10 by adding certain purchases of properties to the list of actions that FEMA categorically excludes from reviews under the National Environmental Policy Act (NEPA). Likewise implementation of E.O. 12898 is immediately effective.

Categorical Exclusion of Projects Involving Acquisition of Damaged Properties

This rule is intended to speed the administrative process for acquisition projects which include subsequent conversion to open space and which will not have a significant environmental impact. This CATEX was developed in response to the increased number and scope of properties being acquired by the States and communities to resolve public health and safety concerns following the Great Flood of 1993. By utilizing the new CATEX in conjunction with mitigation program funding, it is intended that the acquisition of significant numbers of qualified properties may be efficiently processed, thereby avoiding repeated damage and threat to public safety associated with those same properties. This CATEX is effective nationwide and applies to all acquisition projects that will be converted to open space regardless of the reason.

This CATEX does not apply to projects involving the relocation of structures or the development of other sites. In addition, a normally excluded acquisition project that has characteristics described under "Actions That Normally Require an Environmental Impact Statement" (44 CFR 10.8(b)(2)) or that would trigger any criteria described under "Extraordinary Circumstances" (44 CFR 10.8(e)) will require that the appropriate assessment process be followed.

Additionally, the new CATEX does not change FEMA's responsibility to comply with other environmental statutes. These include, but are not limited to, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and the Resource Conservation and Recovery Act. In many communities, historic properties may be a part of an acquisition project. Consequently, the National

Historic Preservation Act must be followed in the acquisition process, including consultation with the State Historic Preservation Officer (SHPO). Consultation with the Advisory Council on Historic Preservation should be coordinated by the SHPO.

FEMA's responsibilities under Executive Orders 11988 and 11990, FEMA's implementing regulations at 44 CFR 9, and FEMA's National Flood Insurance Program regulations at 44 CFR 59 through 77 are not affected by the new CATEX.

Implementation of E.O. 12898 Concerning Environmental Justice

On February 11, 1994 President Clinton signed E.O. 12898, entitled, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." (Copy attached) The Executive Order directs Federal agencies "to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States" A preliminary assessment of FEMA programs indicates that some of the hazard mitigation projects proposed in the floodplain may potentially fall within the scope of agency actions which have a greater impact on minority and low-income populations.

The NEPA environmental review process provides a convenient vehicle for fulfilling FEMA's environmental justice responsibilities. This environmental justice consideration should be included in the assessment of socioeconomic or other relevant impacts of proposed actions and their alternatives in the environmental assessment (EA) or the environmental impact statement (EIS). For those actions which would otherwise qualify as categorical exclusions (CATEX), and thus not require a NEPA review, the Regional Director shall assess the impact of the proposed action on minority and low-income populations and make a finding on whether the proposed action would have a "disproportionately high and adverse effect" on the populations identified in E.O. 12898. This finding shall be incorporated in the documentation supporting a CATEX for a proposed action. If the proposed action is deemed to have a disproportionately high and adverse impact, mitigative actions should be incorporated as part of the proposed action.

For example, in the acquisition of residential property in the floodplain to remove structures from the floodway pursuant to Section 404 of the Stafford Act, it appears that these properties tend to represent the least expensive real estate in the area and are more likely be owned by a lower income population than the homes located above the floodplain. If the Regional Director assesses the proposed action and determines that the proposed acquisition would have a disproportionately high and adverse effect on a minority and/or low-income population because replacement housing is scarce, relocation assistance might be recommended as a mitigative action.

If you have any questions regarding this new CATEX or the implementation of E.O. 12898, contact my office at 202-646-3011.

Attachment

Executive Order 12898 (Federal Register Vol. 59, No. 32, Wednesday 2/16/94)

cc Director
 Chief of Staff
 Public Affairs
 Congressional Affairs
 Regional Operations



Federal Emergency Management Agency

Washington, D.C. 20472

MAY 24, 1994

OP

MEMORANDUM FOR: Associate Directors
Administrators
Regional Directors

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO # 2
Other Federal Agency Clearance for Environmental Assessments

Questions have arisen concerning the level of input and clearance required from other Federal agencies for environmental assessments (EA) generated by FEMA. This memo is intended to clarify those questions.

When an environmental assessment is done our regulations (44 CFR 10.9(c) and the Council on Environmental Quality regulations (40 CFR Parts. 1500-1508) ask that we involve affected Federal, State, and local agencies and concerned groups to the extent practicable. In addition, however, there are numerous other requirements that must be considered in evaluating each project. Three that are of particular importance address:

- 1) The identification of historic, archeological or cultural resources which could require a section 106 consultation with the State Historic Preservation Officer (36 CFR 800).
- 2) The occurrence of threatened or endangered species which could require a section 7 consultation with the Fish and Wildlife Service (50 CFR Part 402).
- 3) The undertaking of any work, structure, or activity occurring in, or affecting any body of water in the United States, including wetlands and coastal waters which could require review by the U. S. Corps of Engineers to determine whether some level of a section 404 (40 CFR Part 6) permit is required.

Each of these resources should be discussed in the "existing conditions" portion of the EA indicating a determination of whether they are or are not found in or near the project area. If it is shown that the project results in adverse impacts to any of these resources, then specifically defined procedures and consultations may be required and compliance with these procedures must be documented in the EA .

If you have questions in any of these areas please feel free to call (646-3610) or E-mail me. I would like to move the EAs through the review process as quickly as possible and having these three areas fully addressed will help immensely.



Federal Emergency Management Agency

Washington, D.C. 20472

May 3, 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs
Mitigation Division Chiefs
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #3 (Issued 3/24/95, Revised and
Reviewed at CEQ 3/1/96)
Policy for Projects Initiated Without Environmental Review Required by
the National Environmental Policy Act (NEPA)

This memorandum, which reissues ENVIRONMENTAL POLICY MEMO #3, maintains the original policy but includes clarifications recommended by the Council on Environmental Quality.

Occasionally FEMA funding is requested for an action that has been initiated and/or completed prior to environmental review and documentation as required by NEPA and outlined in 44 CFR Part 10, FEMA's Environmental Considerations. Often when these actions occur, the applicant has already requested and attained local, state and Federal permits required for such actions. However, due to lack of prior Federal involvement, the full NEPA environmental review process has not been followed in which reasonable alternatives and their impacts are fully investigated and documented **before** the action takes place.

There is minimal guidance in FEMA's regulations on how to address such situations, and this memorandum is intended to clarify policy and procedures for such actions.

Policy: It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding.

Exception: A statutory exclusion to this requirement already exists in the Stafford Act. An action taken or assistance provided pursuant to Sections 402, 403, 407, 502, or 422, or an action that has the effect of restoring a facility substantially to its condition prior to the disaster or emergency pursuant to Section 406, shall not be deemed a major Federal action affecting the environment. In this case, no NEPA documentation is required and no coordination with the Environmental Officer would be required. Be aware, however, this exclusion does **not** relieve FEMA of the responsibility to comply with other Federal statutes, permits, and requirements such as, National Historic Preservation Act, Endangered Species Act, Section 404 of the Clean Water Act, Executive Orders 11988, 11990, and 12898, etc.

In addition, there may be a rare situation where an extension of this exception can be considered. Actions proposed for FEMA funding which were completed without fulfilling the documentation and procedural requirements of NEPA, but which were initiated in an emergency situation to prevent or reduce an immediate threat to life, health, property or severe economic losses may be considered, if otherwise eligible. Situations that might be considered under this extension could be HMGP or Public Assistance actions which were taken to avoid imminent loss from an ongoing event or from a highly probable future event whose anticipated occurrence could not possibly allow appropriate time for NEPA review.

The Regional Director has responsibility for determining the immediate course of action in such exceptional situations, but must coordinate with the Environmental Officer when these requests are made. The following paragraphs outline the procedure and documentation required when the Regional Director determines that an already initiated and/or completed project might qualify to be considered under this extension.

Procedure: If an action is proposed which is not statutorily excluded from the NEPA process and has been or will be initiated and/or completed prior to NEPA documentation due to the circumstances noted above, the Regional Director should contact the Environmental Officer at the earliest possible time so that the Environmental Officer may consult with the President's Council on Environmental Quality (CEQ), the body which has oversight for Federal agency NEPA compliance. If it is determined that the proposed action is likely to qualify under this extension then the following steps will be required:

1) The Regional Director will see that all substantive Federal, state and local statutes, regulations, and permits (local building permits, USACE 404 Permits, Section 106 historic preservation consultation, Endangered Species consultation, Executive Order considerations, etc.) are satisfied for the action. This information is to be documented in an "Environmental Record of Completed Action" which is approved by the Regional Director and submitted for review by the Environmental Officer. This document should include:

- (a) The purpose and need for the action, specifically defining its emergency nature;
- (b) A description of the action;
- (c) A description of the preexisting affected environment;
- (d) A description of the potential and actual impacts to the environment, including a summary of the results of all environmental evaluation conducted prior to and since the completion of the project, supporting consultation letters from applicable agencies, and a description of any environmental mitigation measures which were implemented; and
- (e) A description of any significant unaddressed environmental impacts resulting from the action and the mitigation measures required to reduce these impacts below the level of significance.

2) With the document provided, the Environmental Officer, in consultation with the Regional Director and CEQ should determine whether the action initiated and/or completed prior to NEPA review has potential of actual significant impacts not previously mitigated and whether or not those impacts can be mitigated. Examples of impacts that could be of issue include significant impacts to the natural environment, irretrievable loss of critical habitat, the taking of threatened or endangered species, or unacceptable upstream or downstream effects. Where there is reason to suspect that the action did have a significant impact on the environment, but that the actual impact cannot be verified, significant impact will be presumed. If the significant impacts can be mitigated to below a level of significance, public notice will be given and the necessary mitigation measures will be required to be implemented before funding can be considered. A recommendation that the action not receive funding would result where the significant impacts cannot be mitigated.

Please explain this policy to the states and potential applicants to ensure they are clear on how the requirements of the NEPA regulations can preclude the funding of completed actions except in the rare situation define above. If you have any questions on this policy, please contact Brent Paul at (202) 646-3032.



Federal Emergency Management Agency

Washington, D.C. 20472

FEB 27, 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #4
Availability and Use of the Updated list of Categorical Exclusions
Published February 5, 1996 as a Revision of 44 CFR 10.8.

This memorandum distributes and discusses use of the final rule for the revision of 44 CFR 10.8 which became effective February 5, 1996, the day it was published in the Federal Register. This rule generally expands the categories of FEMA actions that normally would not require an environmental impact statement or an environmental assessment to fulfill the requirements of the National Environmental Policy Act (NEPA). Actions fitting these categories are commonly referred to as categorical exclusions or CATEXs.

Any action that FEMA initiates or funds whether through program funds (mitigation, public assistance, flood insurance, etc.), funds provided to states, or internal administrative or construction expenditures must undergo environmental review pursuant to NEPA unless that action is statutorily excluded from NEPA by section 316 of the Stafford Act or qualifies as an emergency action under 44 CFR 10.13. NEPA review, for a significant portion of those actions, can be satisfied by a relatively simple documented determination that the action fits one of the exclusion categories defined in this rule. This CATEX documentation, as with any NEPA documentation must be completed prior to initiation of the action.

When it is determined that an action fits an exclusion category, two additional considerations must be addressed. First, it must be determined if extraordinary circumstances exist. The identification of one or more extraordinary circumstances associated with an action, that would otherwise qualify for a CATEX, can override that CATEX and trigger the need for an EA or EIS. (The list of extraordinary circumstances, which has also been revised in this rule change, is found in 10.8.(d)(3)). Second, there are other environmental and related Federal statutes and Executive Orders (EOs) that are often addressed within the NEPA process which, however, have their own separate legally enforceable requirements and penalties. Actions whose NEPA review is shortened by being CATEXed or actions excluded from NEPA review for statutory or emergency reasons, must still meet the full requirements of these other statutes and EOs which address such areas as wetlands, historic preservation, cultural resources, endangered species, hazardous materials, etc.

The CATEXs on this revised list can be immediately applied to any qualifying project. A project for which an environmental assessment has been started, but which now qualifies for a CATEX may be processed as a CATEX. The exception might be those projects where a formal review or comment process for the EA has been publicly initiated by published announcement.

While we hope these new CATEXs have captured all the areas where CATEXs are needed and can be used, we realize that the identification exclusion categories is the result of ongoing experience. Therefore the submission of additions and modifications to this list is encouraged and will be thoughtfully considered by this office. Please direct any questions on this memo to Brent Paul (202/646-3032).

Enclosure

(Federal Register Vol. 61, No. 24, page 4227-32, February 5, 1996. Also see 44CFR 10.8.)

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Part 4100**

[WO-330-1020-00-24 1A]

RIN 1004-AB89

Grazing Administration, Exclusive of Alaska; Amendments to the Grazing Regulations; Correction**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Correcting amendments.

SUMMARY: This document contains correcting amendments to the final amendments to the grazing regulations of the Bureau of Land Management, published on February 22, 1995, in the Federal Register [60 FR 9960], and to the pre-existing grazing regulations not affected by the 1995 amendments.

EFFECTIVE DATE: February 5, 1996.**FOR FURTHER INFORMATION CONTACT:** Matthew Reed, 202-452-5069.

SUPPLEMENTARY INFORMATION: The Department of the Interior is making correcting amendments to the final regulations pertaining to livestock grazing published in the Federal Register on February 22, 1995 [60 FR 9960], and to the pre-existing grazing regulations not affected by the 1995 amendments. The following revisions are made as editorial, and not substantive, changes. The changes include correction of erroneous cross-references, removal of an unnecessary and inaccurate paragraph and removal/replacement of several inaccurate or unnecessary acronyms, words and phrases.

The Department of the Interior has determined that, because this rulemaking makes only correcting amendments to the final rulemaking published on February 22, 1995, it is a rule of organization, procedure and practice and does not require notice and an opportunity for public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)(A)). Therefore, these correcting amendments are published as a final rulemaking effective February 5, 1996. The Department of the Interior has determined that this rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. Neither an environmental impact analysis nor a regulatory flexibility

analysis is required. This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The principal author of this final rulemaking is Matthew Reed, Regulatory Management Team, Bureau of Land Management.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record-keeping requirements.

For the reasons stated in the preamble and under the authority of 43 USC 1740, part 4100, group 4100, subchapter D, of subtitle B of chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 4100—[AMENDED]

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

- 1A. Section 4100.0-3(g) is removed.
2. In § 4110.2-2(b), the phrase "grazing preference" is revised to "permitted use."
3. In § 4110.2-3(a)(2), the phrase "cooperative agreements" is revised to "cooperative range improvement agreements."
4. In § 4120.2(e), the word "multiple" is removed.
- 5.-6. In § 4120.3-1(c), the section reference "§ 4130.6-2" is revised to read "§ 4130.3-2."
- 7.-8. In § 4120.3-2 (a), (b) & (d), the acronym "BLM" is revised to read "the Bureau of Land Management."
9. In § 4120.3-4, the phrase "cooperative agreements" is revised to read "cooperative range improvement agreements".
10. In § 4120.3-6(d), the phrase "cooperative agreement" is revised to "cooperative range improvement agreement."
11. In § 4120.3-8(b), the acronym "BLM" is revised to read "the Bureau of Land Management."
12. In § 4130.1-2(a), the section reference "§ 4130.2(d)" is revised to read "§ 4130.2(e)."
13. In § 4130.2(g) introductory text, the acronym "AMP" is revised to read "allotment management plan."
14. In § 4130.2(g)(1), the word "nonuse" is revised to "use."
15. In § 4130.2(i), the section reference "§ 4130.6-2" is revised to read "§ 4130.3-2."
16. In § 4130.2(i), the section reference "§ 4130.4-1" is revised to read "§ 4130.6-1."

