

Public Assistance 9500 Series Policy Reference Table

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9510.1	Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation	January 9, 2001 – January 22, 2013
9521.1	Community Center Eligibility	August 11, 1998 – June 18, 2008
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9530.1	Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants	August 8, 2000 – January 1, 2009
9530.1	Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Public Assistance Grants	January 2, 2009 – December 31, 2015
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9550.3	Interim Policy on Fire Suppression Assistance	March 19, 2001 – October 29, 2001
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9580.4	Emergency Work Contracting Fact Sheet	October 23, 2008 – October 27, 2012
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Number	Policy Title	In Effect
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Memo	2013 PA Policy Rescissions	January 23, 2013
Memo	9580.3 Rescission	February 8, 2013
Memo	9523.9 Rescission	October 6, 2015

9510.1 – Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation (2001)

1. **Response and Recovery Directorate Policy Number:** 9510.1
2. **Title:** Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation
3. **Date Signed:** January 9, 2001 (Rescinded on January 23, 2013)
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 longstanding 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-case 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),¹ 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, and 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;²
 - 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, and Division Director;
 - ii. Headquarters: OGC and other key offices, as appropriate;
 - iii. RR: Policy Advisor, DAD, EAD;

¹ 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.

² *Id.*

- 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),³ 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, and 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;⁴
 - 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, and 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.
 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;

³ *Id.*

⁴ *Id.*

- 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, and 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:
 - 1. Technical advice on application/implementation of policy;
 - 2. Formalization of past practice;
 - 3. Interpretations of law, regulation, policy or other text;
 - 4. Correction of policies/practices inconsistent with law, regulation, policy or national intent;
 - 5. Appeal decisions;
 - 6. 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
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.

RR POLICY 9510.1 - APPENDIX⁵

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 – To result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or 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

FEMA coordinates draft interim policy internally at regional and national levels.

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).

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.

FEMA advises national and local congressional offices (briefing as appropriate).

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.

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.

⁵ 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.

Optional: FEMA will conduct briefings for affected subgrantees. If comments are accepted at the briefing, FEMA must record substance of comments and source (to the extent the provider is willing to be identified). Briefings may be conducted simultaneously in multiple locations.

FCO provides the FEMA Office of General Counsel (OGC) Docket Clerk and FEMA RR/IS a complete record of the interim policy including, at a minimum: draft interim policy, entities from whom views and recommendations were solicited, and comments received.

FEMA consolidates and considers views and recommendations received by the deadline. FCO, Regional Director and FEMA RR/IS coordinate final document.

Optional: FEMA conducts follow-up discussions as appropriate.

Executive Associate Director, RR, FEMA revises and signs interim policy for use during the declared disaster. FCO and Regional Director distribute the interim policy. FEMA RR/IS maintains file with signed final document.

Minor modifications to this process may be made for cause by the Director, Infrastructure Division, RR Directorate, or FEMA.

/Signed/

Lacy E. Suiter

Executive Associate Director

Response and Recovery Directorate

17 April 2001

Date

9521.1 – Community Center Eligibility (1998)

- 1. Date Published:** August 11, 1998 (Superseded on June 19, 2009)
- 2. Response and Recovery Directorate Policy Number:** 9521.1
- 3. Title:** Community Center Eligibility
- 4. Purpose:** To specify criteria that a private nonprofit (PNP) facility must meet to be eligible, as a community center, for disaster assistance under Title 44 of the Code of Federal Regulations (CFR) 206.221(e)(6).
- 5. Scope and Audience:** This policy details eligibility criteria for permanent repair, restoration and replacement of PNP community centers under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act). It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making public assistance eligibility determinations and personnel otherwise involved in the administration of the Public Assistance Program. This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy.
- 6. Background:**
 - A) Public Law 100-707 added a new category of PNP facility eligible for assistance as “facilities which provide essential services of a governmental nature to the general public.” The House report that accompanied the bill included as PNPs “museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities and shelter workshops that are open to the general public.”
 - B) Since the statute has been implemented through the 44 CFR provision, many PNPs have applied for disaster assistance under the category of community centers. However, the term “community center” is popularly used to describe a wide variety of facilities, many of which are not eligible for assistance under the Stafford Act.
 - C) This guidance has been prepared to define what constitutes an eligible PNP community center. Note that all PNP applicants must also meet additional eligibility criteria, detailed primarily in 44 CFR 206, in order to receive disaster assistance. Under the Stafford Act, private nonprofit facilities that are not eligible as community centers may be eligible under other categories of PNP facilities, such as shelter workshops, senior citizen centers, schools, or homeless shelters. It is emphasized that just because a facility is owned or operated by a PNP does not mean that disaster assistance will be provided for that facility.
 - D) This policy does not foresee see all situations and does not specifically address every circumstance. If further clarification is required when interpreting or implementing this policy, please consult with FEMA Response and Recovery Directorate, Washington, D.C.

7. Policy:

- A) An eligible community center is defined as a facility open to the general public, established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities. Facilities established or primarily used for religious, political, athletic, recreational, vocational or academic training, the arts, conference, or similar activities are not eligible PNP community centers.
- B) 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 if the lease, pre-dating the disaster, clearly specifies that the eligible applicant is responsible for repair of disaster damage.
- C) The key words and phrases used in the policy statement are discussed below:
 - 1) A “facility” is a building specifically designated as a community center, together with attached structures and grounds. In determining eligibility, the entire building is 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 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. In multiple use facilities, FEMA uses the principle of majority use to qualify the facility. If 51% of the facility qualifies as eligible, the facility is eligible.

Similarly, a building that is part of a complex that includes outdoor facilities (e.g., swimming pool, athletic fields, tennis courts) will not be evaluated separately from the rest of the complex in determining eligibility of the facility. For example, an outdoor pool usually has a clubhouse for controlling entry, providing locker rooms, etc. In such cases, the clubhouse cannot be evaluated separately since it is an intrinsic part of the pool complex.

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

- 2) “Open to the general public” not only requires that the facility be available to the public on a non-discriminatory basis, but that any access fees be reasonable. A

facility at which most community center functions were offered to the public either free or for a reasonable use charge would usually meet this requirement. However, a facility with a high initiation fee or annual dues of hundreds of dollars generally would not be eligible.

- 3) “Established...” refers to the purpose for which a facility was instituted. This should be determined by reviewing the organization’s (pre-disaster) charter, bylaws, and amendments or other well-documented evidence of longstanding, routine (day-to- day) use of such facility as a community center. A facility offering a wide range of activities for only a brief period or at irregular intervals would not be eligible. As a general rule, a facility that was not founded as a community center would not be an eligible community center. If it cannot be established by documentary or other evidence that a facility that was used as a community center prior to a disaster, it will not be considered an eligible community center.

Further evidence of the established purpose of a facility is the degree to which community center staff actively manages, oversees, and promotes community activities. Are there designated staff members responsible for community activity? Do they make community activities happen or merely let them happen? Simply making a room available to any community organization that happens to request it does not make a facility an eligible community center. There is, however, an exception to this general requirement. FEMA regulations recognize as eligible, a PNP organization that owns or operates an eligible PNP facility. This situation usually involves an eligible PNP organization that owns a facility that it leases to an operator of an eligible PNP community center. When the PNP owner is the entity legally responsible for performing disaster-related repairs to the facility, it is the activities and documentation of the PNP tenant community center that will be evaluated, not the PNP facility owner.

- 4) “Primarily used...” means that more than half (i.e., over 50%) of the total use of the facility must be for community activities (i.e., “a variety of social, educational enrichment, and community service activities”). To qualify for disaster assistance, a community center need not be used exclusively for community activities; however, the majority use must be for community center functions. This could mean that if 40% of the activities at a particular facility were community oriented, 35% athletic, and 25% religious, the facility would not be an eligible community center.

In determining primary use, there is no substitute for personally visiting the community center and touring the facility, along with reviewing relevant flyers, leaflets, advertisements, and newsletters. An on-site visit should be made whenever possible, especially if eligibility is in doubt.

Materials such as the organizational charter, articles of incorporation, minutes of board meetings, activity logs, and other documents that existed prior to the disaster and evidence of the facilities activities and uses prior to the disaster should

be obtained and reviewed to ensure that a facility is not being identified as a community center for the first time only after the disaster.

A facility's primary use can also be determined by checking the facility's pre-disaster listing in the local telephone directory. A "community center" listed in the telephone book yellow pages as a performing arts center would warrant closer examination.

Primary use can be established by approximating the space and time dedicated to community activities. This approach should focus on the overall use of the facility without becoming mired in details. 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.

An approximation of the number of participants regularly involved in various activities must also be considered in determining primary use. 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.

Another approach is to ask the question: "If all community activities were eliminated, would the facility still function?" If, stripped of all community activities, a facility would be a performing arts center, church, or gymnasium; it is more likely to have been established for that purpose, not as a community center. Conversely, if ending all community activities would result in an empty, unused building, the facility is more likely to have been established as a community center.

- 5) "As a gathering place for a variety... (of activities)" means that the facility is used by many individuals and groups for many 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.
- 6) "Social, educational enrichment, and community service activities" are key functions that define a community center. Variously 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 in typical hobby or at-home pursuits such as gardening, sewing, ceramics, car care, personal financial and tax planning, 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.
- 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.

In summary, a community center must involve many different activities, serving many diverse groups in order to be eligible. A facility used for only one or two activities or limited to a narrow range of activities; however, worthwhile or socially redeeming, 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. 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.

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 ordinarily not qualify.

- 7) "Facilities established or primarily used for religious... or similar... 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.
 - a) However, just because a community center is operated by a religious institution does not automatically disqualify it. 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.

- b) One key determinant for religious-based community centers is the nature of the activities. Exclusively religious are such activities as worship services, Sunday school, Bible study, missionary activities, choir and religious music, evangelism, religious fellowship activities, nursery during religious services, religious radio and television programming, preaching, prayer, religious training, and children, youth and seniors ministries. 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 fund raising activities undertaken for the benefit of a religious institution would not be considered toward eligibility, whereas the same activities done to help the homeless may be.
 - 8) “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.
 - 9) “Facilities primarily established or used for…athletic, recreational, vocational or academic training, the arts, conferences, or similar activities” are not eligible, because they were specifically listed as examples of ineligible facilities in information supplementary to the September 14, 1993, revision to 44 CFR 206.221 (e)(6).
- 8. Supersession:** This policy updates and replaces all relevant FEMA past policy memoranda.
- 9. Authorities:** 44 CFR §206.221 (e)(6)
- 10. Originating 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

SEE ATTACHED APPENDIX FOR FACILITY CASE EXAMPLES

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APPENDIX: PNP 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.

Windsor Community Center

Windsor Community College 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 is not an eligible community center, primarily because it is established and 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.

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, church 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 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 is 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.

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 appliquéd 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 is not 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, 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 is not 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 is an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; thence it is not a recreational center. The minimal fee (which can be earned through volunteer work) essentially make it open to the public.

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 is not an eligible community center.

9521.1 – Community Center Eligibility (2008)

I. TITLE: Community Center Eligibility

II. DATE: June 19, 2008 (Superseded on January 1, 2016)

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 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.
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 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. Variously 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.
- 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 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

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 – Windsor Community Center

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.

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 – Westover RECenter

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 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

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. 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 appliquéd 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

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, 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

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 – Somerset Community Center

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.

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 – Hopewell Community Center

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.

9521.2 – Private Nonprofit Museum Eligibility (1999)

- 1. Response and Recovery Directorate Policy Number:** 9521.2
- 2. Title:** Private Nonprofit Museum Eligibility
- 3. Date Published:** August 17, 1999 (Superseded on January 14, 2009)
- 4. Purpose:** This policy clarifies what constitutes a museum as an eligible private nonprofit (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:** Subject to the provisions that follow, PNP museums may be eligible for public assistance grant funding.
 - 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.
 - 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

9521.2 – Private Nonprofit Museum Eligibility (2009)

I. TITLE: Private Nonprofit (PNP) Museum Eligibility

II. DATE: January 14, 2009 (Superseded on January 1, 2016)

III. PURPOSE:

This policy specifies the criteria that a PNP facility should meet to qualify as an eligible PNP Museum.

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. This policy does not address museum collections or individual holdings as those are the subject of a separate Disaster Assistance Policy (DAP) 9524.6, Collection and Individual Object Eligibility.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5172, and 44 Code of Federal Regulations (CFR) §§206.221(e)(7) and 206.226.

VI. BACKGROUND:

This policy provides guidance on what constitutes an eligible PNP museum facility. Note that all PNP applicants must also meet additional eligibility criteria, detailed primarily in 44 CFR §§206.221 and 206.222 in order to receive disaster assistance under the PA Program.

VII. POLICY:

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

- A. PNP museums are facilities which are constructed, manufactured, or converted with the primary purposes of:
 1. Preserving a documented collection of artistic, historic, scientific or other objects; and
 2. Exhibiting the documented collection to the general public.
- B. Eligible Facilities
 1. The museum buildings that are used for the preservation or exhibition of the documented collection.
 2. Permanent infrastructure (e.g., walkways and driveways) of outdoor museum-type exhibition areas.
 3. PNP-owned historic buildings, including their appurtenances, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area.
 4. PNP-owned permanent facilities and equipment that are part of arboretums and botanical gardens.
 5. Infrastructure (water, power, sewer/septic) and administrative support necessary to support a PNP-eligible museum building.

C. Ineligible Facilities

1. Buildings and other assets that are not primarily used for the preservation or exhibition of artistic, historic, scientific or other objects (except as authorized in VII.B.5. above).
2. The grounds at museums and historic sites (except as authorized in VII.B.2. above). Plant materials are subject to the provisions of DAP9524.5, Trees, Shrubs, and Other Plantings Associated with Facilities.
3. 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.

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

IX. SUPERSESSION: This policy supersedes RP9521.2 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

9521.3 – Private Nonprofit Facility Eligibility (2000)

This policy provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in 44 CFR 206.221. 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 still is necessary to provide this additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule of 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.

This policy is archived and has been superseded by 9521.3 PNP Facility Eligibility (2003).

1. Date Published: April 25, 2000 (Superseded on May 23, 2003)

2. Response and Recovery Directorate Policy Number: 9521.3

3. Title: Private Nonprofit Facility (PNP) Eligibility

4. Purpose:

This policy provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in 44 CFR 206.221.

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 Public Assistance Program.

6. Background:

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 still is necessary to provide this additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule of 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.

7. Policy:

Guidance for determining the eligibility of PNP organizations and their facilities follows:

A. Applicants - Basic Requirements.

1. The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State that they are nonprofit organizations doing business under State law.

2. The applicant must meet requirements as listed in 44 CFR 206.221 - 44 CFR 206.223, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.

B. Facilities - Basic 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. The facility must be open to the general public.
4. Eligible PNP Facilities. The following generally are eligible for assistance:
 - a. Educational facilities as defined in 44 CFR 206.221 (e);
 - b. Utilities as defined in 44 CFR 206.221 (e);
 - c. Emergency facilities as defined in 44 CFR 206.221 (e);
 - d. Medical facilities as defined in 44 CFR 206.221 (e);
 - e. Custodial care facilities as defined in 44 CFR 206.221 (e);
 - f. Facilities which provide essential governmental services such as:
 - i. Museums;
 - ii. Zoos;
 - iii. Community centers;
 - iv. Libraries;
 - v. Homeless shelters;
 - vi. Senior citizen centers;
 - vii. Rehabilitation facilities;
 - viii. Shelter workshops; and
 - ix. Facilities that provide health and safety services of a governmental nature including:
 - a) Low-income housing as defined by Federal, State or local law or regulation;
 - b) Alcohol and drug rehabilitation centers;
 - c) Residences and other facilities offering programs for battered spouses;
 - d) Animal control facilities directly related to public health and safety;
 - e) Facilities offering food programs for the needy; and
 - f) Daycare centers for children, senior citizens and those 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. Examples include:
 - a. Recreation facilities;
 - b. Job counseling and training centers;
 - c. Facilities for advocacy groups not directly providing health services;
 - d. Public housing other than low-income housing;

- e. Cemeteries;
- f. Performing arts facilities;
- g. Parking garages;
- h. Conference facilities;
- i. 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
- j. Daycare centers for other than those included above as eligible.

C. Facility Eligibility Based on Primary Use.

Even though an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space, time, and number of persons involved in the eligible purposes/missions of an organization are parameters in determining if a facility is eligible.¹

- 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. 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, the primary use is determined by examining the amount of time for eligible services and number of people using the facility for eligible services.
 - 3. Space dedicated to or primarily used for religious purposes is not eligible for Public Assistance Program assistance. An otherwise eligible use occurring in a place of worship does not create eligibility for the place of worship. However, if a potentially eligible function occurs separately or in space segregated from the place of worship, it will be evaluated for eligibility on its own merits vis-à-vis its space.
 - 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.
- D. Ownership. There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion to an ineligible organization. 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.

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

1. 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.
 2. A facility that does not meet the 50% space threshold is not an eligible PNP facility.
 3. 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.
 - 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 limited to 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.
- E. Defining "open to the general public."
- Being "open to the general public" and "providing services to the general public" are requirements for an organization to be eligible for assistance. There are organizations that charge membership fees for use of their facilities. The collection of membership fees may cause an organization to be ineligible because the fee may restrict use by the general public.
1. An organization is ineligible when:
 - 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 excludes individuals of certain discrete groups, 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.
2. A review is required, but an organization likely meets the "open to the general public" requirement if:
- 1. It is open to the general public;
 - 2. Membership fees, if any, are nominal;
 - 3. Membership fees, if any, can be waived in instances in which someone can show inability to pay the fee; and
 - 4. Use restrictions, if any, are clearly related to the nature of the facility. (Facilities for senior citizens, child day-care, children with cancer and other disabilities, or abused spouses could be restricted to that group and might still be eligible.)

F. 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.

G. Examples.

Several examples are offered for clarification purposes in the attached Appendix A. In addition, RR Policy #9521.1, "Community Center Eligibility," should be reviewed as a complementary policy and for more examples of partial eligible use.

8. Supersession:

Memorandum from Grant C. Peterson to Regional Directors dated April 27, 1990, Subject: Private Nonprofit Facilities.

1. Memorandum from Dennis H. Kwiatkowski to Regional Directors dated October 4, 1993, Subject: Final Rules - 44 CFR Part 206- Private Nonprofit Facilities.
2. Memorandum from Richard W. Krimm to Regional Directors and Disaster Recovery Managers dated May 4, 1994, Subject: Private Nonprofits - Eligibility of "essential governmental services facilities".
3. Memorandum from William C. Tidball to Leland R. Wilson dated July 22, 1996, Subject: Guidance for Eligibility of Medical Office Buildings.
4. All other relevant provisions of other public assistance policy documents on this subject.

9. Authorities:

Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended;
44 CFR § 206.221 - 44 CFR § 206.223.

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

9521.3 – Private Nonprofit Facility Eligibility (2003)

- 1. Recovery Division Policy Number:** 9521.3
- 2. Title:** Private Nonprofit Facility (PNP) Eligibility
- 3. Date Published:** May 23, 2003 (Superseded on July 18, 2007)
- 4. Purpose:** This policy provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in 44 CFR 206.221.
- 5. Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after January 20, 2001. This change in policy affects eligibility for the public assistance program as well as for the Hazard Mitigation Grant Program (HMGP).

Since this policy is applicable retroactively, the normal application deadlines will be extended for Public Assistance. The Regions and the States will take appropriate measures to identify and re-evaluate applicants who may have been denied assistance in disasters declared on or after January 20, 2001. For HMGP, the States may amend their applications until December 31, 2003, with respect only to PNP applicants who are now eligible because of the revised policy and were PNPs at the time of the declaration, and only for major disaster declarations where HMGP funds are available. This policy is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the Public Assistance Program.

- 6. Background:** 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 44CFR 206.221. However, PNP organizations offer so many types of services that it is still necessary to provide this additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule of 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. In the past, all PNPs had to be open to the general public. However, a careful reading of legislative authorities makes clear that in 1988, in amending the Disaster Relief Act of 1974, Congress intended that facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature "[as defined in §206.221(e)(7)] must be open to the general public. Furthermore, with passage of the Disaster Mitigation Act of 2000 Congress added "irrigation" facilities to the extent they provide water for essential services of a governmental nature to the general public. These changes have been incorporated into the existing policy, which is presented in its entirety below.

- 7. Policy:** Guidance for determining the eligibility of PNP organizations and their facilities follows:

- 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 it is a nonprofit organization doing business under State law.
 - 2) The applicant must meet requirements as listed in 44 CFR 206.221 - 44 CFR 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) I) 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 §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 §206.221 (e)(3)] and facilities that provide “other essential government services” as defined in §206.221(e)(7), and as listed in 4(g) below, must be open to the general public.
 - 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 §206.221 (e)(1)]
 - b) Utilities [as defined in §206.221 (e)(2)]
 - c) Irrigation facilities [as defined in §206.221(e)(3)]
 - d) Emergency facilities [as defined in §206.221 (e)(4)]
 - e) Medical facilities [as defined in 206.221 (e)(5)]
 - f) Custodial care facilities [as defined in §206.221 (e)(6)]
 - g) Facilities that provide essential governmental services and which must be open to the general public [as defined in §206.221(e)(7)] such as:
 - i. Museums;
 - ii. Zoos;
 - iii. Community centers;
 - iv. Libraries;
 - v. Homeless shelters;
 - vi. Senior citizen centers;
 - vii. Shelter workshops; and
 - viii. Health and safety services of a governmental nature, including, for example:
 - Low-income housing (as defined by Federal, State or local Jaw 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; and
 - Daycare centers for children, or 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) Public housing (other than low-income);
- e) Cemeteries;
- f) Performing arts facilities;
- g) Parking garages;
- h) Conference facilities;
- i) 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
- j) Daycare centers for purposes other than those described in paragraph 4 above.