17. In § 4130.4(a), the section reference "§ 4130.7-3" is revised to read "§ 4130.8-3."

18. In § 4130.8-1(c), the acronyms "BLM" and "AUMs" are revised to read "the Bureau of Land Management" and "animal unit months" respectively.

19. In § 4130.8(d), the acronym "AUM" is revised to read "animal unit month."

20. In § 4140.1(a)(4), the phrase "range improvement cooperative agreements" is revised to read "cooperative range improvement agreements."

21. In § 4140.1(b) introductory text, the phrase "shall be subject" is inserted after the word "rangelands" and prior to the phrase "to civil and criminal penalties."

22. In § 4140.1(b)(1)(iv), the section reference "§ 4130.5(c)" is revised to read "§ 4130.7(c)."

23. In § 4140.1(b)(8), the phrase "cooperative agreements" is revised to read "cooperative range improvement agreements".

24. In § 4150.3(e), the section reference "§ 4160.1-2" is revised to read "§ 4160-1."

25. In § 4160.2, the phrase "affected interests" is revised to read "interested public."

26. In § 4160.3(b), the pronoun "his" is revised (four times) to read "her/his."

27. In § 4160.4, the word "decision" is revised to read "appeal" the first time it appears in the second sentence.

Dated: January 26, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-2193 Filed 2-2-96; 8:45 am]

BILLING CODE 4310-84-P

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 10**

RIN 3067-AC41

Environmental Considerations/ Categorical Exclusions**AGENCY:** Federal Emergency Management Agency (FEMA).**ACTION:** Final rule.

SUMMARY: This rule revises the categories of actions or categorical exclusions that normally would not require an environmental impact statement or environmental assessment. These changes are intended to reduce the administrative processes and decrease the time required for project funding and implementation, while still ensuring that FEMA satisfies

environmental concerns and issues. The changes are consistent with Federal directives, regulations and statutes.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Shivar, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646-3610.

SUPPLEMENTARY INFORMATION: On August 3, 1995, FEMA published a proposed rule for comment in the Federal Register, 60 FR 39694. The proposed rule contained changes responding to numerous suggestions for additional exclusion categories and for modifications to existing exclusion categories. They reflect several years' experience on the types of actions that generally receive a finding of no significant impact after FEMA makes an environmental assessment. These changes are intended to speed the approval of those projects with no potential for significant environmental effects and to allow attention to be focused on those projects with potential environmental concerns. The publication of the proposed rule allowed for a 45-day comment period ending on September 18, 1995. During this period, comments were received from one state, two Federal agencies, an environmental group and from within FEMA. The concerns identified in these comments are addressed later in this section.

In order to produce a complete and effective update of exclusion categories, we conducted a review of the environmental assessments (EA) and the findings of no significant impact (FONSI) that FEMA has issued. In the last few years we have completed over 340 EAs, but there is only one case where an environmental impact statement (EIS) was written. While many EAs identified impacts that were able to be mitigated below the level of significance, we found that the clear majority of actions have no significant impact. Reviewing this last group revealed specific types of projects that historically did not produce significant environmental effects. In conjunction with the review of FEMA's EAs, we conducted a literature review of other Federal documents containing similar types of exclusions to ensure consistency of FEMA's exclusions with other Federal agencies' regulations. The results of these two reviews are the basis for these changes to FEMA's list of exclusion categories.

These changes are also in keeping with the Council on Environmental Quality's guidance to Federal agencies

on this subject (48 FR 34263, July 28, 1983). That guidance encourages Federal agencies to add flexibility to implementing procedures to allow new types of actions to be classified as categorical exclusions (CATEXs) with minimal documentation required. This is done by developing more broadly defined categories as well as providing examples of typical CATEXs, rather than a comprehensive list, so that specific actions not previously listed by an agency can be considered for CATEX status on a case-by-case basis.

These revised exclusion categories will not affect FEMA's responsibility to comply with all other applicable local, state, and Federal laws and regulations relating to health, safety and the environment. This encompasses Federal environmentally oriented statutes including, among others: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archaeological and Historic Preservation Act. It would not affect FEMA's responsibilities under Executive Orders 11988, 11990, and 12898. Nor would it affect FEMA's implementing regulations at 44 CFR part 9, or FEMA's National Flood Insurance Program rules at 44 CFR parts 59 through 77.

A point of clarification of the term "categorical exclusion" is necessary in the discussion of this revised rule. Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 93-288, as amended, 42 U.S.C. 5159, provides (1) for a statutory exclusion from NEPA requirements for certain actions taken under specific sections of that Act (§§ 402, 403, 407 and 502), and (2) for those actions under § 406 of the Stafford Act that have "the effect of restoring a facility substantially to its condition prior to the disaster or emergency." While statutory exclusions are exempted from all NEPA documentation, actions that are categorically excluded from preparation of an EA or an EIS must be documented by FEMA under this part. However, as with actions categorically excluded, an action statutorily excluded from NEPA is *not* exempt from the requirements of the other environmentally oriented statutes indicated above. To help determine the level of environmental review required and, specifically, when neither an EA nor an EIS is likely to be required for a proposed action, the list

of exclusion categories presented by this rule is comprehensive in that it includes both categorical exclusions and those actions that are statutorily excluded (denoted by [SE]).

The list of exclusion categories is presented with administrative type actions appearing first followed by emergency and other actions. The administrative actions relate mainly to activities that in and of themselves do not normally impact the environment, such as: planning, design, procurement, acquisition, training, studies and other administrative processes. The emergency and other actions mainly address emergency, disaster-related, or other activities that could impact features of the human and natural environment, such as: construction; maintenance or repair of facilities or vegetation; relocation of structures; floodproofing; emergency response and deployment; physical and other assistance.

Since this revision republishes and redesignates some paragraphs, and modifies other paragraphs, the following discussion is directed only at those items that are added, removed, or revised from the current 44 CFR § 10.8.

44 CFR § 10.8 is revised to redesignate and revise the discussion of statutory exclusions to recognize the difference between the basic nature of the statutory exclusion and of the CATEX. We also updated references to sections of the Stafford Act.

New paragraph (d)(2) modifies the nomenclature "List of categorical exceptions" to "List of exclusion categories" to reflect the categorical nature of the list as opposed to a list of exceptions. This change is also reflected in new paragraph (d)(6).

New paragraphs (d)(2) (i), (ii), (iii), (v), (vii), and (x) make minor wording revisions and clarify the language of existing categories but do not change their general substance.

New paragraph (d)(2)(iv) addresses inspection and monitoring processes that are part of the compliance requirements for various programs. These activities are passive as to the environment. Any federally funded action that the inspections or monitoring might recommend is subject to the NEPA process.

New paragraph (d)(2)(vi) expands the scope of the old paragraph (d)(2)(iii) on procurement of goods and services for operational support of facilities to include support of emergency operations together with temporary storage of those goods.

Paragraph (d)(2)(viii) addresses the purchase or leasing of existing facilities

when land use requirements allow the proposed use.

Paragraph (d)(2)(ix) covers the acquisition, installation, or operation of utilities, gauges, communication and warning systems when using existing systems or facilities, or currently utilized infrastructure rights-of-way.

Paragraph (d)(2)(xi) would allow for the planting of indigenous vegetation, for example, to reduce erosion or fire hazard.

Paragraph (d)(2)(xii) applies to the removal of uncontaminated structures, improvements or debris to sites permitted for such material. The paragraph also applies to the demolition associated with the removal of structures or improvements.

Paragraph (d)(2)(xiii) applies to small, individual structures that are to be relocated to a new site, where FEMA is not involved in the selection or development of the new site.

Paragraph (d)(2)(xiv) excludes the act of granting a community exception for residential basement floodproofing pursuant to the National Flood Insurance Program.

Paragraph (d)(2)(xv) provides to actions under the mitigation and other programs a slightly broader exclusion than that available by statute to actions funded pursuant to § 406 of the Stafford Act whereby a facility can be restored to its approximate preexisting design, function and location. The broader interpretation also applies to § 406 actions. Some existing statutory exclusions are incorporated into the CATEX list in this paragraph and in paragraph (d)(2)(xix).

Paragraph (d)(2)(xvi) allows for improvements to an existing facility or for the construction of small scale mitigation measures in an already developed and appropriately zoned area on previously disturbed or graded lot(s). This includes improvements in the disturbed portion of a lot of an existing building, culverts, and berms within the previously disturbed perimeter of a road, storm drainage or utility system or existing facility. Any action covered by this category cannot change the basic function, exceed the capacity of other system components, violate land use requirements, or operate in a way as to affect the environment adversely.

Paragraph (d)(2)(xvii) permits actions within enclosed facilities which comply with local construction, noise, pollution and waste disposal regulations.

Paragraph (d)(2)(xviii) excludes, in addition to the existing category for the deployment and support of Emergency Support Teams, direct response activities including activation and support of the Catastrophic Disaster

Response Group, Regional Operations Centers, Emergency Response Teams, Urban Search and Rescue Teams, and situation assessment, reconnaissance and other data gathering efforts in response to and for recovery from a disaster.

Paragraph (d)(2)(xix) excludes emergency assistance and relief activities and rephrases terminology to reflect the amended Stafford Act. This includes general Federal and essential assistance (Stafford Act §§ 402 and 403), food coupons and commodities (§§ 412 and 413), and Federal emergency assistance (§ 502). Debris removal (§ 407) becomes less restrictive. The temporary housing definition (§ 408) is simplified as are the definitions of the individual and family grant (§ 411) and community disaster loan (§ 417) exclusions.

In paragraph (d)(3) the list of Extraordinary Circumstances, which was § 10.8(e), is updated to clarify the circumstances that may cause an action that is normally categorically excluded to have the potential for significant environmental impact. The previous paragraph (e)(2) describing "actions in highly populated or congested areas" is replaced in paragraph (d)(3)(ii) with a more workable "actions with a high level of controversy." In paragraph (d)(3)(iv) clarifying language is added to the term "unproven technology." In paragraph (d)(3)(vi) the hazardous substance condition was changed from "use" to "presence" and linked to levels that would trigger local, state, or Federal requirements. Paragraph (d)(3)(vii), which addresses flood plains or wetlands, is expanded to include other special or critical resources, i.e., coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, etc.

Three new categories are added to insure that adverse health and safety effects, paragraph (d)(3)(viii); the potential violation of Federal, state, local or tribal requirements, paragraph (d)(3)(ix); and cumulative impacts, (d)(3)(x); will now be considered as extraordinary circumstances.

Paragraph (d)(5), Revocation, is added to assure that if the conditions upon which a categorical exclusion was granted have changed or new information is discovered indicating that the action no longer meets the conditions of the categorical exclusion, the responsible official must revoke the exclusion and ask for a full environmental review.

Paragraphs (d)(6)(i) and (d)(6)(ii), which address changes to the list of exclusion categories, adds "directorates" to "offices and

administrations" to more correctly reflect all the organizational entities in FEMA.

The comments received during the comment period centered on four areas: (1) hazardous materials; (2) exception categories being too expansive; (3) extraordinary circumstances; and (4) clarification of terms and the scope of several of the proposed categories. In addition, it has been suggested that some of the categories could be combined and that some could be eliminated because they were not germane to FEMA activities. The following discussion addresses those comments directed at the substance of the proposed rule.

Several comments expressed concern about the integration of hazardous waste requirements into the categories, specifically the original sections (d)(2)(viii), (x), (xiv), and (xv). That integration already exists in the form of the extraordinary circumstance defined in (3)(vi) and in general FEMA policy regarding hazardous materials. The extraordinary circumstance would override the categorical exclusion if special hazardous material situations were identified associated with any categorically excluded action. In addition, it is FEMA policy that before the acquisition of property all state and local hazardous material ordinances must be adhered to and that the property itself must be free of contaminants. Original sections (d)(2)(vii) and (d)(2)(x) have been dropped and sections (d)(2)(xiv) and (d)(2)(xv) are adequately covered by existing policy and the extraordinary circumstance.

Commenters felt that the proposed (d)(2)(xvii) was too expansive in what it could include and that it went beyond the definition used to describe what was allowed by the statutory exclusion of the Stafford Act, 42 U.S.C. 5159. The new wording intentionally goes beyond that of the statutory exclusion. Our experience in working with this type of project indicates that many projects that truly fit the categorical exemption criteria were not covered and this language now includes them for all FEMA programs. Any project qualifying for this exclusion that is not covered by the statutory exclusion will still be evaluated for extraordinary circumstances and will lose its categorical exclusion if any of those circumstances apply.

One comment suggested adding a new extraordinary circumstance to section (d)(3) that could override the categorical exclusion of an action if that action impacted the recovery of an endangered species or could be used be

affirmatively used in that recovery. It was felt that the existing endangered species extraordinary circumstance, (d)(3)(v), would be invoked by the mere presence of a protected species and once the environmental assessment was required the opportunity for affirmatively considering recovery efforts would be available.

A suggestion was made to modify the wording of the extraordinary circumstance (d)(3)(vii) which addresses "special status areas or other critical resources" to include rare habitat that may not be on the critical list. This modification has been made by adding the quality of "uniqueness", i.e., "special status areas or other unique or critical resources."

The addition of a new extraordinary circumstance, (d)(3)(x) was suggested to address situations where normally excludable actions have impacts which by themselves are not significant, but when combined with impacts of other past, present, or foreseeable future activities have the potential for significant impact.

Two proposed categories addressing the acquisition of real property for future use, (d)(2)(viii), and the transfer of administrative control, (d)(2)(x), were eliminated as not germane to normal FEMA activities.

Newly designated sections (c)(1), (c)(2), (d)(2), (d)(2)(vi), (d)(2)(vii), (d)(2)(ix), (d)(2)(x), (d)(2)(xii), (d)(2)(xiii), (d)(2)(xv), (d)(2)(xvi), (d)(2)(xix)(F), (d)(3)(v), (d)(3)(vi), and (d)(5) have been modified from the corresponding proposed sections in response to specific suggestions to improve clarity and definition. The explanation presented above which addresses any of these modified sections reflects the new changes since the proposed rule was published.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, exclude this rule according to § 10.8(c)(2)(i). FEMA has not prepared an environmental impact statement.

Regulatory Flexibility Act

I certify that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds eight categories to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) will affect adversely the availability of disaster assistance funding to small entities, (2) will have significant secondary or incidental effects on a

substantial number of small entities, or (3) will create any additional burden on small entities.

Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, Regulatory Planning and Review, 3 CFR, 1994 Comp., p. 638. To the extent possible this proposed rule adheres to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, 44 CFR part 10 is amended as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 et seq.; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E. O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

2. Section 10.8 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 10.8 Determination of requirement for environmental review.

* * * * *

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159;

(1) Action taken or assistance provided under sections 403, 407, or 502 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties and the associated demolition/removal [see paragraph (d)(2)(xii) of this section] or relocation of structures [see paragraph (d)(2)(xiii) of this section] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;

(x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;

(xi) Planting of indigenous vegetation;

(xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;

(xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;

(xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the

completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications

(§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically

excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, or archaeological, cultural, historical or other protected resources;

(vi) Presence of hazardous or toxic substances at levels which exceed Federal, state or local regulations or standards requiring action or attention;

(vii) Actions with the potential to affect special status areas adversely or other critical resources such as wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(x) Potential for significant cumulative impact when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting an exclusion, the Regional Director determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.*

(i) The FEMA list of exclusion categories will be continually reviewed and refined as additional categories are

identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and the Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the Federal Register at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

Dated: January 26, 1996.

Harvey G. Ryland,
Deputy Director.

[FR Doc. 96-2087 Filed 2-2-96; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-32; RM-8545]

Radio Broadcasting Services; Parker and Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Southern Broadcasting Companies, Inc., reallots Channel 233C from Port St. Joe, Florida to Parker, Florida, and modifies Station WPBH(FM)'s license accordingly. See 60 FR 15275, March 23, 1995. Channel 233C can be allotted to Parker in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.9 kilometers (29.8 miles) southeast at Station's WPBH(FM)'s presently licensed transmitter site. The

coordinates for Channel 233C at Parker, Florida, are North Latitude 29-49-09 and West Longitude 85-15-34. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-32, adopted December 15, 1995, and released January 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 233C at Port St. Joe, and by adding Parker, Channel 233C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-2280 Filed 2-2-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-79; RM-8620]

Radio Broadcasting Services; De Kalb, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Choctaw Broadcasting, allots Channel 289C2 to De Kalb, Mississippi,

as the community's first local aural transmission service. See 60 FR 31277, June 14, 1995. Channel 289C2 can be allotted to De Kalb, Mississippi, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C2 at De Kalb are 32-46-03 and 88-39-03. With this action, this proceeding is terminated.

DATES: Effective March 15, 1996. The window period for filing applications will open on March 15, 1996, and close on April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-79, adopted January 16, 1996, and released January 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding De Kalb, Channel 289C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-2279 Filed 2-2-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-136; RM-8682]

Television Broadcasting Services; Sioux Falls, SD

AGENCY: Federal Communications Commission.



Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Regional Environmental Officers

FROM: Richard S. Shivar [signed]
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #5
Documentation of National Environmental Policy Act (NEPA) Categorical Exclusions (CATEX)

The amount of environmental analysis and documentation required for FEMA actions that are categorically excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to NEPA, as implemented at 44 CFR Part 10 may be reduced according to the terms of this policy memo. After consultation with the Council on Environmental Quality (CEQ), FEMA has concluded that it is appropriate to reduce the amount of CATEX documentation required by FEMA for certain categories of action that, due to the nature of the action, have little potential to impact the environment. The determination that a FEMA action qualifies as a CATEX is under the authority of the Regional Director (44 CFR 10.8(d)(4)) or the Associate Director when addressing programmatic or directorate activities. In regions with a Regional Environmental Officer (REO), the oversight responsibility of CATEX determination and appropriate level of CATEX documentation ultimately rests with the REO.

This memo defines three levels for the administrative recordation of a CATEX:

Level 1 — No Documentation

Categorically excludable FEMA actions that are of a day-to-day administrative nature and generally have no potential to impact the environment require no NEPA documentation. These actions are described in exclusion categories: 44 CFR 10.8(d)(2)(i), (ii), (iii), (iv), (v), (vi), (viii), (x), (xi), (xiv), (xviii), and (xix) (see attachment). Unless available information indicates to the contrary, extraordinary conditions need not be addressed at this level.

Level 2 — Notation

Categorically excludable actions that generally have no potential to impact the environment require no documentation except that which might be necessary with respect to historic resources. These actions are described in exclusion categories (vii), (ix), (xii), (xiii), (xv), and (xvii). When required the administrative record should document all consultation and agreements implemented to comply with the National Historic Preservation Act (NHPA). If the action is in compliance with the NHPA, the only NEPA recordation required is the notation of the particular qualifying CATEX on the application, approval, or funding document. The potential for extraordinary circumstances related to the proposed action must still be addressed but may be determined by FEMA. If the nature of a particular action is such that extraordinary circumstances can be expected, it should be reviewed and documented at Level 3.

Level 3 — Full Documentation

Any action that can be Categorical Excluded and is not covered in Levels 1 and 2 requires a full CATEX review and documentation as described in the FEMA NEPA Desk Reference. This includes actions

described in category (xvi) or actions in any category where there is an expectation of possible extraordinary circumstances. Since these actions have some potential to impact the environment, a careful inquiry to identify extraordinary circumstances is required, including consultation with resource agencies as appropriate. Because of the potential for extraordinary circumstances and, thus, for an EA to be needed, FEMA must conclude NEPA review and documentation of these actions prior to initiation of the action.

General Considerations

For actions that qualify for a CATEX at any level, as with any statutorily excluded actions, there still remains the requirement to comply with other Federal statutes, such as the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, etc., as well as Executive Orders on Floodplains, Wetlands, and Environmental Justice. NEPA documentation, i.e. CATEX (level 3), EA, and EIS, should contain or reference the letter, permit, consultation, etc. necessary to comply with the requirements of the other environmental laws and Executive Orders. Where NEPA documentation is not required, i.e. level 1 and 2 CATEXs and statutorily excluded actions, documentation necessary for indicating compliance with the other laws would be handled separately, as required by the particular law.

This policy memo becomes effective immediately and applies to any action for which the DSR or project application is evaluated by FEMA on or after the date of this memo. Please advise and help regional program offices in implementing this change and make a special effort to work with all active DFOs in your region so they can modify their procedures to benefit from this change.

Direct any questions regarding this memo and its implementation to Brent Paul (202) 646-3032.

Attachment

44CFR10.8(d)(2) List of Exclusion Categories

FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in (d)(5) exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

- (i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;
- (ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;
- (iii) Studies that involve no commitment of resources other than manpower and associated funding;
- (iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;
- (v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;
- (vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;
- (vii) The acquisition of properties and the associated demolition/removal [see ¶ (xii)] or relocation of structures [see ¶ (xiii)] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.
- (viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;
- (ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;
- (x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;
- (xi) Planting of indigenous vegetation;
- (xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;
- (xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;
- (xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;
- (xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]
- (xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;
- (xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

- (xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:
 - (A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;
 - (B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;
 - (C) Deployment of Urban Search and Rescue teams;
 - (D) Situation Assessment including ground and aerial reconnaissance;
 - (E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and
- (xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:
 - (A) General Federal Assistance (§ 402); [SE]
 - (B) Essential Assistance (§ 403); [SE]
 - (C) Debris Removal (§ 407) [SE]
 - (D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;
 - (E) Unemployment Assistance (§ 410);
 - (F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;
 - (G) Food Coupons and Distribution (§ 412);
 - (H) Food Commodities (§ 413);
 - (I) Legal Services (§ 415);
 - (J) Crisis Counseling Assistance and Training (§ 416);
 - (K) Community Disaster Loans (§ 417);
 - (L) Emergency Communications (§ 418);
 - (M) Emergency Public Transportation (§ 419);
 - (N) Fire Suppression Grants (§ 420); and
 - (O) Federal Emergency Assistance (§ 502) [SE].



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** May 29, 2002
2. **Response and Recovery Directorate Policy Number:** 9560.3
3. **Title:** Programmatic Agreement - Historic Review
4. **Purpose:** This policy makes available a sample executed Programmatic Agreement (Agreement) to accomplish FEMA's Section 106 requirements under the National Historic Preservation Act of 1966, as amended (NHPA).
5. **Scope and Audience:** The Agreement is intended for Federal Emergency Management Agency (FEMA) personnel in coordinating historic review for FEMA undertakings using Public Assistance [as well as other FEMA] grant funds.
6. **Background:**
 - A. Section 106 of NHPA requires all Federal agencies to review the effect of an agency undertaking on historic properties prior to funding the project, activity, or program. 36 CFR 800.16(1)(1) defines historic properties as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria."
 - B. FEMA develops Agreements with States and Tribal governments as an alternative to Section 106 compliance (36 CFR 800.14(b)), in order to simplify and expedite coordination and to provide specific guidance to consulting parties in the historic review process. Agreements also exempt routine disaster recovery activities with little potential of adversely affecting historic properties from the review mandated by Section 106 of NHPA.
 - C. The Advisory Council on Historic Preservation published new regulations, 36 CFR Part 800 (effective January 11, 2001), which guide Section 106 compliance.
7. **Policy:**
 - A. FEMA regional personnel should follow the standard Section 106 review procedures outlined in 36 CFR Part 800 for undertakings in States or on Tribal lands for which an Agreement is not executed or applicable.

B. FEMA regional personnel should utilize this Agreement as a sample in the development of separate Programmatic Agreements for each State or Tribal government. The signatories may execute the Agreement either prior to or immediately following a declared disaster to facilitate an immediate exchange of information about historic properties in the disaster area. The four required signatories are:

1. FEMA;
2. the Advisory Council on Historic Preservation;
3. the State Emergency Management Agency; and,
4. the State/Tribal Historic Preservation Office.

C. The Agreement is in effect immediately after all signatories have signed the document and will continue to be in effect for the period of time specified in the Agreement. If a disaster occurs near the end of the specified period, the Programmatic Agreement will remain in effect until the close of that disaster.

D. FEMA Regional Environmental Officers should work with Headquarters Historic Preservation Program personnel to initiate, negotiate and execute a Programmatic Agreement with the involved parties.

8. Supersession: This policy replaces RR# 9560.3, *Model Programmatic Agreement - Historic Review*, issued August 17, 1999.

9. Authorities: National Historic Preservation Act of 1966, as amended; 36 CFR 800.

10. References: RR #9570.9, *Historic Review Standard Operating Procedures*, issued September 2001.

11. Originating Office: Recovery Division, Readiness, Response and Recovery Directorate

12. Review Date: Five years from date of publication

13. Signature:

Signed
Kenneth S. Kasprisin
Assistant Director
Readiness, Response and Recovery Directorate

14. Distribution: Regional Directors, Regional and Headquarters RRR Division Directors

ATTACHMENT: SAMPLE EXECUTED PROGRAMMATIC AGREEMENT

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER,
THE WASHINGTON STATE EMERGENCY MANAGEMENT DIVISION, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, in response to the Washington Nisqually Earthquake, FEMA-1361-DR-WA (Disaster), the Federal Emergency Management Agency (FEMA) proposes to administer the Federal disaster Public Assistance, Hazard Mitigation Grant, Individual and Family Grant, and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5204c, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may affect properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), pursuant to 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, as a result of the Disaster, Washington State will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible applicants to alleviate the effects of the Disaster, and as such the Washington State Emergency Management Division (EMD) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, the SHPO, EMD, and the Council acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO and Council review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of Undertakings on historic properties may be considered while delays to FEMA's delivery of disaster assistance are minimized; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on historic properties that have religious and cultural significance to Federally recognized tribes (Tribes), and FEMA may request that these Tribes participate in the terms of this Agreement to fulfill the requirements of Section 106;

NOW, THEREFORE, FEMA, the SHPO, EMD, and the Council agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106

responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, EMD, and the Council, FEMA shall require that the following measures are implemented:

I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded by the Programs.
- B. FEMA may request that a Tribe become a signatory to this Agreement by entering into an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of a Tribe without further change to this Agreement will not require an amendment to the Agreement. A sample Tribal Addendum is attached as Appendix A.

II. APPLICABILITY

- A. This Agreement applies to the Programs implemented for the referenced Disaster.
- B. FEMA has determined that the following types of activities are not Undertakings under 36 CFR §800.16(y), and FEMA has no further Section 106 responsibilities, pursuant to 36 CFR Part 800.3(a)(1):
 - 1. Implementation of the Programs as related to assistance to individuals and households (Sections 408 and 411 of the Stafford Act, Individual and Family Grant Programs), with the exception of ground disturbing activities and construction related to temporary housing;
 - 2. Funding the administrative action of acquiring properties in buyout projects. EMD will ensure that applicants secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. Applicant communities will agree to these provisions as a condition of the grant before FEMA will release any project funding.
 - 3. Implementation of Federal assistance pursuant to Section 422 of the Stafford Act, Simplified Procedures, when it has the effect of restoring a facility to its pre-disaster condition, and using in-kind materials.
- C. FEMA will determine when an Undertaking meets applicable criteria of the Programmatic Allowances (Allowances) listed in Appendix B. FEMA will document this determination in the project file and authorize the release of funding for the Undertaking.

- D. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of the Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, Washington State agency, or contractor staff who meet the Secretary of the Interior's (SOI's) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in ensuring compliance with this Agreement.
2. FEMA acknowledges that Tribes possess special expertise related to properties that possess Tribal religious and cultural significance, and FEMA may utilize this expertise in determining if any such properties are eligible for the National Register.

- B. All time designations will be in calendar days. If any party does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the party's concurrence with FEMA's determination.

C. FEMA responsibilities:

1. FEMA may request that Federal, Washington State agency, or applicant staff who meet the Qualifications, as determined by FEMA's FPO, conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR §800.4(b,c).¹
2. FEMA will review any National Register eligibility determinations resulting from the performance of these delegated activities.
3. FEMA will provide the SHPO and Council with an annual report for the previous calendar year by March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement the terms of this Agreement, and recommend any actions or revisions that should be considered during the next year. These parties will review this information to determine if amendments to the Agreement are necessary.

D. SHPO responsibilities:

1. The SHPO will concur or non-concur with FEMA's National Register eligibility determinations within the timeframes required by this Agreement.

¹ FEMA will provide 100 percent funding under the Stafford Act through standard procurement procedures for the performance of these delegated activities.

2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of a representative, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER

Upon entering into this Agreement, FEMA will meet with the SHPO and EMD to establish points of contact and protocols for the implementation of the Agreement. SHPO and EMD representatives will then attend a historic scoping meeting, where FEMA and EMD will provide guidance on program issues and processes. EMD and FEMA, as appropriate, will also present information related to the Section 106 review process to all applicants, at the applicants' briefings and kickoff meetings.

A. FEMA will:

1. Determine with the SHPO those historic properties (standing structures) that have not retained integrity. This Agreement will only apply to historic properties that retain integrity in the aftermath of the Disaster, pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a listed property has retained integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.
2. Consult with other Federal agencies and any Tribes having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic laws and regulations.
3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process.