C. Facility Eligibility Based on Primary Use.

Even though 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 purposes is not eligible for Public Assistance Program assistance under the governing statutes and regulations.
- 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.

D. 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

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

- 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:
 - i. Must own more than 50% of the facility; and
 - ii. 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.
 - 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.

E. 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 §206.221(e)(7)], but are not requirements for facilities that meet the definition of an educational, utility, emergency, medical, or custodial care facility as defined in §206.221(e).

- 1) A private nonprofit facility that provides “other essential governmental services” [defined in §206.221(e)(7)] is likely to meet the “open to the general public” requirement if:
 - a) It is open to the general public. (Facilities defined in §206.221(e) as educational, utility, emergency, medical, or custodial care are exempt from this requirement);
 - 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.
- 2) A private nonprofit facility that provides “other essential governmental services” [defined in §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.

F. Requirement for Application to the Small Business Administration (SBA).

PNP facilities potentially eligible for permanent work assistance that provide “non-critical services” must first apply for a disaster loan from the SBA before applying to FEMA for disaster assistance. “Non-critical” PNPs, however, may apply directly to FEMA for emergency work costs. “Non-critical services” include educational facilities as well as those facilities defined in §206.221(e)(7). Facilities providing “critical services” as defined in §206.226(c)(1), including power, water, sewer and wastewater, communications, medical treatment, fire protection, emergency rescue, and nursing homes, may apply directly to FEMA for disaster assistance. The SBA loan application process for these “non-critical” PNP facilities will result in one of three outcomes:

- 1) If the PNP is declined for an SBA loan, the PNP may then apply to FEMA for public assistance.
- 2) If the SBA loan fully covers eligible damages from the disaster event, then no assistance from FEMA is available.
- 3) If the maximum SBA loan for which the facility is eligible does not fully cover eligible damages, the PNP may then apply to FEMA for the excess eligible damages.

Eligible PNPs are also required to apply to SBA for any 406 Hazard Mitigation costs.

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, RR Policy 9521.1 Community Center Eligibility and RR Policy 9521 .2 Private Nonprofit Museum Eligibility should be reviewed as complementary policies and for more examples of partial eligible use.

8. Supersession:

- A. RR Policy 9521.3 Private Nonprofit (PNP) Facility Eligibility dated April 25, 2000.

- B. All other relevant provisions of other public assistance policy documents on this subject.
- 9. Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206, and 44 CFR 206.

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

11. Review Date: One year from date of publication.

12. Signature:

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

13. Distribution: Regional Directors, Regional Recovery Division Directors, and Regional Public Assistance Branch Chiefs.

9521.3 – Private Nonprofit Facility Eligibility (2007)

I. TITLE: Private Nonprofit (PNP) Facility Eligibility

II. DATE: July 18, 2007 (Superseded on January 1, 2016)

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.
- 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 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, amphitheaters,

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

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.
 - 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:
 - 1) The PNP is declined for an SBA loan. The PNP may then apply for FEMA assistance.
 - 2) 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.
 - 3) 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.
 - 4) 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

9521.3 PRIVATE NONPROFIT FACILITY (PNP) ELIGIBILITY APPENDIX

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 – Parkland Hospital Medical Office Building

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 – Springtown Recreation Center

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.

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 – Community Church School

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 – Southlake Hospital Parking Garage

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.

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 – Woodlands Homeowners Association

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 – Midwest Methodist University

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.

9521.4 – Administering American Indian and Alaska Native Tribal Government Funding (1999)

- 1. Response and Recovery Directorate:** 9521.4
- 2. Title:** Administering American Indian and Alaska Native Tribal Government Funding
- 3. Date:** December 28, 1999 (Superseded on April 30, 2007)
- 4. Purpose:** This policy provides guidance in administering Public Assistance funding to American Indian and Alaska Native Tribal Governments when the Tribal Governments choose to act as their own Grantee or the State cannot legally act as their Grantee.
- 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. This policy applies only to federally recognized Indian Tribal Governments. It does not apply to other tribal governments, e.g., State-recognized tribes.
- 6. Background:**
 - A. The State is usually the Grantee for all Public Assistance funding and responsible for administering all funds provided 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. However, when legally permitted, Tribal Governments should be encouraged to continue existing relationships with the State as the Grantee. When possible, Administrative Plans should be developed before a disaster to expedite response and recovery actions and to ensure an understanding of roles and responsibilities.
 - B. For the purposes of this policy, the following definitions apply:
 1. An 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. An 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 (85 Stat. 688). The shortened name, Tribal Government, is used throughout this policy.
- 7. Policy:**
 - A. A Tribal Government may request to act as its own Grantee if the State Governor has requested a major disaster or emergency declaration, and the disaster or emergency has been approved by the President. The Tribal Government makes the request by submitting an SF424, 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.
- C. The Tribal Government will operate under the same disaster declaration number issued as a result of the Governor's request, even if the State is involved as Grantee under that number in other areas of the State. 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 dealt with 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 states the understandings, commitments, and conditions under which assistance will be provided to the Tribal Government. FEMA Headquarters Response and Recovery Directorate will draft the basic provisions for the Agreement. FEMA Regional Directors will add specific provisions related to the disaster and the Tribal Government. All proposed changes to the basic Agreement must be reviewed by FEMA Headquarters prior to inclusion.
 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 its own Grantee, will receive project funding, Grantee management costs and administrative allowances under the Public Assistance Program. Subgrantee administrative allowances will be provided to subgrantees if they are subdivisions of the tribal government.
 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.

8. Supersession:

- A. Memorandum from Richard W. Krimm to Regional Directors dated June 23, 1993, Subject: Emergency Management Assistance (EMA) Funding for the Navajo Nation.
 - B. This policy also updates and replaces relevant provisions of previous public assistance documents on this subject.
- 9. References:** 44 CFR 206.44 and 206.202(l)(1); Federal Register: January 12, 1999 (Vol. 64, No. 7), Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Governments.

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 Directors

ARCHIVED

9521.4 – Administering American Indian and Alaska Native Tribal Government Funding (2007)

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

II. DATE: April 30, 2007 (Superseded on January 1, 2016)

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.

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 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.

XII. SIGNATURE:

____//Signed//____

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

ARCHIVED

9521.5 – Eligibility of Charter Schools (2006)

I. TITLE: Eligibility of Charter Schools

II. DATE: June 16, 2006 (Rescinded on January 23, 2013)

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 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.

XI. SIGNATURE:

____//Signed//____
David Garratt
Acting Director of Recovery
Federal Emergency Management Agency

RESCINDED

9523.1 – Snow Assistance Policy (1999)

- 1. Date Published:** December 28, 1999 (Superseded on November 2, 2009)
- 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 one-day snowfall of 20 inches that exceeds its historical record snowfall. County "B" is contiguous to county "A" and also receives a one-day snowfall of 20 inches. However, county "B's" one-day record snowfall is 25 inches. Therefore county "B" received snowfall equal to that of 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. Sujor
Executive Associate Director
Response and Recovery Directorate

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

9523.1 – Snow Assistance Policy Memo (2007)

MEMORANDUM FOR: FEMA Regional Administrators
Regions I-X

ATTENTION: Disaster Assistance Division Directors

FROM: Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

SUBJECT: Response and Recovery Policy 9523.1 *Snow Assistance Policy*
Procedures for Determining Record or Near Record Snowfall

DATE: December 3, 2007 (Superseded on November 2, 2009)

FEMA's Response and Recovery Policy RR9523.1, Snow Assistance Policy, dated December 28, 1999, describes FEMA's procedures for evaluating requests for emergency and major disaster declarations due to snowfall. This memorandum clarifies the snowfall comparison procedures described in paragraphs 8.D and 8.E of FEMA's Snow Assistance Policy. This memorandum does not change FEMA's Snow Assistance Policy or FEMA's procedures for making recommendations to the president for snowstorm events.

1. Obtaining Current Event Snowfall Data. In its declaration request, the state must identify the date(s) of the snowstorm event. Snowfall data for those date(s) will be used to determine if the snowstorm is a "record" or "near-record" event.

The National Climatic Data Center (NCDC) is the primary source of snowfall data. NCDC provides current daily snowfall totals from its Cooperative Observers Network (COOP) Monitoring Stations at: <http://www.ncdc.gov/oa/climate/research/snow/snow.html>.

In the event that NCDC data is not available, certified National Weather Service (NWS) data may be used. Contact the local NWS office to obtain this data. NWS Public Information Statements sometimes include data that has not been certified. Uncertified data may not be used.

2. Obtaining Historic "Record" Snowfall Data. Historic "record" snowfall data is also provided by NCDC at: <http://www.ncclc.noaa.gov/ussc/pagemap.html>. First, select the appropriate state. On the subsequent page, select the option "1-Day, 2-Day and 3-Day Record Snowfall for All Stations in a State/County." To obtain "record" snowfall amounts for all counties within the state, use option #2 and select "All Months." This will provide a listing sorted by county and station. Data for a specific month shall not be used.

3. Comparing Current Event vs. Historic “Record” Snowfall Data.

- a. A COOP monitoring station’s current event snowfall shall be compared to the historic “record” snowfall for the same station whenever possible.
- b. If historic “record” data is not available for any of the stations reporting current event snowfall, such that a direct comparison is not possible, then the historic “record” data from any other station in the county may be used for comparison purposes. In such a case, it is allowable to use the station with the lowest historic “record” snowfall at the source of the historic data. Current event data from any station in the county or NWS data may be used.
- c. Wherever possible, current event and historic “record” snowfall data within the same county should be compared. If either current event snowfall data or historic “record” snowfall data is not available for a particular county, the data from any contiguous county may be used. Both the current event and historic “record” snowfall data from that contiguous county shall be used to ensure an appropriate comparison.
- d. Daily and cumulative snowfall totals for the current event must be compared to the historic “record” snowfall over the same time period. For example, if the current event snowfall occurs over one day, the snowfall total for that day should be compared to the 1-day historic “record” snowfall. If snow falls over two days, then the cumulative total for those two days should be compared to the 2-day historic “record” snowfall, etc. Snowfall for a duration of 24 hours or less may be considered a 2-day snowfall if it occurs during two 24-hour observing periods. For example, snowfall from 8PM to 8AM is considered a 2-day storm if the observing period is from 12AM to 11:59PM.
- e. Snowfall within 10 percent of the historic “record” amount is considered to be a near-record snowfall.

Any questions regarding COOP snowfall data should be referred to the Chief of NCDC’s Climate Monitoring Branch at 828-271-4750. Contact Elissa Carleton at (202) 646-2808 or Andrew Lenard at (202) 646-2726 of the Public Assistance Division with any questions or clarifications regarding this guidance or regarding FEMA’s Response and Recovery Policy RR 9523.1, Snow Assistance Policy.

9523.1 – Snow Assistance and Severe Winter Storm Policy (2009)

I. TITLE: Snow Assistance and Severe Winter Storm Policy

II. DATE: November 2, 2009 (Superseded on January 1, 2016)

III. PURPOSE:

This policy describes the procedures and criteria FEMA uses to make its recommendations to the President after a state Governor requests a declaration following a snowstorm or severe winter storm. It also describes eligible work for snow events and severe winter storms.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all declarations on or after the date of publication of this policy. It provides guidance to FEMA, state and local personnel responsible for administering the Public Assistance Program, including applicants.

V. AUTHORITY:

Sections 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, 44 CFR §206.35, 44 CFR §206.36, 44 CFR §206.48, and 44 CFR §206.227.

VI. BACKGROUND:

On July 24, 2008, FEMA published a proposed revision of Response and Recovery Policy 9523.1 Snow Assistance Policy (dated November 10, 1998) in the Federal Register for review and comment. The final policy was published in the Federal Register on November 6, 2009, and is available online at <http://wv.gpoaccess.gov/fr/>.

VII. POLICY:

A. Definitions:

1. Contiguous County means a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.
2. Core County means a county that has a record or near record snowfall with public assistance costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration.
3. Incident Period means the time span during which the disaster-causing incident occurs, e.g., approximately 6:00 p.m. January 5, 2007, through 8:00 a.m., January 7, 2007.
4. Near Record Snowfall means a snowfall that approaches, but does not meet or exceed, the historical record snowfall within a county as published by the National Climatic Data Center (NCDC). FEMA generally considers snowfall within 10 percent of the record amount to be a near record snowfall.
5. Record Snowfall means a snowfall that meets or exceeds the highest record snowfall within a county over a 1, 2, 3-day or longer period of time, as published by the NCDC.

6. Snow Assistance means assistance for all eligible activities under Category B, emergency protective measures (See Categories of Work in the Public Assistance Guide, FEMA 322, <http://www.fema.gov/pdf/government/grant/pa/paguide07.pdf>) related to a snowstorm, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, as well as search and rescue, sheltering, and other emergency protective measures.
7. Snowstorm means an event in which a State has record or near record snowfall in one or more counties, as determined by paragraph (e), and that overwhelms the capability of the affected State and local governments to respond to the event. While snowstorms will normally only receive Snow Assistance, other categories of supplemental Federal assistance may be designated for a snowstorm declaration as warranted.
8. Severe Winter Storm means an event that occurs during the winter season that includes one or more of the following conditions: snow, ice, high winds, blizzard conditions, and other wintry conditions; and that causes substantial physical damage or loss to improved property.

B. Snowstorm Declaration Criteria:

FEMA may recommend the declaration of a major disaster for a snowstorm that meets the following criteria. However, the criteria listed in this policy are solely for use by FEMA in making recommendations to the President and in no manner restricts the ability of the President, in his discretion, to declare emergencies or major disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

1. County criteria. Each county included in a Governor's request for a declaration must have a record or near record snowfall, or meet the contiguous county criteria described in this policy, and have estimated public assistance costs including snow assistance costs within a 48 hour period that equal or exceed the county per capita cost threshold required for a major disaster declaration, which is published annually in the Federal Register. See, e.g., 74 FR 51296 (October 6, 2009). The State must also demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded. An applicant may select a 48-hour period for estimating purposes, but use a different 48-hour period when submitting actual costs.
2. State criteria. In addition to the county criteria, a State must also meet the statewide per capita cost threshold required by 44 CFR §206.48(a)(l), based on eligible public assistance costs including the snow assistance costs it incurs within the prescribed 48-hour period.

C. Snowstorm Declaration Requests:

1. Within 30-days following a record snowstorm, the Governor shall submit a request for a snowstorm major disaster declaration that addresses the requirements of 44 CFR §206.36, 44 CFR §206.48, and this policy. A Governor's request for a snowstorm major disaster declaration and the Regional Administrator's Regional Summary, Analysis, and

Recommendation shall cite "Snowstorm" as the incident type in the Governor's request. Furthermore, the Governor' s request shall provide the following information:

- a. Overview of the event;
 - b. Core and contiguous counties for which a snowstorm declaration is requested;
 - c. Date(s) of snowfall;
 - d. For each requested county, copies of event daily snowfall totals from NWS stations and historical record snowfall data from the National Climatic Data Center (NCDC), to maintain consistency of evaluation data to determine when a snowstorm reaches record or near record proportions;
 - e. A description of State and local resources activated in response to the event;
 - f. The extent of search and rescue operations performed and impacts to State and local government operations;
 - g. Any other localized impacts as described in 44 CFR §206.48(a) (2);
 - h. Total estimated eligible costs for each core and contiguous county, including the estimated snow assistance costs for a 48 hour period. The county per capita estimate of costs, which includes the estimated eligible costs incurred by State agencies working within each county, must meet or exceed the county per capita cost threshold; and
 - i. Total estimated statewide costs, which include the total of estimated eligible costs for all counties requested. The per capita estimate of statewide costs must meet the statewide per capita cost threshold in 44 CFR §206.48(a)(1).
2. The Regional Administrator of FEMA will evaluate the Governor's request and make appropriate recommendations to the FEMA Assistant Administrator of the Disaster Assistance Directorate. The Regional Summary, Analysis and Recommendation (See Template at <http:// declarations.fema.net> should include:
 - a. An overview of the snowstorm;
 - b. A summary of statewide and localized impacts;
 - c. A summary of State and local resources dedicated to alleviating the emergency, to include shelter information;
 - d. A comparison of actual event snowfall to the highest historical record snowfall for each county for which snow assistance is requested;
 - e. An identification of any extenuating circumstances.
 - f. The recommended Incident Period of the event and the Categories of Work recommended (See Public Assistance Guide, FEMA 322, page 66 at <http://www.fema.gov/pdf/govemmen t/grant/paguide07.pdf>;
 - g. Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan, and that the Governor's request meets all statutory requirements;
 - h. An evaluation of statewide and localized impacts;
 - i. The type of assistance needed;
 - j. A recommendation on the Governor's declaration request based on the criteria in this policy; and

- k. A list of the recommended counties that met the requirements for a declaration for snow assistance under this policy.
3. The FEMA Administrator may add counties to a snowstorm declaration after the President has issued the declaration. Requests for additional counties should meet the criteria for designation under paragraph (B) of this policy and .include the documentation required under paragraph (C) of this policy. Such requests may be made with.in 30-days of the declaration, or the end of the .incident period, whichever is later.

D. Use of Official Government Snowfall Data:

1. Current Snowfall Data. A Governor's request for a snowstorm major disaster declaration shall .include snowfall amounts measured and published by the National Oceanic and Atmospheric Administration (NOAA) for the current snowstorm for each county for which snow assistance is requested. The NCDC, which is a part of NOAA, publishes snowfall data from measurements made by observers who are part of the National Weather Service (NWS), airport stations, and the NWS Cooperative Network. FEMA will rely primarily on snowfall measurements taken at NWS Cooperative Network Stations, but in cases where Cooperative Network Stations do not ex1stor do not report, FEMA will accept snowfall measurements from other sources that have been verified by the NCDC or NWS. A Governor's request for a snowstorm major disaster declaration must include copies of all NCDC or NWS Cooperative Network Station reports published for the counties for which snow assistance is requested.
2. Historical Snowfall Records. FEMA accepts historical snowfall records maintained by NCDC. NCDC's website (See <http://www.ncdc.noaa.gov/oa/ncdc.html>) provides snowfall amounts recorded at NWS Cooperative Network Stations for single and multiple day events. If NCDC data are not available or do not reflect snowfall records through the previous year's snow season, such data should be obtained from regional NWS offices and provided as part of the Regional Summary, Analysis, and Recommendation.

E. Determining Record and Near Record Snowfalls.

The following criteria will be used to determine record or near-record snowfalls:

1. Current snowfall amounts under paragraph (D)(1) of this policy will be compared with the historical record snowfall amounts under paragraph (D)(2) of this policy for a like number of days without regard for the month in which the record snowfall or current event occurred.
2. For multiple day snowstorms, a county that meets the 1-day record or near record requirement on any one day, or the 2-day record or near record over two consecutive days, or the 3-day record or near record over three consecutive days, etc., will have met the record or near-record criteria for that county.

3. When data from multiple NWS Cooperative Network Stations exist within a county, the highest current event snowfall reported by the NWS within that county will be compared to the highest historical snowfall record for that county.
4. For counties that do not have NCDC or NWS historical record snowfall data, the historical record from the nearest NWS Cooperative Network Station in an adjacent county, even if located in an adjacent State, may be used for determining historical snowfall records.
5. If current event snowfall data under paragraph (D){1} of this policy are not available from the NWS for a county, the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State, may be used.
6. A county that does not receive a record or near record snowfall, but is contiguous to a county that does receive a record or near record snowfall, may be designated for snow assistance if the county has current event snowfall that meets or exceeds the current event snowfall of a county, to which it is contiguous, that has record or near record snowfall. This comparison is based on the highest current event snowfall received by each county as reported by the NWS under paragraph (D}{1) of this policy.
7. Counties that experience snowfalls occurring over a period exceeding three consecutive days that do not reach record or near-record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCDC or NWS, will be considered for a major disaster declaration on a case-by-case basis.

F. Eligible Period of Assistance.

1. Snow assistance is available for all eligible costs incurred over a continuous 48-hour period. Applicants may select a 48-hour period during which the highest eligible costs were incurred. Once costs are submitted for the chosen 48-hour period that selected 48-hour period cannot be changed.
2. The FEMA Assistant Administrator of the Disaster Assistance Directorate may extend the eligible time period of assistance by 24 hours in counties where snowfall quantities greatly exceed record amounts. To be eligible for a time extension, the current event snowfall must exceed the historical record snowfall by at least 50 percent. The time period will be extended 24 hours for each designated county that meets this 50 percent criterion.
3. Different applicants in the same designated county may use different 48-hour periods. However, all agencies or instrumentalities of a local government must use the same 48-hour time period.
4. A State agency, such as a Department of Transportation, that provides snow assistance in multiple locations throughout the State, may use different 48-hour periods.

G. Eligible Applicants.

Entities that meet the applicant eligibility, 44 CFR §206.222, and are performing work that meets the requirements of general work eligibility, 44 CFR §206.223, are eligible for snow assistance.