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
 - a. properties listed in or previously determined eligible for the National Register through a Section 106 review or by the SOI;
 - b. properties listed in the Washington Heritage Register;
 - c. geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and

- d. previously identified Traditional Cultural Properties, and known properties of religious and cultural significance to Tribes.
2. Work with FEMA to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.
3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and to identify in coordination with FEMA specific activities that the SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying any Tribes, organizations, or individuals that may have an interest in historic properties affected by the Disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.
5. Assist local jurisdictions in identifying staging and landfill sites for debris disposal, and sites for chipping of vegetation debris, if applicable, that will have a minimal or no effect on historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d)).
- B. As a result or in anticipation of the Disaster, FEMA may be requested to authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
 1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.
 2. The FCO will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, request an extension in writing from the Council. FEMA will immediately assume the Council's concurrence unless otherwise notified by the Council.

3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. The SHPO will respond to any FEMA request for comments within 3 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. STANDARD PROJECT REVIEW

The signatories of this agreement will follow the following review for all non-emergency undertakings:

- A. Area of Potential Effects (APE): For all project review of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR §800.4(b,c), FEMA will determine, in consultation with the SHPO, if the APE contains properties (including archaeological properties) that are listed in or eligible for the National Register.
- C. If no historic properties are present, or if an Undertaking is designed to avoid affecting the character defining features of such historic property or properties, FEMA will make a determination of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation. Unless the SHPO or any consulting party objects to this determination within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
- D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 14 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR

§800.5(a)(1), or determine if the Undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards. FEMA will also consider any views provided by consulting parties and the public related to such effects.

1. For standing structures only:

- a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of “no adverse effect” pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding.
- b. If the SHPO objects to the “no adverse effect” determination, FEMA will request through EMD that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
- c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

- a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.
- b. If the SHPO or any other consulting party objects that identified archaeological properties can be avoided through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties, or concurs that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR §800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e).
1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to treat adverse effects to historic properties. FEMA may consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, EMD, the Council, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by an applicant.
- B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation* and consult with the other consulting parties to prepare a data recovery plan. For sites where FEMA determines extraordinary circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.
- C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).
- D. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA also will notify and invite the Secretary of the Interior (Secretary) to participate in consultation. When the Council participates in consultation related to an NHL, the Council will report the outcome of the consultation to the Secretary and the FEMA Director.

VIII. CHANGES TO AN APPROVED SCOPE OF WORK

EMD will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO

to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

IX. UNEXPECTED DISCOVERIES

- A. EMD will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. EMD will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO.
- B. FEMA will notify the SHPO of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. EMD and the applicant may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the Undertaking.
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.

X. DISPUTE RESOLUTION

- A. Should the SHPO, EMD, the Council, or a consulting party object within the timeframe provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward to the Council all documentation relevant to the dispute, including FEMA's proposed resolution to the objection.
- B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.

XI. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consulting with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VII.
- B. FEMA will specifically advise EMD of this Stipulation and will require that EMD advise its applicants in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. EMD will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XII. DURATION, AMENDMENTS, AND TERMINATION

- A. Unless terminated pursuant to Stipulation XII.C. below, this Agreement shall remain in effect from the date of implementation until FEMA, in consultation with all other signatories, determines that the terms of this Agreement have been satisfactorily fulfilled. Upon such determination, this Agreement will terminate, and FEMA will provide all other signatories with written notice of the determination and termination.
- B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, the signatories will consult to seek amendment of the Agreement. Any amendment will be specific to the applicable Disaster unless otherwise agreed to by the signatories.
- C. FEMA, the SHPO, EMD, or the Council may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.
- D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR §800.14(a).

XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.
- B. Execution of this Agreement by the Council and implementation by FEMA evidences that FEMA has afforded the Council a reasonable opportunity to comment on all of the Programs pursuant to the Stafford Act and the National Flood Insurance Reform Act, and that FEMA has satisfied its Section 106 responsibilities for all Undertakings.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: *signed*
Lacy E. Suiter, Assistant Director,
Readiness, Response and Recovery Directorate

Date: _____

By: *signed*
Robert F. Shea, Acting Assistant Director,
Federal Insurance Administration and Mitigation

Date: _____

By: *signed*
Tamara Doherty, Acting Regional Director,
Region X

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *signed* _____
John M. Fowler, Executive Director

Date: _____

**WASHINGTON STATE OFFICE OF ARCHAEOLOGY AND HISTORIC
PRESERVATION**

By: *signed*
Allyson Brooks, State Historic Preservation Officer

Date: _____

WASHINGTON STATE EMERGENCY MANAGEMENT DIVISION

By: *signed* _____

Date: _____

Glenn Woodbury, Director,
Washington State Military Department,
Emergency Management Division

APPENDIX A

**ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER,
THE WASHINGTON STATE EMERGENCY MANAGEMENT DIVISION, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, in response to the Washington Nisqually Earthquake, FEMA-1361-DR-WA, the Federal Emergency Management Agency (FEMA) proposes to administer the Federal disaster Public Assistance, Hazard Mitigation Grant, Individual and Family Grant, and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5204c, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; and

WHEREAS, FEMA, the Washington State Historic Preservation Officer (SHPO), the Washington State Emergency Management Division (EMD), and the Advisory Council on Historic Preservation (Council) recognize that implementation of these Programs will result in Undertakings that may occur on lands under the jurisdiction of the _____ Indian Tribe (Tribe); and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on properties of religious and cultural significance to the Tribe, located on or off Tribal lands, that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe and its Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR §800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA);

NOW, THEREFORE, FEMA has consulted with the Tribe and requested that it enter into this Addendum to the Programmatic Agreement (Agreement) to facilitate the Section 106 review of Undertakings that may directly or indirectly affect historic properties of religious and cultural significance on or off Tribal lands.

STIPULATIONS

FEMA shall require that the following measures are implemented:

[OPTION 1: The THPO has not assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA.]

1. FEMA will consult with the _____ THPO in addition to the SHPO, pursuant to this Agreement, for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will also refer to the THPO for the review of these Undertakings.
2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO in addition to the SHPO pursuant to the Agreement and this Addendum.
3. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, EMD (if the Grantee), the Council, and any other participating Federal agency.

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA recognizes that the _____ Tribe has assumed the responsibilities of the SHPO for Section 106 on Tribal lands, pursuant to Section 101(d)(2) of the NHPA, and shall consult with the THPO in lieu of the SHPO, pursuant to this Agreement for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will refer only to the THPO for the review of such Undertakings occurring on or affecting historic properties on Tribal lands. All references to the SHPO will refer to both the SHPO and the THPO for the review of such Undertakings that may affect historic properties off Tribal lands, unless the SHPO elects to not participate in this review.
2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO pursuant to the Agreement and this Addendum.
3. The parties recognize that the SHPO shall participate as a consulting party pursuant to the Agreement if an Undertaking will occur on Tribal land but affect historic properties off Tribal land. The SHPO may also participate in consultation if requested in accordance with 36 CFR §800.3(c)(1).
4. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, EMD (if the Grantee), the Council, and any other participating Federal agency.

SIGNATORY PARTIES:

FEMA, the SHPO, the THPO, EMD (if the Grantee), the Council, and any other participating Federal agency

_____ **TRIBAL HISTORIC PRESERVATION OFFICE**

By: _____
[name], Tribal Historic Preservation Officer

Date: _____

APPENDIX B: PROGRAMMATIC ALLOWANCES

The following project activities do not require review by the SHPO or Council pursuant to Stipulations III.-VI. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

When referenced in an Allowance, “in kind” shall mean that the result will match all physical and visual aspects of existing historic materials, including form, color, and workmanship. “In kind” mortar will also match the strength and joint tooling of existing historic mortar.

- I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when all work is consistent with the Standards, or any other applicable SOI Standards
 - A. Ground disturbing activities related to the repair, replacement, or hardening of any footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks), provided the excavation will not disturb more soil than previously disturbed. This Allowance refers to archaeological review. The Allowance also applies to historic review of such features that are listed in or eligible for the Register, only if the work is in kind.
 - B. Substantially in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any modest increase in capacity, provided the excavation will not disturb more soil than previously disturbed. This Allowance also applies to related features (such as headwalls and wing walls) that are in or eligible for the Register, only if the work is in kind.
 - C. Repair, replacement, or hardening of utilities under existing improved roads/roadways, or within other previously disturbed rights of way.
 - D. In kind repair or replacement of driveways, parking lots, and walkways.
 - E. In kind repair or replacement of fencing and other freestanding exterior walls.
 - F. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including major exposed pipelines. Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
 - G. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts.
 - H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.

- I. In kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
- J. In kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, and dune crossovers, provided the footprint will substantially match the existing footprint.
- K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of debris staging areas.
- L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site.
- M. Dewatering flooded developed areas.

II. BUILDINGS, when all work is consistent with the Standards

A. Interior Floors, Walls, Stairs and Ceilings

- 1. In kind repairing, replacing, retaining, preserving, protecting, or maintaining of materials or features.
- 2. In kind repair of interior floors, walls and ceilings. This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
- 3. Repair or replacement of suspended or glued ceiling tiles.
- 4. Installation of grab bars and other such minor interior modifications for handicapped accessibility.
- 5. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

- 1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in kind replacement, with the exception of historic

fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.

2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, etc.

C. Windows and Doors

1. In kind repair or replacement of damaged or deteriorated windows and doors.
2. Replacement of window panes in kind or with clear double or triple glazing, provided the result does not alter the existing window material and form. Also, historic windows or glazing may be treated with clear window films. This Allowance does not apply to the replacement of existing archaic or decorative glass.
3. In kind repair of historic door and window hardware.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning.
2. In kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim.
3. Substantially in kind repair or replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems, and disturbed historic fabric is restored in kind.
6. In kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.

8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.
- E. Roofing
1. In kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Also, cement asbestos shingles may be replaced with asphalt based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.
- F. Weatherproofing and Insulation
1. Caulking and weather-stripping to complement the color of adjacent surfaces.
 2. In kind replacement or installation of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.
- G. Seismic Upgrades
1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

III. ROADS AND ROADWAYS

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. This Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.
- C. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.

- D. In kind repair of road lighting systems, such as period lighting.
- E. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.
- F. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.

IV. FEES AND SERVICES

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of an applicant's insurance deductible, not to exceed \$1,000.

V. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 412, 415, and 416 of the Stafford Act:

- A. The minimal repair program.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites.
- C. Disaster unemployment assistance.
- D. Legal services.
- E. Crisis counseling.
- F. Loans to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- G. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

VI. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.



FEMA

DISASTER ASSISTANCE

FACT SHEET

DAP9580.2

INSURANCE RESPONSIBILITIES FOR FIELD PERSONNEL

Overview

This Fact Sheet provides information on the insurance responsibilities for Field Personnel. Additionally, this Fact Sheet supplements information listed on DAP9580.3, "[*Fact Sheet - Insurance Considerations for Applicants*](#)".

Field Personnel Responsibilities

The Public Assistance (PA) Group Supervisor and designated staff are responsible for compliance with the Insurance provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (Stafford Act). These responsibilities include ensuring that insurance has been obtained and maintained by the Applicants who previously received disaster assistance, reducing PA funding for flood losses in the Special Flood Hazard Area, and if appropriate, making reductions from the PA grants when the loss is covered by insurance. The State is responsible for ensuring that the Applicant has purchased an insurance policy or binder for losses being covered by PA funding.

In the event that a Region does not have adequate insurance support for a Joint Field Office (JFO), the PA Group Supervisor can obtain this resource from the Disaster Assistance Employee (DAE) Cadre or through the Standby Technical Assistance Contract (PA-TAC), managed by the Disaster Assistance Directorate/Public Assistance Division at FEMA Headquarters.

The Insurance Specialist should be among those first deployed in order to assist the Public Assistance Coordinator (PAC) Crew Leader and/or PA Project Specialist. The Insurance Specialist should be included in the Applicants' Briefing and Kickoff Meetings. The Insurance Specialist's primary role is to provide technical expertise in evaluating insurance related issues.

INSURANCE RESPONSIBILITIES FOR FIELD PERSONNEL

Frequently Asked Questions (FAQs)

1. Who is an Insurance Specialist?

The Insurance Specialist is a certified and qualified flood and/or general property insurance adjuster with experience dealing with commercial property insurance policies. An Insurance Specialist can be a FEMA employee or a TAC. He/she will address insurance issues as identified throughout the PA Program process.

2. Why should the Insurance Specialist be deployed to a JFO during the initial stages of a disaster?

Deploying an Insurance Specialist early in the disaster process will expedite funding of the Project Worksheets and reduce the chance of duplication of benefits, which is prohibited by the Stafford Act. The Insurance Specialist can minimize the duplication of benefits problem by readily evaluating the Applicant's insurance policy to determine if a loss is covered.

3. When should an insurance review be initiated?

An insurance review is initiated when any of the following questions are answered "Yes" or "Unsure" on the applicable FEMA forms:

- "Is there insurance coverage on this facility?" - Project Worksheet - FEMA Form 90-91, Feb 06.
- "Does the damaged facility or item of work have insurance coverage and/or is it an insurable risk (e.g., buildings, equipment, vehicles, or contents)?" - Question #1, on the Special Considerations Questions Form - FEMA Form 90-120, Feb 06.
- "Is the damaged facility located within a floodplain or coastal high hazard area, or does it have an impact on a floodplain or wetland?" - Question #2, Special Consideration Questions Form - FEMA Form 90-120, Feb 06.

All three questions must be answered when the Applicant or the PA Project Specialist develops the Project Worksheet. When the answer is "Yes" or "Unsure", the PAC Crew Leader must require an insurance review for that Project Worksheet. This is accomplished by the PAC Crew Leader prompting the Insurance Review in NEMIS' Reviews queue.

INSURANCE RESPONSIBILITIES FOR FIELD PERSONNEL

4. What types of assignments can the Insurance Specialist expect at a JFO?

The Insurance Specialist's assignment will typically fall into one of four general categories. These categories are briefly described below:

- a. *Technical Support to the PAC Crew Leader:* After reviewing the Applicant information, a PAC Crew Leader may request an Insurance Specialist to attend Applicants' Briefing(s) and/or Kickoff Meeting(s). The PAC Crew Leader may ask for assistance regarding what type of insurance information the Applicant should bring to the Kickoff Meeting. The Insurance Specialist should be prepared to answer general questions about insurance.
- b. *Reviewing Insurance Settlement Information:* If a project, large or small, has received an insurance settlement payment, the Insurance Specialist will review the settlement and policy documents to assess whether the loss was settled to the maximum amount available under the Applicant's insurance policy. The Insurance Specialist will review the insurance settlement to ensure that it is compatible with the eligible scope of work found on the Project Worksheet. An insurance settlement payment should never be entered as a line item on the Project Worksheet without prior review by the Insurance Specialist. The Insurance Specialist should also look for unusual coverage: debris, roads, bridges etc.
- c. *Insurance Adjustment DURING Project Worksheet Development:* Each project is to be assessed for insurance coverage. For small projects, if the insurance issues are identified during the Kickoff Meeting, or, if a Project Worksheet is submitted and an insurance issue is then identified, an Insurance Specialist can be assigned to work with the Applicant as they develop their Project Worksheets. For large projects that require an insurance adjustment, the Insurance Specialist may work directly with the PA Project Specialist while the scope of work is being prepared. It may be that the Insurance Specialist has both the insurance background and the PA programmatic background; in these cases, the Insurance Specialist may be assigned the task of developing both the Project Worksheet and completing the insurance review process.
- d. *Insurance Adjustment AFTER Project Worksheet Development:* In some cases, a Project Worksheet will be completed before an insurance review can take place. If this is the case, the Insurance Specialist will review the Project Worksheet and the accompanying documentation. If questions occur, the Insurance Specialist will coordinate with the PAC Crew Leader prior to contacting the Applicant. When the Project Worksheet is completed and all insurance issues have been addressed, the PAC Crew Leader must ensure that necessary insurance purchase and maintenance requirements have been met prior to approving the Project Worksheet.