H. Eligible Work.

Eligible work, under Category B, emergency protective measures, as described in the Public Assistance Guide, FEMA 322, (<http://www.fema.gov/pdf/government/granl/paguide07.pdf>) includes snow removal, snow dumps, de-icing, salting, and sanding of roads and other facilities essential to eliminate or lessen immediate threats to life, public health, and safety. In addition, activities related to the snowstorm such as search and rescue, sheltering, and other emergency protective measures are eligible work. Other categories of work may be eligible under a snowstorm declaration where appropriate.

I. Eligible Costs.

FEMA will provide snow assistance during the 48-hour period for the overtime but not the straight time cost of the applicant's regularly-employed personnel. The cost of contract labor (including temporary hires who perform eligible emergency work) is an eligible cost, as are the costs for equipment and materials used in the performance of eligible work. If applicants award contracts for periods greater than the eligible period of assistance, eligible funding will be limited to the costs incurred during the eligible period of assistance. The same pro-rata method for calculating eligible funding applies to all other eligible snow assistance costs.

J. Insurance.

It is the responsibility of an applicant to notify the Regional Administrator of FEMA, through the State, of any actual or anticipated proceeds from insurance covering snow removal or other snow assistance costs. FEMA will deduct the actual or anticipated amount of snow removal or other snow assistance cost insurance proceeds from policies in force at the time of the snowfall.

K. Severe Winter Storm Declarations.

1. Severe Winter Storm declaration requests must satisfy the requirements of 44 CFR §206.36 and 44 CFR §206.48, but are not required to meet the record or near record snowfall requirements described under paragraph (E) of this policy. However, FEMA will not include snow removal costs when calculating the per capita cost impacts for a severe winter storm declaration unless the county qualifies for snow assistance under paragraph (E) of this policy.
2. In a major disaster declaration for a Severe Winter Storm, snow removal costs are not eligible for FEMA assistance if the county does not meet the requirements for snow assistance under paragraph (B) of this policy. A limited level of snow removal incidental to disaster response may be eligible for assistance. Generally, snow removal that is necessary to perform otherwise eligible emergency work is eligible. For example, snow

- removal necessary to access debris or to repair downed power lines is eligible, while normal clearance of snow from roads is not eligible.
3. A Governor's request for a major disaster declaration as a result of a Severe Winter Storm, and the Regional Administrator's Regional Summary, Analysis, and Recommendation, shall cite "Severe Winter Storm" as the incident type.
 4. The procedures for requesting and evaluating a Severe Winter Storm declaration will follow the same process as any request for a major disaster declaration as outlined in 44 CFR part 206 subpart B.
 5. The evaluation of current and historical snowfall data for the designation of snow assistance, if warranted, will follow the same procedures as described for snow assistance in this policy.

VIII. RESPONSIBLE OFFICE:

Office of Response and Recovery, Recovery Directorate (Public Assistance Branch)

IX. SUPERSESSION:

This policy supersedes Response and Recovery Policy 9523.1Snow Assistance Policy, dated November 10, 1998, and all previous guidance on this subject.

X. REVIEW DATE:

This policy does not automatically expire, but will be reviewed 3 years after the date of publication.

____//Signed//____
Elizabeth Zimmerman
Assistant Administrator
Recovery Directorate

9523.1 – Snow Assistance Policy Memo (2011)

MEMORANDUM FOR: FEMA Regional Administrators
Regions I-X

ATTENTION: Recovery Division Directors

FROM: Deborah Ingram
Acting Assistant Administrator
Recovery Directorate

SUBJECT: Disaster Assistance Policy 9100.1 and 9523.1, *Snow Assistance and Severe Winter Storm Policy*

DATE: January 6, 2011 (Superseded on January 1, 2016)

On November 6, 2009, FEMA published a revised Disaster Assistance Policy (OAP) 9100.1 and 9523.1, Snow Assistance and Severe Winter Storm Policy. This policy states, in part, that FEMA will rely primarily on snowfall measurements taken at National Weather Service Cooperative Network Stations, but in cases where Cooperative Network Stations do not exist or do not report within a county, FEMA will accept snowfall measurements from other sources that have been verified by the National Climatic Data Center (NCDC) or NWS. In these circumstances, FEMA accepts snowfall measurements from NWS spotter resources. This memorandum clarifies that FEMA will now accept snowfall measurement data provided by NWS spotter resources, verified by NCDC or NWS as a representative of snowfall in a county, as a primary source of data even when Cooperative Network Stations exist and report.

Following the snowstorms in the 2009-2010 winter season, FEMA and NWS partnered to evaluate and improve how snowfall data is utilized in requests for a major disaster declaration. During this process, FEMA determined that NWS spotter resources provide a comprehensive set of snowfall data that is of comparable accuracy to the NWS Cooperative Network data. Therefore, in addition to snowfall measurements taken at NWS Cooperative Network Stations, a Governor's request for a major disaster declaration for a snowstorm may include data from NWS spotter resources as a primary source of data. FEMA may use data from either source to determine if a county meets the record, near record or contiguous county provisions of the policy. FEMA will continue to use the historic snowfall data maintained by NCDC for determining the snowfall of record. The NCDC historic snowfall information is based on data recorded at NWS Cooperative Network Stations.

Please contact Howard Stronach of the Public Assistance Division at (202) 646-3683 with any questions or clarifications regarding this guidance or regarding DAP 9100.1 and 9523.1, Snow Assistance and Severe Winter Storm Policy.

9523.2 – Eligibility of Building Inspections in a Post-Disaster Environment (1998)

- 1. Date Signed:** June 23, 1998 (Superseded on January 28, 2008)
- 2. Response and Recovery Directorate Policy Number:** 9523.2
- 3. Subject:** Eligibility of Building Inspections in a Post-Disaster Environment
- 4. Purpose:** This formalizes FEMA's policy on the eligibility of building inspections under FEMA's public assistance program in a post-disaster environment. Additional assistance for building inspections may be available under the Hazard Mitigation Grant Program.
- 5. Scope and Audience:** This policy formally prescribes eligible and ineligible costs associated with the performance of building inspections under FEMA's public assistance grant program in a post-disaster environment. It is intended for use by public assistance managers, staff and public assistance applicants. This policy has been in effect since 1994.
- 6. Background:** In response to requests generated by the Midwest floods for assistance in hiring additional building inspectors, FEMA issued a policy memorandum on October 4, 1993 entitled "Eligibility of Hiring Additional Building Inspectors." Under that policy, FEMA considered the increased demand for inspection services as an eligible emergency measure if such inspections were related to the disaster and were necessary to establish what course of action property owners needed to take in order to address their long-term housing needs. The policy stated that if the workload of building inspections had increased above normal levels, the costs of those building inspections were eligible if the inspections were for any one of the following purposes:
 - To determine if the building was substantially damaged beyond repair under National Flood Insurance Program (NFIP) regulations;
 - To determine if the building should be elevated or relocated;
 - To determine the repairs needed to make the building habitable; or
 - To determine if an immediate threat to life, public health or public safety existed.

Inspections associated with the normal building regulation enforcement process were ineligible. Costs eligible for assistance were the actual net increase in cost of the inspections; to that end, fees normally collected for these inspections were deducted from the cost of the inspections. If permit fees were waived for these inspections, the amount that would have been charged was deducted. The 1993 policy was reviewed and revised soon after the issuance of the memorandum. This document formalizes the revised policy.

7. Discussion: The new policy changes FEMA's past policy. The following inspections are ineligible for funding under the public assistance program:

- To determine if the building was substantially damaged beyond repair under NFIP regulations;
- To determine if the building should be elevated or relocated; and
- To determine the repairs needed to make the building habitable.

These inspections, however, may be eligible under the Hazard Mitigation Grant Program.

FEMA's formalization of policy in this area is one of proper interpretation of the extent of assistance permitted by the pertinent sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act). Under section 403(a)(3)(I) of the Stafford Act, FEMA's public assistance grant program can provide assistance for, "reduction of immediate threats to life, property, and public health and safety" (emphasis added). Accordingly, FEMA may provide grants and/or direct assistance to a State or community to inspect buildings to ensure immediate safe occupancy and perform other enforcement activities on damaged buildings to ensure public health and safety benefits. The three types of inspections listed above do not meet this intent of the Act and are classified more appropriately as related to re-construction and repair, rather than to safety.

Under section 406 of the Stafford Act, FEMA's Public Assistance program can provide assistance for the repair, restoration, reconstruction, or replacement of eligible facilities which are damaged or destroyed by a major disaster. Eligible costs may include any permit and inspection fees required for the repair of eligible facilities. With regard to privately-owned, insured structures, allowances for permit fees and related expenses are generally included through insurance proceeds. Additionally, for those applicants who qualify for Small Business Administration loans, building permit fees are approved expenses as part of the loan when building permit fees are required by a local jurisdiction following a disaster.

Normally, increased code enforcement activity as a result of a disaster is not considered essential to meeting the immediate threats to life and property. In fact, code enforcement reflects the normal rebuilding process, rather than the immediate response efforts designated under section 403. Building permit fees (usually based upon a percentage of construction cost) are used to cover the costs associated with the processing of a permit, reviewing of drawings, details and specifications, performing periodic and final site inspections for codes compliance, and permit closure. By establishing an appropriate permit fee, a local building department could provide a means for hiring additional staff to handle an increased rebuilding workload.

8. Policy: Under section 403 of the Stafford Act, FEMA can consider the increased demand for inspection services as an eligible emergency protective measure if such inspections are related to the disaster and are necessary to establish if a damaged

structure poses an immediate threat to life, public health or safety after a disaster (hereinafter referred to as safety inspection). Inspections associated with the reconstruction effort and normal building regulation enforcement process are ineligible, since these go beyond the scope of a safety inspection.

Eligible costs for safety inspections will be written as "Category B" work on the DSR. 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 FEMA if they change the approved scope of work or project cost. Short-term allowable costs, e.g., overtime for permanently employed staff (i.e., no straight-time), hiring and/or contracting of additional staff, additional office space for staff, telecommunications set-up, etc., may be eligible if in accordance with 44 CFR 206.228, 44 CFR Part 13 and OMB Circular A-87.

- 9. Key Words:** Building Permit Fees; Emergency Work; Building Inspections; Life, Health and Safety Inspections; Stafford Act, Sections 403 and 406; Category B.
- 10. Supersession:** This policy supersedes the memorandum entitled Eligibility of Hiring Building Inspectors, dated October 4, 1993, and any other public assistance program policy and guidance, same subject.
- 11. Reference:** Joint MT/RR memorandum entitled Eligibility of Assistance to Building and Land-Use Departments following a Disaster, dated September 15, 1997.
- 12. Authorities:** Sections 403 and 406 of the Stafford Act, 44 CFR Part 206
- 13. Originating Office:** Infrastructure Division, Response and Recovery Directorate
- 14. Review Date:** Two years from date of publication.
- 15. Signature:**
____//Signed//____
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate
- 16. Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors

9523.2 – Eligibility of Building Safety Inspections Supporting Emergency Work (2008)

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

II. DATE: January 28, 2008 (Superseded on January 1, 2016)

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:

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.