INSURANCE RESPONSIBILITIES FOR FIELD PERSONNEL

5. What NEMIS queues require insurance related comments? And who is responsible for entering this information?

The Insurance Specialist is responsible for making appropriate entries in NEMIS. Specifically, entries are made in the following queues: Special Considerations (Question 1 - Comments), Insurance Information, General Comments, and Reviews.

6. Are there special insurance cost codes that need to be entered in Project Worksheets?

Yes, one of the following cost codes should be used when making an insurance reduction on Project Worksheets:

- 5900 - Deduct Actual Insurance Proceeds;
- 5901 - Deduct Anticipated Insurance Proceeds;
- 5902 - Mandatory NFIP Reduction - Maximum Proceeds Available;
- 5903 - Previous Disaster Insurance Purchase Requirement;
- 5904 - Deduct Actual Flood Insurance Proceeds; and
- 5905 - Deduct Anticipated Flood Insurance Proceeds.

7. Who is responsible for making sure the Applicant has obtained and maintains insurance?

The State has the lead responsibility for ensuring that the Applicant has obtained and/or maintains insurance for insurable facilities (i.e., buildings, contents, vehicles, and equipment) that received PA funding. Project Worksheets will be approved after receiving either the insurance binder or a policy for the insurable loss from the Applicant.

signed

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

6/4/2007

Date



FEMA

DISASTER ASSISTANCE

FACT SHEET

DAP9580.3

INSURANCE CONSIDERATIONS FOR APPLICANTS

Overview

Insurance is an important element of the Public Assistance (PA) Program. The purpose of this Fact Sheet is to highlight for you, the Applicant, insurance considerations that will influence your PA grant.

Three key provisions in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended, and 44 Code of Federal Regulations (CFR) §§206.250, 206.252, and 206.253 guide our insurance policies and procedures:

1. Disaster assistance provided by FEMA is intended to supplement financial assistance from other sources. Disaster assistance will not be provided for damage or losses covered by insurance. Insurance coverage must be subtracted from all applicable PA grants in order to avoid duplication of financial assistance. If PA funds are obligated for work that is subsequently determined to be covered by insurance, FEMA must de-obligate the funds. (Stafford Act, Sections 101(b)(4) and 312(c)).
2. The Applicant must obtain insurance on damaged insurable facilities (buildings, equipment, contents, and vehicles) as a condition of receiving PA grant funding. In addition, the Applicant must maintain insurance on those facilities in order to be eligible for PA funding in future disasters. (Stafford Act, Section 311).
3. FEMA will reduce the amount of eligible PA funding for flood losses in the Special Flood Hazard Area (SFHA) (Stafford Act, Section 406(d)). If an eligible insurable facility damaged by flooding is located in a SFHA that has been identified for more than one year by the Administrator, and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the buildings and contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

INSURANCE CONSIDERATIONS FOR APPLICANTS

Applicant Responsibilities

You, the Applicant, should:

1. Identify all damaged facilities that were covered by insurance at the time of the disaster and the type and amount of coverage (including deductibles and policy limits) for each.
2. Identify all damaged facilities for which PA funding was received previously and for which you were required to purchase insurance. Failure to maintain the required insurance for the hazard that caused the disaster will render the facility ineligible for PA funding.
3. Provide all pertinent insurance information (policies, declarations, insuring agreements, conditions, exclusions, and "Statements of Loss") for each insured damaged facility to the State Public Assistance Officer (PAO) as soon as possible.
4. Pursue payment under your insurance policies to maximize potential benefits, thereby avoiding risk of delays or loss of Federal assistance.
5. Identify all facilities (buildings, equipment, contents, and vehicles) located in the SFHA. If an eligible insurable facility and contents damaged by flooding are located in a SFHA that has been identified for more than one year by the Administrator and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the facility and its contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

Insurance Requirements

Further, you, the Applicant:

1. Must purchase and maintain insurance coverage on facilities – buildings, equipment, contents, and vehicles - for the type of hazard that caused the damage in order to receive future PA funding. Such coverage must, at a minimum, be in the amount of the eligible project costs. FEMA will not provide assistance for that facility in future disasters if the requirement to purchase and maintain insurance is not met (44 CFR §§206.252(d), 206.253(b)(1)).
2. Must document insurance coverage by an insurance policy or binder and submit it to FEMA before project approval (44 CFR §§206.252(c), 206.253(a)).
3. Are exempt from this requirement for projects where the total eligible damage is less than \$5,000 (44 CFR §§206.252(d); 206.253(d)).

INSURANCE CONSIDERATIONS FOR APPLICANTS

Frequently Asked Questions (FAQs)

1. Are there pre-disaster insurance requirements for facilities that have not had any prior disaster assistance?

No. State and local governments, Indian Tribal governments, and private nonprofit (PNP) organizations are not required to purchase insurance prior to a disaster. Note that Stafford Act, Section 406(d) reductions will apply to the facilities located in the SFHA.

2. If the Applicant had insurance but certain items are not covered, will the PA Program provide funding for these items?

Any eligible work not covered by an insurance policy may qualify for a PA grant, including non-recoverable depreciation and items exceeding the policy limit, but excluding items for which there was an insurance purchase requirement.

3. Where eligible and ineligible damage is insured in one policy, how will the insurance settlement proceeds be apportioned?

- If the Applicant's insurance policy specifies the amount of coverage for each type of loss, the proceeds will be apportioned according to the policy limits.
- If the insurer provides a Statement of Loss that specifies the amount of proceeds per type of loss, that will be used to determine the proceeds for eligible damage.
- If the Applicant's insurance covers eligible and ineligible damage (for example, property damage and business interruption losses respectively) without specifying limits for each type of loss, the proceeds will be apportioned based on the ratio of the Applicant's eligible to ineligible damage. For example, if the Applicant's total losses are 60 percent property damage and 40 percent business interruption, then 60 percent of the insurance proceeds would be applied to offset the eligible damage, since business interruption losses are not eligible for reimbursement under the PA Program.

4. Does the PA Program fund deductibles?

In the first disaster, FEMA deducts the total insurance proceeds received or anticipated from the total eligible cost of the project. The remaining amount is reimbursed, which usually includes deductibles, non-recoverable costs, or uninsurable losses. However, a deductible, up to and including the amount of eligible damages incurred in a previous disaster, is **not** eligible for the same facility in a subsequent disaster of the same type. The portion of a deductible in excess of the previous disaster damages is eligible.

INSURANCE CONSIDERATIONS FOR APPLICANTS

5. **Where the deductible covers both eligible and ineligible damage, how will the deductible be apportioned?**

Deductibles are apportioned in the same manner as insurance proceeds described in #3 above.

6. **What facilities or items require the purchase of insurance as a condition of receiving PA funding from FEMA?**

Insurance is required for damage to buildings, equipment, contents, and vehicles exceeding \$5,000.

7. **Does the post-disaster insurance purchase requirement apply to a building that is outside of the Special Flood Hazard Area and damaged by flooding?**

Yes. Prior to the approval of a PA grant, the Applicant must commit to obtain and maintain insurance to protect against future loss of a property whether the property is inside or outside the SFHA. Federal assistance will not be provided for any facility for which the Applicant has previously received Federal assistance, unless all insurance required as a condition for that assistance has been obtained and maintained.

8. **Can self-insurance be used to satisfy the insurance purchase requirement?**

Yes, however, self-insurance is an option only for States. The State must submit an established plan of self-insurance to be approved by FEMA's Assistant Administrator of the Disaster Assistance Directorate. Local and Indian Tribal governments and eligible private non-profit organizations may not satisfy the insurance purchase requirement with self-insurance. For flood disasters, State self-insurance plans must follow the standards established in 44 CFR §75.11. These standards will serve as the model for non-flood disaster self-insurance plans as well.

9. **What if the Applicant cannot obtain insurance because the facility was destroyed by the disaster?**

When a facility is damaged beyond the point of repair, and funding is needed for replacement of the damaged facility, an insurance commitment letter must be submitted by an Applicant to document the outstanding insurance requirement for the replacement facility. The Applicant must provide proof of insurance, for the rebuilt facility, to the State as soon as possible after the insurance is purchased. A project cannot be closed out without proof of purchase (either through policy or binder) of required insurance coverage (44 CFR §§206.202(b)(4), 206.253(3)(f)).



FEMA 9580.4
January 19, 2001

PUBLIC ASSISTANCE PROGRAM

**FACT SHEET
DEBRIS OPERATIONS - CLARIFICATION
EMERGENCY CONTRACTING VS. EMERGENCY WORK**

SUMMARY: Contracting for debris operations, even though it is “emergency work” in FEMA operations, does not necessarily mean the contracts can be awarded without competitive bidding. Applicants should comply with State laws and regulations, but should be aware that non-competitive contracting is acceptable ONLY in rare circumstances where there can be no delay in meeting a requirement. In general, contracting for debris work requires competitive bidding. The definition of “emergency” in contracting procedures is not the same as FEMA’s definition of “emergency work”.

DISCUSSION: There appears to be some confusion regarding the awarding of some contracts, especially for debris, without competitive bidding. The reason cited for such actions is that the contract is for emergency work, and competitive bidding is not required.

Part 13 of 44 CFR is entitled “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”. These requirements apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or regulations authorized in accordance with the exception provisions of Section 13.6. In essence, these regulations apply to all Federal grants awarded to State, tribal and local governments.

Non-competitive proposals awarded under emergency requirements are addressed as follows:

“Procurement by non-competitive 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)

(B) The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.” (44 CFR Part 13.36(d)(4)(1)(B)).”

Staff of the Office of General Counsel and the Office of the Inspector General have expressed concern that contracts are being awarded under this section without an understanding of the requirement. Simply stated, non-competitive contracts can be awarded only if the emergency is such that the contract award **cannot be delayed by the amount of time required to obtain competitive bidding.**

FEMA's division of disaster work into "emergency" and "permanent" is generally based on the period of time during which the work is to be performed, and not on the urgency of that work. Therefore, the award of non-competitive contracts cannot be justified on the basis of "emergency work", as defined by FEMA.

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a public exigency or emergency which "will not permit a delay resulting from competitive solicitation".

Regarding competitive solicitations, applicants can use an expedited process for obtaining competitive bids. In the past, applicants have developed a scope-of-work, identified contractors that can do the work, made telephone invitations for bids, and received excellent competitive bids. Again, applicants must comply with State and local bidding requirements.

Please remind applicants that no contractor has the authority to make determinations as to eligibility, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Such determinations are to be made by FEMA.



FEMA

RECOVERY DIVISION

FACT SHEET

9580.100

MOLD REMEDIATION

Overview

Extensive disaster-related damages may result in public facilities becoming inundated or exposed to wet and humid weather conditions for extended periods of time. The limited availability of repair and restoration contractors may delay clean-up activities. In addition, the disruption of electrical power can inhibit the use of water extraction, pumping and drying electric equipment. As such, the damaged structures and their contents may remain waterlogged until power is restored and remediation can begin. Such water saturation may cause growth and propagation of mold on structures and interior contents, causing health-related problems and increasing the cost of repairs. The following guidance is provided to assist Public Assistance staff and applicants (entities that meet the requirements of 44 CFR 206.222 – State, local governments, Indian tribes or authorized tribal organizations, and certain private non-profits) with the remediation and/or repair of their damaged facilities.

Determining Eligibility of Mold Remediation Costs

- The cost of mold sampling, both pre-and post-remediation, may be eligible for reimbursement, provided there is evidence prior to remediation to indicate the existence of disaster-related mold.
- The cost of mold sampling which reveals *no presence of disaster-related mold* is not eligible for reimbursement.
- Costs to perform eligible remediation - either through force account or a contractor - may be eligible for reimbursement. Contractor costs are subject to the contract procurement requirements in 44 CFR 13.36.
- The following remediation activities may be eligible under Category B:
 - Wet vacuuming, damp wiping or HEPA vacuuming of the interior space.
 - Removal of contaminated gypsum board, plaster (or similar wall finishes), carpet or floor finishes, and ceilings or permanent light fixtures.
 - Cleaning of contaminated heating and ventilation (including ductwork), plumbing, and air conditioning systems, or other mechanical equipment.

MOLD REMEDIATION

- If an applicant fails to take reasonable measures to prevent the spread of mold contamination to a facility, the rehabilitation and repair of the additional contaminated area will not be eligible for federal assistance.
- If an applicant can document and justify why reasonable measures were not taken to prevent further contamination to a facility from mold, or why reasonable measures taken were insufficient to prevent further damage, remediation activities may be eligible for reimbursement. Examples of extenuating circumstances may include:
 - Disruption of power.
 - Facility remained underwater.
 - Inability to access the facility due to the disaster, i.e. debris blocking access routes and facility.
 - Facility HVAC equipment damaged due to the disaster.
 - Insufficient resources to remediate the entire facility.

Identification

- Mold contamination or associated damages, identified by the applicant, must be a direct result of the disaster. Situations that are not obvious will require a closer examination, usually with the assistance of an Industrial Hygienist.
- It is the responsibility of the applicant to show evidence of mold contamination or damage during the inspection. Sampling may not be necessary; however, applicants may choose to conduct pre- or post- sampling by an experienced professional to ensure proper or adequate remediation.
- The applicant may provide an Industrial Hygienist's report to support its request for assistance.

Remediation

- The method of remediation will depend on the types of material that are damaged and the extent of damage. Accordingly, applicants may employ a variety of mold cleanup methods to remediate mold damage, as appropriate to the characteristics of the situation.
- The following charts provide guidance on sizing the scope of the remediation effort and mold remediation methods and their application. This information is not all encompassing, but is provided as a general reference for an applicants' consideration when developing a scope of work for force account or a request for bid/proposal.

MOLD REMEDIATION

Sizing the Scope of Work

The extent of contamination will dictate the containment and personal protection equipment used by the Applicant or contractor during remediation work. The following parameters may be used as a general guideline.