Some type 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:

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.

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.

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.

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.

Eligible work for building safety inspections will be written as “Category B” emergency work on the Project Worksheet (PW).

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 sub-grantee must be approved by the Grantee.

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.

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:

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. ORIGINATING 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

9523.3 – Provision of Temporary Relocation Facilities (1998)

1. Date Published: July 16, 1998 (Superseded on December 14, 2010)

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. Originating 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

9523.3 – Provision of Temporary Relocation Facilities (2010)

I. TITLE: Provision of Temporary Relocation Facilities

II. DATE: December 14, 2010 (Superseded on January 1, 2016)

III. PURPOSE

This policy provides guidance on determining eligibility for and duration of a temporary facility under the FEMA Public Assistance Program.

IV. SCOPE AND AUDIENCE

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

V. AUTHORITY

Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, and implementing regulations of 44 CFR parts 206.

VI. BACKGROUND

As a result of major disasters and emergencies, 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 temporary facilities to continue that service.

Section 403 of the 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.

VII. POLICY

A. Eligibility: Eligible applicants can be State, local or Tribal governments, or PNP organizations or institutions which provide essential community services. Essential community services are those services performed by governmental entities or PNPs, which are necessary to save lives, or to protect and preserve property or public health and safety.

1. Eligible public facilities include facilities for police, fire protection/emergency services, medical care, education, libraries, utilities and other essential community services. State or local government administrative and support facilities essential to the operation of such facilities are also eligible.
2. PNP facilities eligible for temporary facilities include: fire protection/emergency services, medical care, education, utilities, child care facilities, alcohol and drug rehabilitation facilities, custodial care, homeless shelters, libraries and other facilities that

provide health and safety services of a governmental nature. Ancillary facilities may also be eligible, such as administration buildings and hospital laundry facilities.

3. Facilities ineligible for temporary facilities include museums, zoos, community centers, shelter workshops, and performing arts centers. These facilities are ineligible for funding because disruption of service at these facilities will not result in an increased threat to life and property, or public health and safety. In addition, recreation and parking facilities, athletic stadiums, research and warehouse facilities, and student union buildings are not considered to provide essential community services, and therefore are not eligible.
4. If an applicant has a facility that does not meet the eligibility requirements for a temporary facility, Public Assistance may reimburse for temporary space to store and protect property if the facility's damage is to such an extent that the contents of the facility are at risk. The temporary storage space is limited to an area necessary to house the contents. This space is not intended for public access, alternate office space, exhibits, or other purposes; it is solely for storage. The temporary storage space is limited by the time needed to complete the permanent work required for repair/replacement of the damaged facility. FEMA is not responsible for any damage which may occur to the contents in temporary storage. The applicant should insure the contents of its temporary storage space.

B. Basis for Temporary Facilities: The following should be considered when determining eligibility for a temporary facility:

1. If the facility was damaged by the disaster, but can be used if emergency protective measures or minor repairs can be performed quickly, a temporary facility may not be necessary.
2. If the facility was damaged by the disaster to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time, then a temporary facility may be needed. This may be necessary during either repair or replacement of the damaged facility.
3. If the facility was not damaged by the disaster but lacks a critical utility or operational item (such as potable water, electricity, or road access) and a temporary facility would restore services to the community more quickly than awaiting restoration of the disrupted vital utility at the current site, then a temporary facility may be necessary.
4. The capacity of temporary facilities must not exceed the pre-disaster capacity of the facility that housed the displaced services.

C. Time Limitations for Temporary Facilities:

1. The period of time for which temporary facility assistance may be provided is usually six months, based on the regulatory time limitation for the completion of emergency work (44 CFR § 206.204 (c)(1)) Deadlines. However, the time period provided in the initial Project Worksheet (PW) for completion of eligible permanent work may be longer and, where appropriate, the time limitations for temporary facility assistance will be established according to the particular requirements of the restoration project.
2. FEMA may provide a time estimate of no more than 12 months in the initial PW's scope of work prepared for the temporary facility.

3. Applicants should submit requests for time extensions through the Governor's Authorized Representative (GAR) for FEMA approval. Consistent with the requirements of 44 CFR § 206.204(c)(2)(ii) and (d), the GAR may recommend to the FEMA Regional Administrator a time extension of the project completion deadline based on information provided by the applicant, that is: 1) circumstances beyond the control of the applicant that prevented the completion of the reconstruction project within the initial time limit, 2) status of permanent restorative work (work completed and work to be completed), and 3) revised timeline for project completion. FEMA may not grant extensions without the above documentation. Generally, in order for FEMA to consider an extension, construction must have begun within 12 months of the date of the major disaster declaration. FEMA may grant extensions in situations where, because of circumstances beyond the control of the applicant, construction did not begin within 12 months of the date of declaration.
 4. With the proper documentation, FEMA may grant extensions for the projected duration of the construction work, based upon industry standards (e.g., from R.S. Means or equivalent source), and a revision should be made to the initial scope of work that funded the temporary facility.
- D. Applicant's Options for Temporary Facilities: Applicants may lease, purchase, or construct eligible temporary facilities. Applicants must use the selected facility to provide the eligible function to the same extent and manner as it was provided prior to the major disaster or emergency. Whichever option is selected, it must be reasonable, cost-effective, and temporary in nature. FEMA will not mandate that the applicant pursue a specific option for a temporary facility, but FEMA will fund only the most cost effective option. FEMA will not fund utilities (power, water, heat, etc.), maintenance, or operating costs, nor will FEMA fund the differential should these costs increase. FEMA will use the following considerations in making a determination on whether to fund a temporary facility.
 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 option.
 2. Renting/Leasing Option. When it is the most-cost effective option, the Applicant can receive Federal disaster assistance from FEMA for the rent of a temporary facility during the eligible time period.
 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.
 - a. With the exception of modular or manufactured units, all proposed purchase/construction options should be submitted in advance to the Assistant Administrator of the Recovery Directorate for review and approval. Before approving a proposal, FEMA may determine whether it is in the best interest of the federal government to impose conditions on the applicant's use and/or disposition of the facility.

- b. Pursuant to 44 CFR Part 13.31 (c)(1)and (2) and Office of Management and Budget Circular A-110, FEMA must 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. The Applicant may choose to retain the title of the facility or sell it.
- 1) Whether an Applicant chooses to retain the title of the facility or sell it, 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. If an Applicant chooses to dispose real property acquired with Federal funding provided by FEMA and acquires replacement real property under the same funding, the net proceeds of the sale may be used to offset the cost of the replacement property.

E. Insurance:

1. FEMA requires an Applicant to maintain insurance for any insurable temporary facility, either purchased, leased (as appropriate) or built, for which Federal funding is provided. This is also applicable to insurable contents. This is the applicant's responsibility and is not a reimbursable expense under FEMA guidelines.
2. Some insurance policies provide funds for temporary relocation. FEMA will make appropriate adjustments to the PW to reflect the applicant's insurance coverage; thus ensuring that there is no duplication of benefit.

F. Eligible and Ineligible Costs:

1. Relocation costs. These are costs associated with the transfer of the eligible pre-disaster service, including equipment and supplies, and costs for necessary modifications to the temporary facility. The allowable costs associated with the provision of temporary facilities include:
 - a. Reasonable alterations of the temporary facility if they are required to make the space functional and meet the pre-disaster needs of the applicant.
 - b. Moving expenses to and from the temporary facility.
 - c. 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) Allowable Costs for emergency work.
 - d. 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. Applicants may not apply funds approved for temporary facilities to an alternate project defined by 44 CFR § 206.203(d) (2) Federal Grant Assistance. Once

an Applicant decides to pursue an alternate project, additional funding for temporary relocation facilities is not eligible. FEMA will not reduce or de-obligate funding for the cost of temporary relocation facilities incurred prior to the date on which the applicant requests an alternate project.

3. Improved Projects. For improved projects [CFR § 206.203(d) (1)] Federal Grant Assistance, temporary 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. Funding of a temporary facility will not be based on the total amount of time necessary to complete the improved project.
4. 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 major disaster or emergency. 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 eligibility requirements in Section VII A and B above.

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

IX. SUPERSESSION: This policy supersedes Recovery Policy 9523.3, “Provision of Temporary Relocation Facilities” dated July 16, 1998, and any other previous guidance on this issue.

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

____//Signed//____
Deborah Ingram
Acting Assistant Administrator
Federal Emergency Management Agency

9523.3 – Safe Rooms for Temporary School Facilities under Provision of Temporary Relocation Facilities Memo (2011)

MEMORANDUM FOR: Regional Administrators
FEMA Regions I - X

ATTENTION: Recovery Division Directors

FROM: Deborah Ingram
Assistant Administrator
Recovery Directorate

SUBJECT: Safe Rooms for Temporary School Facilities under RP9523.3,
Provision of Temporary Relocation Facilities

DATE: June 13, 2011 (Superseded on January 1, 2016)

This memorandum provides information on the eligibility of safe rooms as part of temporary relocation facilities for schools. FEMA is authorized under Section 403(a)(3)(D) of the Stafford Act, and as outlined in Recovery Policy 9523.3, Provision of Temporary Relocation Facilities, to provide temporary relocation facilities for schools and other essential community services after a major disaster.

Recent tornado incidents have had severe impacts on a number of communities across the country, including damage and destruction to the communities' school facilities. At the request of applicants, FEMA may provide temporary school facilities while permanent repairs or replacement is completed. Some of the temporary facilities may be comprised of modular units, and may not provide sufficient safe space for students and staff in the event of subsequent tornados. Tornadoes typically occur with limited to no warning, resulting in limited response time. As a result, adequate safe space needs to be located in or in close proximity to the school facilities.

Additionally, the National Commission on Children and Disasters issued a report titled 2010 Report to the President and Congress, in which they recommend that because children have unique needs when an emergency or disaster strikes, the Federal government should prioritize children as a separate population category and incorporate them as a distinct priority in relevant programs. FEMA's provision of temporary schools through the Public Assistance Program should provide for and address the specific safety needs of children and the schools they attend. Funding for safe rooms as part of a temporary school facility may be eligible under the Public Assistance Program when the disaster damaged facility contained a safe room or other space that served as a storm shelter, and there are no other cost beneficial alternatives available to address the safety needs of the school.

Funding for safe rooms may be provided as part of the temporary school facility project under Category B, emergency protective measures, and should adhere to the provisions of RP9523.3 Provision a/ Temporary Relocation Facilities. Applicants may also request installation of the safe room under direct Federal assistance when the State and local government lacks the ability to perform the work itself and direct Federal assistance is authorized in the major disaster declaration. The provision of temporary school facilities and safe rooms, whether through grant or direct Federal assistance, is subject to the established cost share rate for the declared event.

Safe rooms provided as part of a temporary school facility will follow the requirements of ICC/NSSA 500: 2008 Standard for the Design and Construction of Storm Shelters, or Design and Construction of Community Safe Rooms (FEMA 361). The safe room capacity should not exceed the pre-disaster capacity of the damaged facility and should be based on the student population and the number of teachers and staff who are expected use the temporary school facility. The safe rooms should be made available no later than the opening day of classes at the temporary facility. Disposition of the safe room when the use of the temporary facility ends must be in accordance with established Federal regulations, policies and procedures (see 44 CFR 13.31 Real Property and DAP9525.12, Disposition of Equipment, Supplies and Salvageable Materials). The timeframe for provision of the temporary safe room space will coincide with the approved timeframe for the provision of the temporary school facility.

To be eligible for a safe room as part of a temporary school facility, an applicant should obtain prior approval via the State from the FCO. Information in the request should include: a description of the safe room or safe space in the damaged facility that was used as a storm shelter, the population of the students and facility that needs access to the safe room; verification that there are no other cost effective reasonable alternatives within proximity that could be used as appropriate safe space for the school population; and an indication that the safe room will be installed and operational when school resumes and students occupy the temporary classroom space.

It is vitally important that as we not only provide assistance to communities in support of their recovery from the devastating impacts of disaster, but that we also provide for their safety during the recovery process, in particular with regard to the restoration and rebuilding of a communities' schools.

If you have additional questions regarding this guidance, please contact Tod Wells, Acting Director of the Public Assistance Division, at (202) 646-3936.

9523.4 – Demolition of Private and Public Facilities (1999)

1. **Date Published:** November 9, 1999 (Superseded on July 18, 2007)
2. **Response and Recovery Directorate Policy Number:** 9523.4
3. **Title:** Demolition of Private and Public Facilities
4. **Purpose:** This policy provides guidance in determining the eligibility of structures for demolition under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act).
5. **Scope and Audience:** This policy is intended to guide Federal Emergency Management Agency (FEMA) personnel responsible in making eligibility determinations for the Public Assistance grant program. The provisions of this policy relating specifically to Section 404 Hazard Mitigation buyouts and relocations are a formalization, continuation and refinement of the concept contained in the 1995 policy memorandum referenced in Paragraph 9. The other provisions of this policy are unchanged from the Interim policy issued on September 14, 1999.
6. **Background:** This policy applies to the exercise of authorities for emergency work and permanent recovery . Recent disasters highlighted the lack of common understanding of the appropriate application of the authorities of Sections 403 and 407 of the Stafford Act. This policy supersedes Interim Policy #9523.4 issued on September 13, 1999 and incorporates provisions for the application of emergency authorities to Section 404 Hazard Mitigation buyout and relocation projects.

FEMA sometimes is requested to pay for the demolition of public and private structures in the aftermath of declared disasters. The most frequent use of demolition authority is to use Section 403 of the Stafford Act to fund the demolition of unsafe structures that endanger the public. Section 406 of the law , which funds the permanent repair of eligible structures, also has been used to fund demolition when demolition has been part of funding of a FEMA-approved Section 406 project. Section 407 of the law may be used to clear debris and wreckage resulting from a major disaster when it is determined to be in the public interest.

7. **Policy:**

- A. **Insurance.** When demolition is covered by an insurance policy, the insurance proceeds must be used as the first source of funding.
- B. **Special Considerations.** Historic and environmental requirements must be addressed unless otherwise exempted. The following table provides general guidance.

Stafford Act Reference	National Environmental Policy Act	Other Federal Laws (National Historical Preservation Act, Endangered Species, Clean Water Act), Regulations, EOs
Section 403 and 407	Not required (statutorily excluded; see Section 316 of the Stafford Act)	Required (some laws have special procedures in emergency circumstances)
Section 406	Depends on Associated Eligible Action: (a) Not required with repair substantially to pre-disaster condition project Statutorily excluded; see. Section 316 of the Stafford Act. (b) Required when determined as independent from a repair to pre-disaster condition project. (c) Required with improved or alternate projects.	Required

C. Basic Eligibility for Demolition. In order to be eligible for demolition and debris removal, an eligible applicant must incur an eligible expense. Upon meeting the above requirements, Public Assistance Program funds may be used for demolition and debris removal.

1. Section 403 Funding.

- a. Publicly-owned and eligible Private Nonprofit (PNP) structures. Demolition and removal of debris is eligible for publicly-owned structures and the eligible structures of eligible PNP organizations when:
 - The structures were damaged by the disaster, and
 - The structures are determined to be unsafe and pose an immediate danger to the public, and
 - The work is completed within the completion deadlines outlined in 44CFR 206.204 for emergency work.
- b. Privately-owned damaged structures.
 - Privately-owned damaged structures may be eligible for Public Assistance grant funding for demolition (and the removal of debris from the demolition) if they meet the criteria in the three bullets contained in Paragraph 7.C.1.a. and liability and legal permission requirements are met.
 - Generally, the removal of the debris from private property is not an eligible cost unless the disaster caused very severe and widespread damage and the removal of the debris is necessary: to eliminate an immediate threat to life, public health and safety; to eliminate immediate threats of significant damage to improved public or

private property; or to ensure the economic recovery of the affected community to the benefit of the community-at-large.

- Except in very unusual circumstances, such as erosion under slabs on a hillside, slabs or foundations do not constitute debris or wreckage, nor do they present a health or safety hazard to the general public. Broken slabs, or slabs incapable of supporting a new structure, typically do not constitute a public health or safety hazard. Slabs removed primarily for reconstruction purposes are not eligible for removal as disaster-related debris.
 - Individuals and private organizations (except for eligible PNPs with documentation of their efforts on property for which they are responsible) will not be reimbursed for their efforts on their own properties.
- c. Debris removal using the economic recovery criterion normally is restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.
- d. To address current health and safety requirements, the following building demolition costs are eligible: capping wells, pumping and capping septic tanks, and filling in basements and swimming pools. The removal or covering of pads and driveways is not considered part of the emergency demolition of structures.
- e. Structures condemned as safety hazards before the disaster are not eligible for demolition and resulting debris removal under Public Assistance grant authority.
- f. Habitable (but not yet damaged) structures are not eligible for demolition under Public Assistance grant authority even when they are in serious danger of total destruction (e.g., on a failing slope).
2. Section 407 Funding.
- a. This authority may be used to fund removal of debris and wreckage caused by a major disaster when the Director, FEMA, determines that the removal would be in the public interest.
 - b. Generally, the removal of debris is in the public interest only 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
 - Ensure economic recovery of the affected community to the benefit of the community at large. The use of this criterion normally is restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.
 - c. Structures may not be demolished using this authority unless the structures can be defined as debris or wreckage caused by the major disaster. The following criteria also apply:

- The structures were damaged by the disaster, and
 - The structures are determined to be unsafe and pose an immediate danger to the public (or the Regional Director otherwise determines that their removal is clearly in the public interest), and
 - The structures have been uninhabited since the major disaster.
- d. While timely action is required , the timeline for emergency work does not govern the use of this authority.
- e. Structures condemned as safety hazards before the disaster are not eligible for demolition and resulting debris removal under Public Assistance grant authority.
- f. Except in very unusual circumstances, such as erosion under slabs on a hillside, slabs or foundations do not constitute debris or wreckage, nor do they present a health or safety hazard to the general public. Broken slabs, or slabs incapable of supporting a new structure, typically do not constitute a public health or safety hazard. Slabs removed primarily for reconstruction purposes are not eligible for removal as disaster-related debris.
- g. The removal of substantially damaged structures and the removal of slabs, driveways, fencing, garages, sheds and similar appurtenances are eligible costs when the property is part of a Section 404 Hazard Mitigation buyout and relocation project. In each case, the principle structure must have been substantially damaged by the disaster, as determined by the local building official.
3. Section 406 Funding of Permanent Work.
- a. Demolition of a structure and removal of debris may be funded when demolition is required:
- As part of a Public Assistance program repair, replacement, or construction project,
 - As part of a relocation required by the FEMA Regional Director under 44 CFR 206.226(e)(2), or
 - As part of an approved relocation cost when a Public Assistance program structure is being moved out of the 100 year floodplain.
- b. Demolition also may be funded when it is part or all of an approved alternate project for the welfare of the general public.
8. **Supersession:** This policy replaces RR #9523.4, Interim Policy on Demolition of Private and Public Facilities, issued September 14, 1999.
9. **Reference:** Memorandum dated March 30, 1995, "Demolition of Flood Damaged Structures Under Section 403 of the Stafford Act," from Richard W. Krimm, Associate Director, Response and Recovery Directorate, to Richard T. Moore, Associate Director for Mitigation.

10. **Authorities:** Stafford Act, Sections 403, 406 and 407; 44 CFR 206.

11. **Originating Office:** Infrastructure Division, Response and Recovery Directorate.

12. **Review Date:** Two 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

9523.4 – Demolition of Private Structures (2007)

I. TITLE: Demolition of Private Structures

II. DATE: July 18, 2007 (Superseded on January 1, 2016)

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:

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.

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).

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 206.226). 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:
 - 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 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.
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.

VIII. ORIGINATING OFFICE: Disaster Assistant 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 the date of publication.

____//Signed//____
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9523.5 – Debris Removal from Waterways (2010)

I. TITLE: Debris Removal from Waterways

II. DATE: March 29, 2010 (Superseded on January 1, 2016)

III. PURPOSE:

This policy provides guidance for determining the eligibility of debris removal from navigable waterways, the coastal and inland zones and wetlands under the Public Assistance Program.

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 Program.

V. AUTHORITY:

Sections 403, 407 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5170b, 5173 and 5192.

VI. BACKGROUND:

The U.S. Army Corps of Engineers (USACE) has primary responsibility for the removal of debris from federally-maintained navigable channels and waterways. Section 202 of the Water Resources Development Act of 1976 (PL 94-587) authorizes USACE to remove debris from federally-maintained commercial harbors and water areas immediately adjacent thereto. 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. 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.

Title 33 Code of Federal Regulations (CFR) Part 153, Control of Pollution by Oil and Hazardous Substance Discharge Removal authorizes the United States Coast Guard (USCG) to remove sunken vessels in order to prevent marine pollution. In 1985, USACE and USCG signed a Memorandum of Agreement to enhance coordination between the two agencies for the removal of sunken vessels and other obstructions to navigation from navigable waters of the United States. Under this agreement, USACE and USCG work together to determine if a sunken vessel either poses a threat to navigation or a pollution threat to public health and safety. If the agencies determine that the vessel poses a threat to navigation, USACE will remove the vessel using the emergency authorities proscribed in Section 20 of the River and Harbor Act of 1899. If the sunken vessel poses a pollution threat, under 33 CFR Part 153 Control of Pollution by Oil and Hazardous Substances, Discharge Removal and the Abandoned Barge Act of 1992, the USCG's authority to remove the vessel is subject to a determination that its removal is essential to abate a

pollution threat from the vessel. In most cases, USCG authorized actions are limited to removing oil and other hazards substances from the vessel while leaving the vessel in place.