*Size designation	*Personal Protective Equipment	*Containment	Remediator
Small (<10 sf)	Minimum RN-95 respirator Gloves Goggles	None required	Force Account
Medium (10 – 100 sf)	Limited or Full OSHA requirements	Limited, containment of the contaminated area using sheeting	Force Account or Remediation Contractor depending on contaminated materials
Large (>100 sf)	Full OSHA requirements	Full containment	Remediation Contractor

* Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings"; <http://www.epa.gov/mold/table2.html>

Mold Remediation Methods

Method	Application
Wet Vacuum	<ul style="list-style-type: none"> ▪ Use when materials are wet ▪ Use where water has accumulated, such as on floors, carpets and hard surfaces ▪ Do not use when sufficient liquid is not present
Damp Wipe	<ul style="list-style-type: none"> ▪ Wipe or scrub non-porous (hard) surfaces with water and detergent ▪ Follow instructions listed on the product label
High Efficiency Particulate (HEPA) Vacuum	<ul style="list-style-type: none"> ▪ Final clean-up after thoroughly dry, and contaminated materials are removed ▪ Recommended for cleanup of dust outside of the remediation area ▪ Properly seal HEPA filter ▪ Personal protection equipment (PPE) is highly recommended; filter and contents must be disposed of in well-sealed bags
Discard	<ul style="list-style-type: none"> ▪ Building materials and furnishings that cannot be remediated ▪ Seal contents in two bags using 6-mil polyethylene sheeting ▪ Large items may be covered in polyethylene sheeting and sealed with duct tape ▪ Sealing materials must be within containment area to limit further contamination

Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings"; http://www.epa.gov/mold/mold_remediation.html

MOLD REMEDIATION

Application of Remediation Methods

The following list outlines actions typically used to remediate mold. The methods are described above.

Water Damaged Material	Action
Books and paper	<ul style="list-style-type: none"> • Non-valuable items, discard • Valuable/Important, photocopy and discard originals • Invaluable items, freeze in frost free freezer, meat locker or freeze dry
Carpet and backing	<ul style="list-style-type: none"> • Wet vacuum • Reduce ambient humidity levels with dehumidifier • Accelerate drying process with fans
Ceiling tiles	<ul style="list-style-type: none"> • Discard and replace
Cellulose insulation	<ul style="list-style-type: none"> • Discard and replace
Concrete or cinder block surfaces	<ul style="list-style-type: none"> • Wet vacuum • Accelerate drying process with dehumidifiers, fans and/or heaters
Fiberglass insulation	<ul style="list-style-type: none"> • Discard and replace
Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl)	<ul style="list-style-type: none"> • Vacuum or damp wipe with water and mild detergent • Scrubbing may be necessary • Allow to dry
Upholstered furniture	<ul style="list-style-type: none"> • Wet vacuum • Accelerate drying process with dehumidifiers, fans and/or heaters
Wallboard (drywall and gypsum board)	<ul style="list-style-type: none"> • If obvious swelling and seams are not intact – discard • If no obvious swelling and seams are intact, may be dried in place • Ventilate wall cavity
Window drapes	<ul style="list-style-type: none"> • Launder or clean according to manufacturer’s instructions
Wood surfaces	<ul style="list-style-type: none"> • Remove water with wet vacuum • Accelerate drying process with dehumidifiers, fans and/or heaters • Treated or finished wood, damp wipe • Wet paneling, discard and ventilate wall cavity

Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, “Mold Remediation in Schools and Commercial Buildings”; <http://www.epa.gov/mold/table1.html>

Other item of note:

- Do not use fans before determining that the water is clean and sanitary. Consult an experienced professional if you and/or your remediators lack expertise in contaminated water situations.

//signed//

John R. D’Araujo, Jr.
Director of Recovery



FEMA

RECOVERY DIVISION

FACT SHEET

RP9580.101

FREQUENTLY ASKED QUESTIONS (FAQs) 2006 SPECIAL COMMUNITY DISASTER LOAN PROGRAM

Background

The Community Disaster Loan Act of 2005 authorized \$1 billion in loans for communities in Louisiana and Mississippi that were devastated by Hurricanes Katrina and Rita. The Supplemental Appropriations Act of 2006 provided additional loan authority for the Community Disaster Loan Program. The eligibility criteria for the 2006 program are different from those of the 2005 Program. Specifically, the law states, "...the amount of any such loan issued pursuant to this section may exceed \$5,000,000, and may be equal to not more than 50 percent of the annual operating budget of the local government in any case in which that local government has suffered a loss of 25 percent or more in tax revenues due to Hurricane Katrina or Hurricane Rita." These Frequently Asked Questions explain the eligibility under the 2006 Community Disaster Loan Program.

Questions & Answers (Q&A)

1. How much additional money has Congress appropriated for the SCDL Program?

Congress appropriated \$372M for the SCDL in the Supplemental Appropriation Act of 2006.

2. What changes to the 2005 SCDL Program are included in the Supplemental Appropriation Act of 2006?

The Supplemental Appropriation Act of 2006 includes three changes:

- A. The maximum loan amount is increased from 25% to 50% of the applicant's operating budget the fiscal year of the disaster.
- B. The loan analysis may only consider "tax revenue" loss and not "other revenues" as allowed for in the October 2005 SCDL regulations.
- C. The applicant must demonstrate an actual loss in tax revenues of 25% or greater.

Recovery Division Fact Sheet: RP9580.101 2006 Special Community Disaster Loan Program FAQs

3. How will FEMA calculate 50% of the applicant's operating budget the fiscal year of the disaster?

FEMA will multiply 50% by the operating budget calculated in the applicant's original application.

4. How does FEMA define "tax revenues"?

FEMA defines "tax revenues" as revenues generated by a government through its sovereign power to tax. Tax revenues, in accordance with the Government Accounting Standards Board (GASB), are "non-exchange revenues," meaning taxes paid for a non-direct service.

5. Will user fees or in-patient hospital fees qualify as "tax revenues"?

In accordance with the GASB, "exchange revenues" are not considered "tax revenue" as the revenue is generated in exchange for a service (e.g., permit fees, sewer and water fees, hospital in-patient fees, etc.).

6. How does FEMA determine whether an applicant has suffered a loss of 25% or more in tax revenue due to Hurricane Katrina or Rita?

FEMA compares the actual tax revenues to the pre-disaster baseline tax revenues (i.e., what anticipated tax revenues would have been had the disaster not occurred) from the disaster through the most recent reporting period. If the actual tax revenue losses are at least 25% of the pre-disaster baseline for that time period since the disaster, the applicant qualifies to participate. It is assumed that all losses are hurricane-related.

7. What happens if the applicant has suffered less than 25% tax revenue loss due to Hurricane Katrina or Rita?

The applicant does not qualify for a 2006 Supplemental Appropriation CDL.

8. How does FEMA calculate the cumulative revenue loss for the fiscal year of the disaster and three succeeding fiscal years?

FEMA asks the applicant to update its post-disaster tax revenue projections for the tax revenue sources identified in their original application to reflect the actual and revised projections for the fiscal year of the disaster and three succeeding fiscal years. The baseline tax revenues – what revenues would likely have been had the disaster not occurred – remain unchanged.

Recovery Division Fact Sheet: RP9580.101

2006 Special Community Disaster Loan Program FAQs

9. Can the applicant identify any additional tax revenue loan analysis?

Yes. If an applicant believes that the inclusion of additional tax revenue sources will increase its loss it may submit these additional revenue sources. Conversely, applicants will be asked whether any other tax revenue sources increased due to the Hurricane and, if so, to include that tax revenue source in the analysis.

10. How does FEMA calculate the new loan amount?

FEMA takes the lesser of 50% of the operating budget (Fiscal Year of Disaster) or the cumulative projected revenue loss (FY of Disaster + 3 years), then subtracts any previously awarded loan amount(s).

11. What is the timeline for receiving a new loan?

All loans must be awarded no later than **September 30, 2006** as the \$372M is authorized for FY 2006 only.

12. What is the loan process?

- FEMA works with the applicant to prepare the loan application.
- Applicant reviews, signs, and submits application to the Governor's Authorized Representative (GAR).
- Applicant obtains any local or state approval to obtain a loan.
- GAR reviews application and recommends a loan amount.
- Applicant submits signed Promissory Note and Lobby Disclosure Form to GAR.
- GAR forwards recommendation, application, Promissory Note, and Lobby Disclosure form to the Gulf Coast Recovery Office (GCRO).
- GCRO Director signs and forwards application to FEMA HQ.
- FEMA HQ reviews, approves, and awards loan funds.

13. Is there an appeal process if an applicant disagrees with FEMA's decision?

Yes. An applicant that disagrees with FEMA's decision regarding its application may submit a letter describing its reason(s) for dissent to James A. Walke, the FEMA Public Assistance Branch Chief.

14. Will FEMA issue regulations due to the changes noted above?

No. FEMA has determined that the 2006 law is self-executing, meaning that the new loans can be awarded without issuing new regulations.



FEMA

RECOVERY DIVISION

FACT SHEET

9580.102

PERMANENT RELOCATION

Overview

Title 44 CFR 206.226(g) authorizes the Regional Director to “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.” When relocation is required by the Regional Director, eligible work includes land acquisition and the construction of ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. For relocation to be cost effective the eligible costs associated with relocating the damaged facility must not exceed the cost of the damages (the cost to replace the facility at its original location). Demolition and removal of the old facility may also be an eligible cost if deemed necessary. 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.

Questions & Answers (Q&A)

- 1. When FEMA approves a permanent relocation project can the applicant sell the land to any party on which the damaged facility was originally located?**

Yes. However, in accordance with 44 CFR 206.226(g)(3), FEMA will not provide any future funding for repair or replacement of any facility at the original site. An exception is for a facility which facilitates an open space in accordance with 44 CFR Part 9. Applicants should inform the purchaser of the property of the regulatory restrictions associated with future funding at the original site.

- 2. Does FEMA provide funding to acquire new land and construct ancillary facilities such as road and utilities necessary to make the relocated facility operational?**

Yes. FEMA may provide funding to an applicant to acquire land outside of a hazardous area. However, FEMA will limit the land acquisition funding to that which is necessary to make the relocated facility and its associated components operational, and is cost-effective. For example, if the facility being permanently relocated was located on 10 acres of land at the time of the disaster, FEMA

Permanent Relocation

will not necessarily provide 10 acres of land at the new site location if FEMA determines that 10 acres of land is not required to make the facility and its components operational.

Additionally, FEMA may fund the construction of ancillary facilities within the boundaries of the eligible relocation site. Ancillary facilities include, but are not limited to roads, parking lots, sidewalks and utilities necessary to make the relocated facility operational. Similar to limitations placed on land acquisition, FEMA will limit funding for construction to that which is necessary to make the relocated facility operational.

3. If the applicant owns the structures, but does not own the land on which the facility is situated will FEMA provide funding to acquire new land and ancillary facilities?

No. In land lease type situations where the applicant owns the building but not the land or the ancillary facilities, FEMA will only provide funding for the cost of constructing the new facility, not the land or of ancillary facilities.

4. Will FEMA reduce the amount of funding for the relocated project if the Applicant sells the original property?

Yes. While the subgrant is open, FEMA will reduce the grant for the relocated project by the net proceeds from the disposition of property. While the applicant's proceeds derived from the sale of the land, buildings, or ancillary structures on which the damaged facility was originally located will not impact the funding of the reconstruction of the actual damaged facility at the new site, it will offset the permanent relocation costs associated with land acquisition and the construction of ancillary facilities such as roads and utilities. This is in recognition of the fact that the ancillary facilities at the original location have a real dollar value which is included in the sale price of the damaged facility's property.

For example, if FEMA provides a total of \$400,000 in funding to acquire new land and construct the ancillary facilities necessary to make the relocated facility operational (not including construction costs of the actual facility itself), and, the applicant sells the land on which the damaged facility was originally located for \$750,000, a total of \$400,000 would be deducted from the final project cost. The applicant would be able to keep the incremental difference in cost, in this case, \$350,000.

The sale price of property must be reasonable. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return. Pricing the property below market value while receiving full value for the new location would result in a net profit for the applicant. If the applicant sells the property at less than a fair and reasonable price, FEMA reserves the right to offset the full market value against the cost of the new property.



FEMA

MAY 29 2007

MEMORANDUM FOR: FEMA Regional Administrators
Regions I - X

ATTENTION: Response and Recovery Division Directors

FROM: David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

SUBJECT: Clarification of Disaster Assistance Fact Sheet 9580.102,
Permanent Relocation

On May 11, 2007, the Public Assistance Branch at the Mississippi Transitional Recovery Office (TRO) requested clarification of Disaster Assistance Fact Sheet 9580.102, Permanent Relocation, dated November 11, 2006. The TRO indicated there were at least three applicants requesting funding to relocate schools from one location within the Advisory Base Flood Elevation (ABFE) zone to another location within the ABFE zone. The reason cited was that there was no available land within the school district(s) outside the ABFE zone suitable to construct a new school facility that would serve the student body and meet the needs of the local community. Instead, the applicants propose to relocate to a higher ground elevation within the ABFE zone and elevate the facility in accordance with NFIP regulations. The intent of the proposed relocations is to move the facilities further away from the hazard and reduce the cost to elevate the facilities.

Under 44 CFR § 206.226 (g), in order to be considered for permanent relocation, the destroyed facility (i.e. eligible for replacement under the Public Assistance Program) must be subject to past and future repetitive heavy damage; the overall project, including all costs, must be cost effective; and approval must not be barred by other provisions of 44 CFR. Disaster Assistance Fact Sheet 9580.102, Permanent Relocation, states in question 2 that "FEMA may provide funding to an applicant to acquire land outside of a hazardous area." This statement was not intended to prevent permanent relocation when relocating outside the flood hazard area is not feasible. The regulations at 44 CFR § 206.226 (g) do not prohibit relocation within a hazard area, so long as the relocation is shown to lessen future damages and is cost effective. In these situations, a benefit cost analysis using the full data module must be conducted to evaluate the cost effectiveness of the project. Projects that are not cost effective may be considered for eligibility as an improved project.

Should you have any questions please contact Denise Yandle at (202) 646-7064, or at denise.yandle@dhs.gov.



FEMA

DISASTER ASSISTANCE

FACT SHEET

9580.103

GENERAL SERVICES ADMINISTRATION DISASTER RECOVERY PURCHASING PROGRAM

Overview

The General Services Administration (GSA) manages the Federal Supply Schedule Program which provides the framework for federal agencies to conduct a streamlined competition among a number of Schedule contractors for commercial products and services. Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) allows State, local and tribal governments to use the GSA Federal Supply Schedule to procure products and services for recovery activities resulting from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93-288, as amended, 42 U.S.C. 5121-5206. GSA established the Disaster Recovery Purchasing Program (DRPP) to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 in an interim rule published in the Federal Register on February 1, 2007 (72 FR 4649). The main provisions of the DRPP are codified at 48 CFR 538.7100-538.7104. The GSA DRPP authority is limited to GSA Federal Supply Schedule contracts and does not include any other GSA programs.

Participation in the GSA DRPP is voluntary for State, local, and tribal governments, as well as for Schedule contractors. GSA DRPP is not available to Private Non-Profits (PNPs). Participating State, local, and tribal governments have full discretion to decide if they wish to order products and/or services from the GSA Federal Supply Schedule, subject to any limitations that may be established under State and local laws and procedures. Contractors listed under the GSA DRPP are not eligible to purchase goods or services off of the GSA Federal Supply Schedule.

The GSA Federal Supply Schedule is not available to State, local, and tribal governments for day-to-day operations or localized emergencies. State, local, and tribal governments may use the GSA Federal Supply Schedule to purchase products or services in advance of and after a Federally declared major disaster to facilitate recovery from a Federally declared major disaster or act of terrorism. Those services and products purchased in advance of a declaration must still meet Public

GENERAL SERVICES ADMINISTRATION DISASTER RECOVERY PURCHASING PROGRAM

Assistance eligibility requirements for costs incurred from a Presidentially declared major disaster. Schedule 56 for building materials and Schedule 73 for cleaning services are among some of the Schedules available under the GSA DRPP. The GSA Schedule website contains a link entitled "Disaster Recovery Purchasing, State and Local." Participating contractors and the products and/or services available for recovery purchasing are labeled with a Disaster Recovery Purchasing icon.

Competition Requirements

The GSA Federal Supply Schedule ordering procedures address orders for supplies; orders for services where a Statement of Work (SOW) is *not* required (*e.g.*, installation, maintenance, and repair); orders for services where an SOW *is* required; and blanket purchase agreements (*e.g.*, services priced at hourly rates). Each type of procurement noted above requires the ordering entity, in this case the contracting official of the State, local, and tribal governments, to survey a minimum of three (3) contractors. Minimum documentation requirements required by 48 CFR §8.405-1(e) and §8.405-2(e) must be made available to FEMA upon request. See 44 CFR §13.36(g)(2).

1. Full and Open Competition

A Public Assistance State, local, or tribal government applicant that opts to use the GSA Federal Supply Schedule shall not seek competition outside the GSA Federal Supply Schedules. However, **competition is still required among the pool of GSA contractors.** Under the appropriate ordering procedures stated above, participating State, local, and tribal governments must survey at least three (3) Schedule contractors. When restricted competition exists (*e.g.*, only one source is capable of responding due to the unique set of circumstances or nature of the work and/or an urgent and compelling need exists and following the ordering procedures would result in unacceptable delays), participating State, local, and tribal governments are referred to 48 CFR §8.405-6. When competition is not possible because only one Schedule contractor is listed, State and local governments are not relieved from applicable Federal, State and local procurement and competition laws and regulations. See 44 CFR §13.36(b), 48 CFR §8.404.

GENERAL SERVICES ADMINISTRATION DISASTER RECOVERY PURCHASING PROGRAM

2. Fair and Reasonable Prices

Products offered on the GSA Federal Supply Schedule are listed at negotiated ceiling prices. Services offered on the GSA Federal Supply Schedule are priced either at hourly rates, or at a fixed price for performance of a specific task. GSA determines that the prices of products and fixed-price services, and rates for services offered at hourly rates, are fair and reasonable. GSA determines whether prices are fair and reasonable by comparing the prices/discounts that a company offers the government with the prices/discounts that the company offers to commercial customers. Although a spot discount may be sought at any time, State, local, or tribal government applicants placing Schedule orders that exceed the order threshold for a particular Schedule contract shall seek a price reduction pursuant to 48 CFR §8.405.

Public Assistance Program Eligibility

FEMA's Public Assistance program is a reimbursement program. Public Assistance State, local or tribal government applicants that use GSA DRPP to procure goods and/or services ***must still meet grant eligibility requirements*** under titles IV and V of the Stafford Act, 44 CFR parts 13 and 206 and related policies and guidance when seeking reimbursement of costs. For example, GSA may list a contract that offers a per stump price for the removal of hazardous stumps less than 24 inches in diameter, which would not be eligible for Public Assistance funding. Therefore, in addition to the GSA requirement that goods purchased under the GSA DRPP ***must be used to facilitate recovery from a major disaster***, such purchases must also be eligible for reimbursement under the Public Assistance Program. A State, local or tribal government applicant may be required to compensate FEMA for the fair market value of the cost of equipment and supplies purchased under a GSA Schedule when the items are no longer needed. See 44 CFR §13.32(e)(2).

FEMA may reimburse Public Assistance State, local, and tribal government applicants for products and/or services purchased under DRPP if they were procured competitively and are otherwise eligible under the Public Assistance Program. Public Assistance applicants who purchase goods or services under the DRPP should follow the GSA ordering procedures found in 48 CFR §§8.405–8, 8.405-2. By using these outlined procedures, Public Assistance State, local, and tribal governments that participate in the GSA DRPP will satisfy the requirements to procure products and/or services through full and open competition. See 44 CFR §13.36(c); 48 CFR §8.404.

**GENERAL SERVICES ADMINISTRATION
DISASTER RECOVERY PURCHASING
PROGRAM**

Although GSA ordering procedures allow for time and materials contracts, Public Assistance applicants should avoid using these contracts, except under very narrow circumstances. FEMA may reimburse costs for work performed and completed under a time and materials contract 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. See 44 CFR §13.36(b)(10). Public Assistance applicants should be aware that costs incurred under time and materials contracts may not be eligible for Public Assistance funding.

For more information on the GSA Federal Supply Schedule Program visit:

<http://www.gsa.gov/schedules> and <http://www.gsa.gov/disasterrecovery>.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

7/7/2008

Date



FEMA

RECOVERY DIVISION

FACT SHEET

RP9580.201

DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Overview

To be eligible for reimbursement under the Public Assistance Program, contracts for debris removal must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 *Procurement* (http://www.access.gpo.gov/nara/cfr/waisidx_04/44cfr13_04.html). Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13. The following guidance is provided to assist Public Assistance applicants in the procurement process.

Contracting Process Checklist

- Use competitive bidding procedures. Complete and document a cost analysis to demonstrate price reasonableness on any contract or contract modification where adequate price competition is lacking, as detailed in 44 CFR 13.36(f).
- Provide a clear and definitive scope of work and monitoring requirements in the request for proposals/bids. Use acceptable emergency contracting procedures that include an expedited competitive bid process only if time does not allow for more stringent procedures.
- Require bidders to provide copies of references, licenses, financial records, and proof of insurance and bonding.
- Obtain review from your legal representative of your procurement process and any contract to be awarded to ensure they are in compliance with all Federal, State, and local requirements.
- Document procedures used to obtain/award contracts (procurement information, bid requests and tabulations, etc).
- Use load ticket requirement to record with specificity (e.g., street address) where debris is picked up and the amount picked up, hauled, reduced and disposed of.

FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.



FEMA

RECOVERY DIVISION

FACT SHEET

RP9580.201

DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Contract Provisions Checklist

All contracts must contain/reflect the following provisions:

- All payment provisions must be based on unit prices.
- No payments may be based on time and material costs unless limited to work performed during the first 70 hours of actual work following a disaster event.
- That payment will be made only for debris that FEMA determines eligible, referencing FEMA regulations and Public Assistance guides and fact sheets. (This is an optional provision to protect the applicant, and is used only following a major disaster declaration.)
- An invoice provision requiring contractors to submit invoices regularly and for no more than 30-day periods.
- A "Termination for Convenience" clause allowing contract termination at any time for any reason.
- A reasonable limit on the period of performance for the work to be done.
- A subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and limiting use of subcontractors to only those you approve.
- The preference that the contractor use mechanical equipment to load and reasonably compact debris into the trucks and trailers.
- The requirement that the contractor provide a safe working environment, including properly constructed monitoring towers.
- Option of a unit price for extracting from ground and removing FEMA-eligible stumps (only for stumps with diameters larger than 24 inches, measured 24 inches above the ground, and with 50% or more of the root ball exposed), or including all stumps in the unit price.



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RECOVERY DIVISION

FACT SHEET

RP9580.201

DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Contract Provisions Checklist - Continued

All contracts must contain/reflect the following provisions:

- Requirement that all contract amendments and modifications be in writing.
- Requirement that contractor obtain adequate payment and performance bonds and insurance coverage.

Pre-Disaster and Stand-By Contracts Checklist

- It is recommended that you pre-qualify contractors prior to an event and solicit bid prices from this list of contractors once an event has occurred.
- The solicitation for pre-qualifying contractors must adequately define in the proposed scope of work all the potential types of debris, typical haul distances, and size of events for which a contract may be activated.
- To ensure reasonable debris removal costs, award debris removal contracts based on unit prices (volume or weight).
- If the contract is awarded on a time and material basis, it should be limited to no more than 70 hours of actual clearance and removal operations.
- After the initial 70-hour period, payment should be on a unit price basis (volume or weight).



FEMA

RECOVERY DIVISION

FACT SHEET

RP9580.201

DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Avoidance Checklist

- DO NOT:** Award a debris removal contract on a sole-source basis.
- DO NOT:** Sign a contract (including one provided by a contractor) until it has been thoroughly reviewed by your legal representative.
- DO NOT:** Allow any contractor to make eligibility determinations, since only FEMA has that authority.
- DO NOT:** Accept any contractor's claim that it is "FEMA certified." FEMA does not certify, credential, or recommend debris contractors.
- DO NOT:** Award a contract to develop and manage debris processing sites unless you know it is necessary, and have contacted the State for technical assistance concerning the need for such operations. Temporary debris storage and reduction sites are not always necessary.
- DO NOT:** Allow separate line item payment for stumps 24 inches and smaller in diameter; these should be treated as normal debris.
- DO NOT:** "Piggyback" or utilize a contract awarded by another entity. Piggybacking may be legal under applicable state law; however, the use of such a contract may jeopardize FEMA funding.
- DO NOT:** Award pre-disaster/stand-by contracts with mobilization costs or unit costs that are significantly higher than what they would be if the contract were awarded post-disaster. Such contracts should have variable mobilization costs depending upon the size of the debris work that may be encountered.



FEMA

RECOVERY DIVISION

FACT SHEET

9580.202

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

Overview

This fact sheet identifies and describes the authorities of federal departments and agencies in support of debris operations following a presidential emergency or major disaster declaration. The following nine Federal agencies and departments are invested with authorities (described in detail below) addressing various aspects of debris management.

- Department of Homeland Security
 - *Federal Emergency Management Agency*
 - *United States Coast Guard*
- Department of Defense: *U.S. Army Corps of Engineers*
- Department of Agriculture
 - *Natural Resources and Conservation Service*
 - *Farm Service Agency*
 - *Animal Plant and Health Inspection Service*
- Department of Transportation: *Federal Highway Administration*
- Department of Commerce: *National Oceanic and Atmospheric Administration*
- Environmental Protection Agency

Department of Homeland Security

Federal Emergency Management Agency (FEMA)

- FEMA is authorized in Sections 403, 407 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide assistance to eligible applicants to remove debris from public and private property following a Presidential disaster declaration, when in the public interest.
- Removal must be necessary to eliminate immediate threats to lives, public health and safety; eliminate immediate threats of significant damage to improved public or private property; or ensure

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

the economic recovery of the affected community to the benefit of the community-at-large. The debris must be the direct result of the disaster and located in the disaster area, and the applicant must have the legal responsibility to remove the debris.

- FEMA will (1) reimburse applicants to remove eligible debris, or (2) through a mission assignment to another Federal agency (and upon request of the State) - provide *direct Federal assistance* when it has been demonstrated that the State and local government lack the capability to perform or contract for the requested work.
- Assistance will be cost-shared (at no less than 75% Federal and 25% non-Federal). In extreme circumstances, FEMA will provide up to 100% funding for a limited period of time.

United States Coast Guard (USCG)

- Under the National Contingency Plan (NCP), the USCG and Environmental Protection Agency (EPA) are responsible for providing pre-designated Federal On-Scene Coordinators (FOSCs) to conduct emergency removals of oil and hazardous materials.
- USCG is responsible for the coastal zone, and the EPA is responsible for the inland zone. The delineation between coastal and inland zones is by mutual agreement between the USCG and the EPA, and the geographic limits are indicated in Area Contingency Plans.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, USCG has the authority to respond to actual or potential discharges of oil and actual or potential releases of hazardous substances, pollutants and contaminants that may endanger public health or the environment.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan drums tanks and drums), and final disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to USCG response authorities. Oil removal is funded from the Oil Spill Liability Trust Fund, while hazardous materials removal is conducted using CERCLA funds.
- USCG, under the Ports and Waterways Safety Act (33 U.S.C. §§1221), is responsible for keeping waterways safe and open. While there is no specific language stating that the USCG is responsible for debris removal from waterways, the USCG has been tasked - in the past - to assist in waterway and marine transportation system recovery.

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

Department of Defense

United States Army Corps of Engineers (USACE)

- USACE is authorized by Section 202 of Water Resources Development Act (WRDA) of 1976 (PL 94-587) to develop projects for the collection and removal of drift and debris from publicly maintained commercial harbors, and from land and water areas immediately adjacent thereto.
- Specific and limited local programs for continuing debris collection and disposal have been authorized (on an individual basis, with the authorized work carried out at each locality as a separate, distinct project) by Congress for:
 - New York Harbor
 - Baltimore Harbor
 - Norfolk Harbor
 - Potomac and Anacostia Rivers, in the Washington, D.C. Metropolitan area
 - San Francisco Harbor/Bay, California.
- Sections 15, 19, and 20 of the River and Harbor Act of 1899, as amended, authorize USACE to remove sunken vessels or other obstructions from navigable waterways under emergency conditions. A navigable waterway is one that has been authorized by Congress, and which USACE operates and maintains for general (including commercial and recreational) navigation. Funding for operation and maintenance of these “Federal” waterways is through USACE’s annual Operations and Maintenance General Appropriation. USACE’s policy is to oversee removal of sunken vessels by an identifiable owner, operator or lessee if the sunken vessel is in or likely to be moved into a Federal navigation channel. USACE will remove a vessel using its emergency authorities only if the owner, operator, or lessee cannot be identified or they cannot effect removal in a timely and safe manner.
- USACE is also authorized, under Flood Control and Coastal Emergencies (PL 84-99), to provide assistance for debris removal from flood control works, i.e., structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level. Under this authority, USACE requires that an applicant, to be eligible for assistance, be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster.

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

United States Department of Agriculture

Natural Resources Conservation Service (NRCS)

- NRCS' Emergency Watershed Protection Program (EWP) is authorized by Section 216 of the Flood Control Act of 1950, PL 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, PL 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127, 16 U.S.C. 2203.
- Debris clean up must be for either runoff retardation or soil erosion prevention that is causing a sudden impairment in the watershed creating an imminent threat to life or property. Typically, this includes debris within channels but could also include debris in close proximity to a channel or situated where the next event could create an imminent threat to life or property. There is no size limit to the watershed except that EWP assistance is not eligible for coastal erosion restoration.
- The EWP is funded through specific Congressional appropriations.
- Public and private landowners are eligible for assistance but must be represented by a project sponsor (a state or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government).
- Work can be done either through Federal or local contracts. Sponsors are responsible for the 75% local cost share.
- NRCS can provide assistance when the President declares an area to be a major disaster area or when an NRCS State Conservationist determines that a watershed impairment exists.
- NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of an agreement between NRCS and the sponsor.

Farm Service Agency (FSA)

- Emergency Conservation Program (ECP) is authorized by Sections 401 - 406 of the Agricultural Credit Act of 1978, PL 95-334, and provides emergency assistance for debris removal from privately-owned land following a natural disaster. It is funded through Congressional supplemental appropriations.

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.
- The ECP provides emergency cost share funding (up to 75% federal share) and technical assistance for farmers and ranchers to remove debris (other than animal carcasses).

Animal, Plant and Health Inspection Service (APHIS)

- APHIS has two programs under which it can provide debris removal assistance:
 - Veterinary Services (VS) program authorized by Animal Health Protection Act (7 U.S.C. 8301–8317) which provides for removal and burial of diseased animal carcasses.
 - Plant Protection and Quarantine (PPQ) program authorized by Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). This program manages issues related to the health of plant resources. Primary objective is to regulate and monitor in order to reduce the risk of introduction and spread of invasive species, including planning, surveillance, quick detection, containment, and eradication.
- Both public and private lands are eligible under these programs which provide assistance to Federal, State, tribes, local jurisdictions, and private landowners to manage animal and plant health by collecting and providing information, conducting or supporting treatments, providing technical assistance for planning and program implementation (removal).

Environmental Protection Agency (EPA)

- EPA's primary authorities related to debris removal fall into two categories: (1) authorities related to cleaning up debris that is mixed with or contains oil or hazardous materials; and (2) authorities related to establishing standards for proper management of debris (hazardous and non-hazardous). EPA generally does not remove non-hazardous debris after emergencies/disasters.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, EPA and the United States Coast Guard (USCG) have the authority to respond to actual or potential discharges of oil and actual or potential discharges of hazardous substances, and to actual or potential discharges of pollutants and contaminants that may present an imminent and substantial danger to the public health or welfare.

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- EPA has responsibility for responses in the inland zone and USCG has responsibility for responses in the coastal zone. The delineation between the inland and coastal zone is determined by mutual agreement by the EPA and USCG, and the geographic boundaries are indicated in Area Contingency Plans.
- EPA and USCG carry out these responsibilities under implementing regulations known as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and USCG pre-designate Federal On-Scene Coordinators (FOSCs) to direct and coordinate response actions.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks and drums), and disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to these response authorities.
- CERCLA requires that the State in which the site is located fund 10% of remedial action costs, with the other 90% drawn from the Superfund. However, where the potentially responsible party is a political subdivision of a State, the State must agree to fund 50% of the remedial action costs, with the other 50% drawn from the Superfund.
- The Resource Conservation and Recovery Act established a framework for Federal, State, and local cooperation in controlling the management of hazardous and non-hazardous solid waste. The EPA role is to establish minimum regulatory standards that are, in most cases, implemented by the States and to provide technical assistance. EPA administers other laws as well that may impact the management of debris (e.g., Clean Air Act requirements that apply to asbestos-containing debris). Again, some of these programs may be delegated to the States.
- FEMA may mission assign the EPA through the United States Army Corps of Engineers to dispose of household hazardous waste following a major disaster declaration from the President.

Department of Transportation

Federal Highway Administration (FHWA)

- The Emergency Relief (or ER) program is authorized in Title 23, United States Code, Section 125, from the Highway Trust Fund, and supports repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of natural disasters or catastrophic failures from an external cause.
- Debris removal from Federal-aid roads is eligible for 100% reimbursement during the first 180 days following an emergency event that qualifies and is approved for the ER program.

DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The ER program is funded \$100 million in annual authorizations. If the annual authorization is expended, FHWA will reimburse eligible costs when ER funds become available.
- The State must incur a cost of at least \$700,000 statewide to qualify for ER assistance. The cost of individual projects (sites) must be \$5,000.
- It is the responsibility of individual States to request ER funds for assistance in the cost of necessary repair of Federal-aid highways damaged by natural disasters or catastrophic failures.

Department of Commerce

National Oceanic and Atmospheric Administration (NOAA)

- The Coastal and Geodetic Survey Act of 1947 and the Hydrographic Services Improvement Acts of 1998, 2002, authorize NOAA to be directly involved in programs to assess and remove hazards and debris. NOAA does not fund debris removal.
- NOAA's Office of Coastal Survey is responsible for surveying and charting the nation's waters and coast, and has been heavily involved in hydro-surveying using side-scan and multi-beam sonar to identify hazards and debris and dangers to navigation along the Gulf Coast for the last three years.

/Signed/
David Garratt
Acting Director of Recovery

1/27/2007
Date



FEMA

DISASTER ASSISTANCE
DIRECTORATE

FACT SHEET

9580.203

DEBRIS MONITORING

Overview

When a disaster event occurs that produces large amounts of debris, effective coordination is required between the Public Assistance applicant, State, and FEMA to ensure that debris removal operations are efficient, effective, and eligible for FEMA Public Assistance grant funding. Eligible Public Assistance applicants are encouraged to monitor debris removal operations and document eligible quantities and reasonable expenses to ensure that the work is eligible for Public Assistance grant funding. Failure to do so properly may jeopardize this funding.

Public Assistance applicants can use force account resources or contractors to monitor debris removal operations, or a combination of both. Regardless of the method, the applicant is responsible for ensuring that applicant-managed debris removal work (either force account or contract) being funded through Public Assistance grants is eligible in accordance with Public Assistance guidelines. This Fact Sheet provides Public Assistance applicants with information on how to properly monitor applicant-managed debris removal operations to ensure compliance with these guidelines. It also provides information on debris monitoring responsibilities and duties that apply to both force account and contractor operations; however, some information provided only applies to debris operations performed under contract.

Debris Monitoring Roles and Responsibilities

Monitoring debris removal operations requires comprehensive observation and documentation by the Public Assistance applicant of debris removal work performed from the point of debris collection to final disposal. Monitoring debris removal work involves constant observation of crews to ensure that workers are performing eligible work in accordance with Public Assistance guidelines, and helps to verify compliance with all applicable Federal, State, and local regulations.

A number of different entities play a role in monitoring debris removal operations to ensure that they are efficient, effective and eligible for FEMA Public Assistance funding. It is important that these entities work together to communicate and resolve issues in the field so that reimbursement funding for debris removal operations is not jeopardized. Below is a table which addresses the general monitoring responsibilities and tasks of different partners in the debris removal operation. The table is followed by specific monitoring responsibilities and duties for both force account and contractor debris monitors in the field.

DEBRIS MONITORING

Entity	Responsibilities	Tasks
Debris Removal Contractor	Conduct debris removal operations per the terms of the contract.	<ul style="list-style-type: none"> Monitor its own day-to-day operations to ensure its contractual obligations are being met.
Public Assistance Applicant Monitoring Contractor	Works for Applicant to monitor debris contractor's day-to-day operations to ensure the applicants expectations and contractual requirements are being met.	<ul style="list-style-type: none"> Provide debris monitoring personnel who are trained in eligibility. Monitor operations in accordance with the contract requirements. Provide all monitoring documents as required in the monitoring contract.
Public Assistance Applicant (subgrantee)	Provide oversight and quality assurance of both the debris removal contract and the monitoring contract (if applicable). Request PA funds for eligible work. Ensure performance measures are met and eligible work is documented. Understand eligibility requirements and ensure work performed under the contract meets these requirements.	<ul style="list-style-type: none"> Designate project manager. <p><i>If debris removal is performed by force account labor:</i></p> <ul style="list-style-type: none"> Provide documentation to substantiate eligible debris quantities. Ensure compliance with subgrant requirements. <p><i>If debris removal is performed under contract:</i></p> <ul style="list-style-type: none"> Ensure that debris removal contractors and monitoring contractors (if applicable) understand eligibility requirements for the debris removal operations. Ensure that only eligible debris quantities are being claimed for Public Assistance. Resolve issues or discrepancies associated with the contract.
State (Grantee)	Ensure grant requirements outlined in the 44 CFR are being met and that PA applicants are receiving funds for eligible costs. Responsible for monitoring the grant and subgrant to ensure compliance with Federal, State and local laws and regulations.	<ul style="list-style-type: none"> Monitor the grant and subgrant requirements. Ensure that the applicant is sufficiently monitoring the debris removal operation (FEMA \ Grantee effort). Conduct random monitoring at load sites and disposal sites to ensure compliance with grant requirements (FEMA \ Grantee effort). Notify subgrantee of compliance issues and outline corrective actions (FEMA \ Grantee effort).
FEMA	Ensure grant requirements outlined in 44 CFR are being met. Fund eligible work. Responsible for the preparation of large project worksheets, development of the scope of work and the obligation of funds. Responsible for monitoring the grant to ensure compliance with Federal, State and local laws and regulations.	<ul style="list-style-type: none"> Develop large project worksheets in coordination with the Grantee and subgrantee. Utilize monitors to ensure that the applicant is sufficiently monitoring the debris removal operation. (FEMA \ Grantee effort) Conduct random monitoring at load sites and disposal sites to ensure compliance with grant requirements. (FEMA \ Grantee effort). Notify Grantee/subgrantee of compliance issues and outline corrective actions (FEMA \ Grantee effort). Increase or decrease monitoring efforts as necessary to ensure corrective actions are in place and operations are being effectively monitored.

DEBRIS MONITORING

The specific responsibilities and duties of individual debris monitors in the field are the same for both force account and contracted debris monitoring operations. They are:

- Report issues to their direct supervisor which require action (such as safety concerns, contractor non-compliance and equipment use)
- Accurately measure and certify truck capacities (recertify on a regular basis)
- Properly and accurately complete and physically control load tickets (in tower and field)
- Ensure that trucks are accurately credited for their load
- Ensure that trucks are not artificially loaded (ex: debris is wetted, debris is fluffed— not compacted)
- Validate hazardous trees, including hangers, leaners, and stumps
- Ensure that hazardous wastes are not mixed in loads
- Ensure that all debris is removed from trucks at Debris Management Sites (DMS)
- Report if improper equipment is mobilized and used
- Report if contractor personnel safety standards are not followed
- Report if general public safety standards are not followed
- Report if completion schedules are not on target
- Ensure that only debris specified in the contract is collected (and is identified as eligible or ineligible)
- Assure that force account labor and/or debris contractor work is within the assigned scope of work
- Monitor site development and restoration of DMSs
- Report to supervisor if debris removal work does not comply with all local ordinances as well as State and Federal regulations (i.e., proper disposal of hazardous wastes)
- Record the types of equipment used (Time & Materials contract)
- Record the hours equipment was used, include downtime of each piece of equipment by day (Time & Materials contract)

Applicants may request FEMA/State assistance with debris monitoring or monitor training.

Only FEMA has the authority to make eligibility decisions; contractors cannot make eligibility determinations. Information on eligibility can be found in the Public Assistance Debris Management Guide FEMA 325, the Public Assistance Policy Digest FEMA 321, the Public Assistance Applicant Handbook FEMA 323, and the Public Assistance Guide FEMA 322.

Monitoring Requirements by Type of Contract

Unlike other categories of work eligible for Public Assistance grants, initial debris removal project worksheets typically do not have a defined scope of work, since precise quantities of debris are difficult to attain. Therefore, unit price contracts which pay by debris volume or weight removed are typically implemented. Unit price contracts require extensive monitoring to determine accurate quantities of eligible debris removed and disposed. As load tickets are compiled and accurate quantities are determined through monitoring, the scope of work for the project worksheet, or version, is established.

DEBRIS MONITORING

In some cases, time and materials contracts may be more cost effective and appropriate for the amount and type of eligible work to be performed. For both time and materials and lump sum contracts, debris monitors must still document and quantify eligible debris amounts in order to determine reasonableness of costs.

The table below includes a breakdown of monitoring requirements by contract type.

Type of Contract	Project Worksheet Scope of Work	Subgrantee Monitoring Required					Comments
		Crew Efficiency	Load site	DMSs	Disposal sites	Fraud	
Lump Sum	Defined debris quantities and reasonable costs. Estimate is basis for contract costs.		√		√		Quantities are still required to determine reasonable costs.
Unit Price - CY	Based on eligible debris listed on load tickets	√	√	√	√	√	
Unit Price - Ton	Based on actual weight measurements of eligible debris listed on load tickets.		√		√	√	
Time and Materials	Based on labor, equipment and materials records. Reasonable costs evaluated by determining costs per unit.	√	√		√	√	Typically used for road clearance. If used for debris removal, quantities are still required to determine reasonable costs. Eligible costs are restricted to up to 70 hours.

Monitoring Contracts

The request for proposal (RFP) for debris monitoring contracts should outline the qualification of debris monitors. The qualifications should be appropriate for the individual responsibilities and duties listed above, and debris monitors should have experience working on construction sites and be familiar with safety regulations. It is not necessary to have professional engineers and other certified professionals perform these duties. Debris monitors primarily should have the ability to estimate debris quantities, differentiate between debris types, properly fill out load tickets, and follow all site safety procedures.

The RFP should also outline possible locations to be monitored and reporting requirements to document eligible debris quantities.

DEBRIS MONITORING

Monitoring contracts are typically time and materials and must contain a *not-to-exceed* clause per the requirements of Part 13 of 44 CFR. The subgrantee should ensure the level of monitoring and overhead claimed is commensurate with the level of effort required to effectively monitor the debris removal and monitoring operation. In addition to the costs for the monitors, the subgrantee can claim as part of its monitoring project worksheet reasonable costs for the debris monitoring contractor to provide training, oversight, and data compilation as required by the terms of the contract. Architectural and engineering service overhead should not be claimed. Additional information on costs that are eligible can be found in the *Public Assistance Debris Management Guide FEMA 325*.

The monitoring contractor costs associated with compiling data to verify costs invoiced by the debris removal contractor can be an eligible expense. Costs associated with attending meetings with FEMA and/or the Grantee and compiling documentation for the production of project worksheets are funded through the administrative allowance as stated in 44 CFR, Part 206.228 and cannot be a direct charge to a Public Assistance grant.

Reporting Requirements & Performance Measures

If FEMA is providing grant assistance for the applicant's monitoring contract, a sample of the reporting requirements outlined in the contract will be required to substantiate the eligible costs. This sample must be adequate to demonstrate that sufficient measures were taken to ensure eligibility and accurate quantities are being reported as part of the grant. Applicants should require debris monitors to submit daily reports on load quantities, debris management site operations, and operational and safety issues in the field. Regular reporting helps to promote quality assurance and provides the applicant with a consistent accounting of operations in the field.

If a time and materials monitoring contract is used, the contractor will have to supply labor, equipment and material records to the subgrantee in order to substantiate the actual costs in the project worksheet.

Continuous monitoring of all activities of a debris contractor can help promote efficiency and effectiveness in the debris removal operation. In evaluating a contractor's performance, primary interest is in the progress toward completion of the services called for and the financial status of the contract. It is important that the contract provide for submission of reports and payment estimates to aid in evaluating the contractor's progress.

Applicant debris monitoring responsibilities may include tracking performance measures used to assess the progress of debris removal operations in the field. Specific debris contract performance measures may include:

- Percentage completion tracking
- Adherence to contract time schedules
- Adherence to contract cost schedules

DEBRIS MONITORING

Contract Procurement Requirements

To be eligible for reimbursement under the Public Assistance Program, contracts for debris monitoring must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 *Procurement* (http://www.access.gpo.gov/nara/cfr/waisidx_04/44cfr13_04.html). Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13.

/signed/

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

5/2/07

Date