Under the National Contingency Plan, the USCG is also responsible for the removal of oil discharges and hazardous substance releases that occur in the coastal zone. The Environmental Protection Agency (EPA) is responsible for the emergency removal of oil, pollutants, hazardous materials and their containers from inland zones. The precise boundaries of coastal and inland zones are determined by an interagency agreement between the EPA and the USCG.

Section 216 of the Flood Control Act of 1950, PL 81-516, 33 U.S.C. 701b-1; and Sections 403-405 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, authorize the National Resources Conversation Service (NRCS) to provide assistance, through its Emergency Watershed Protection (EWP) program, to implement emergency measures to EWP-eligible facilities where a sudden impairment of a watershed threatens life or property as determined by the NRCS State Conservationist. These emergency measures include, but are not limited to, providing financial and technical assistance to remove debris from streams. The measures that are taken must be environmentally and economically sound. Additional EWP criteria are in 7 CFR Part 624.

Sections 403, 407, and 502 of the Stafford Act and 44 CFR §206.224 Debris removal, authorize FEMA to provide funding to eligible applicants to remove debris, wreckage, and sunken vessels from publicly and privately owned waters to eliminate an immediate threat to public health and safety, or improved property; or to ensure the economic recovery of the affected community. The debris, wreckage, and sunken vessels must be the direct result of a Presidentially declared emergency or major disaster and located in the designated area, and the applicant must have the legal responsibility to remove the threat (see 44 CFR §206.223 General work eligibility). FEMA may fund the removal and disposal of eligible debris, wreckage, and sunken vessels from non-Federally maintained navigable waterways, the coastal or inland zones, or wetlands only when another Federal agency does not have the specific authority to fund the activity (see 44 CFR § 206.208(c)(2)). FEMA will make eligibility determinations on a case-by-case basis in coordination with the State and other Federal agencies, as necessary.

Pursuant to 44 CFR §206.208 Direct Federal assistance, FEMA may provide direct Federal assistance through a mission assignment to another Federal agency to remove eligible debris when the State and local government certify that they lack the capability to perform or contract for the requested work. The duration of mission assignments for debris removal is limited to 60 days from the emergency or major disaster declaration date. Extensions to this time limitation may be made based on extenuating circumstances or unusual project requirements (see 44 CFR §206.208(d)).

VII. POLICY:

A. Definitions.

1. Coastal Zone: As defined for the purpose of the National Contingency Plan (NCP), refers to all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters

of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPNUSCG agreements and identified in federal regional contingency plans.

2. Federally Maintained Navigable Channels and Waterways: For the purpose of this policy, refer to those waters that are maintained under the authorities and responsibilities of the USACE. These channels include USACE authorized projects (e.g., specified harbors, canals, turning basins, anchorage and mooring areas, and waterways) that are designed, constructed, and maintained by the USACE for use by commercial and/or recreational navigation traffic.
 3. Inland Zone: The environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.
 4. Non-Federally Maintained Navigable Waterways: Public waterways that are currently used for commercial and recreational navigation traffic and are not federally maintained or under the authority of a Federal agency.
 5. Specified Ports and Harbors: Those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal Regional Contingency Plans and Area Contingency Plans.
 6. Wetlands: Areas that are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions (e.g., swamps, fresh and saltwater marshes, bogs, fens).
- B. Approval for FEMA Assistance. FEMA may fund the removal and disposal of eligible disaster-generated debris, wreckage, and sunken vessels from the coastal zone or inland zone/non-Federally maintained navigable waterways, and wetlands by an eligible applicant, if (1) the debris, wreckage, or sunken vessel is the direct result of a Presidentially-declared disaster (44 CFR §206.223(a)), (2) the removal is in the public interest (44 CFR § 206.224(a)), and (3) CU)Other Federal agency does not have specific authority to perform or fund the work (44 CFR §206.208(c)(2)).

In order to be eligible for assistance, an eligible applicant must provide documentation of this work, to include: a public interest determination; legal responsibility; debris types and quantities to be removed; and debris removal locations.

1. Public Interest Determination. Pursuant to 44 CFR § 206.224 Debris removal, debris removal is in the "public interest," when its removal is necessary to (1) eliminate immediate threats to life, public health, and safety; or eliminate immediate threats of significant damage to improved property; or (3) ensure economic recovery of the affected community to the benefit of the community-at-large. Applicants should provide FEMA documentation to support one of the following:

- a. 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 in a navigable waterway in the designated area constitutes an immediate threat to life, public health, and safety; or
 - b. Immediate Threat of Significant Damage to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris from a navigable waterway is cost effective. Debris removal is cost effective if the cost to remove the debris is less than the cost of potential damage to the improved property; or
 - c. 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 a navigable waterway is necessary to ensure economic recovery of the affected community to the benefit of the community-at-large.
2. Legal Responsibility. Pursuant to 44 CFR §206.223(a)(3), General work eligibility, an eligible applicant must demonstrate that it had the legal responsibility at the time of disaster to remove debris and obstructions from the impacted waterway. An applicant's legal authorities, codes, and ordinances should be germane to the condition(s) presenting an immediate threat to life, public health, and safety, and not merely define the applicant's uniform level of services. 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 debris removal.

C. Eligible.

1. FEMA will determine the amount of eligible debris to be removed that is necessary to eliminate an immediate threat to life, public health, and safety from non-Federally maintained navigable waterways, the coastal zone or inland zone, and wetlands on a case-by-case basis. FEMA will conduct eligibility assessments with the assistance of representatives from the applicant, State, and other Federal agencies, as necessary. Applicants should provide maintenance records or surveys to demonstrate the pre-disaster condition and capacity of the waterway and its facilities, as appropriate.
2. FEMA will reimburse reasonable costs for the use of side scan sonar that identifies eligible submerged debris and sunken vessels after the applicant provides an eligible initial scope of work and cost estimate, and FEMA has determined that the removal of the debris is in the public interest, as described in Section VII.B.1. Side scan sonar missions should be limited in scope to address the impacted areas of non-Federally maintained navigable waterways and developed in coordination with FEMA and the State. Applicants should provide documentation that demonstrates the need for the use of side scan sonar to identify immediate threats. This documentation should be directly related to the impacted area(s) and debris estimates and locations.
3. FEMA may determine that debris located at or below the surface of a non-Federally maintained navigable waterway, or in the coastal or inland zone, is eligible to a depth

equal to the maximum draft of the largest vessel that utilized the waterway prior to the storm plus two feet. Example: If the maximum draft of the largest vessel using the waterway is four feet, two feet will be added so that any debris below this six feet zone is not eligible.

- a. FEMA may determine that debris extending from the waterway bottom upward into the eligible zone is also eligible for complete removal.
 - b. Applicants should document the maximum draft of waterways for tidal waters by using depths taken at low tide.
4. The removal of trees still rooted to an embankment may be eligible if:
- a. The tree is partially or wholly floating or submerged in the waterway; and
 - b. The tree presents an immediate threat to life, public health, and safety; and
 - c. Another federal agency does not have specific authority to fund or perform the work.

In such cases, FEMA may determine that the cost to cut the floating or submerged portion of the tree at the water's edge is eligible.

5. FEMA may determine that debris along the bank of a non-Federally maintained navigable waterway, in the coastal zone or inland zone, or along the bank of a wetland is eligible if it presents an immediate threat to life, public health, and safety, or to improved property.
6. Debris removal from privately-owned canals, waterways and banks is only eligible when necessary to eliminate an immediate threat to navigation that impedes the access of emergency service providers or if approved by the Federal Coordinating Officer under the guidelines established in Disaster Assistance Policy 9523.13, Debris Removal from Private Property.
7. Eligible debris removal from a stream is limited to the minimum effort required to eliminate an immediate threat to life, public health, and safety, or debris that is immediately up/down stream of and in close proximity to improved property.
8. FEMA may fund the removal and disposal of containers of pollutants and hazardous substances from the coastal zone or inland zone, non-Federally maintained navigable waterways, and wetlands by an eligible applicant, if the removal is in the public interest, and another Federal agency does not have specific authority to perform the work.
9. FEMA may determine that a storm-damaged vessel can be treated as eligible debris if the vessel cannot be salvaged or returned to seaworthiness and it is floating or submerged in the coastal or inland zones, a non-Federally maintained navigable waterway, or wetland. However, if any part of the damaged vessel can be used to identify an owner, the applicant should contact the owner and follow its local ordinances and State laws to demonstrate legal responsibility to remove and dispose of the vessel.

D. Ineligible.

1. The removal of debris by an applicant for which another Federal agency has specific authority, or from federally-maintained navigable channels and waterways is ineligible under the Public Assistance Program.
 2. The removal of wreckage and sunken vessels from federally-maintained navigable channels and waterways is ineligible.
 3. The removal of debris from privately owned canals, waterways and banks is generally ineligible, except in cases described in Section VII.C.6.
- E. Duplication of Benefits. Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing funds for work that is covered by another source of funding. Therefore, applicants should take steps to verify whether insurance coverage or any other source of funding exists for the debris removal work.
- F. Environmental and Historic Review Requirements. Eligible waterway debris removal and disposal activities must satisfy environmental protection and historic preservation compliance review requirements as established by 44 CFR Parts 9, Floodplain Management and Protection of Wetlands, and 10, Environmental Considerations, and all other applicable local, State and Federal legal requirements.

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

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

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

____//Signed//____
Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9523.6 – Mutual Aid Agreements for Public Assistance (1999)

1. Date Published: August 17, 1999 (Superseded on September 22, 2004)

2. Response and Recovery Directorate Policy Number: 9523.6

3. Title: Mutual Aid Agreements for Public Assistance

4. Purpose:

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

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 personnel involved in the administration of the Public Assistance Program. This policy applies to emergency work authorized under Sections 403, 407, and 502 of the Stafford Act.

6. Background:

Many State and local governments and Private Nonprofit organizations formulate mutual aid agreements to provide emergency assistance to each other in the event of disasters or other crises. The conditions of the agreements may be to provide reciprocal services or to receive direct payment through specific labor and equipment rates outlined in the agreements. These agreements usually are written but, occasionally, are by understanding or are arranged after a disaster occurs. This policy addresses both written and unwritten mutual aid agreements.

7. Policy:

A. Written Mutual Aid Agreements. FEMA will reimburse mutual aid agreement costs associated with emergency assistance provided all of the following conditions are met:

1. The assistance requested by the applicant is directly related to the disaster and is eligible for FEMA assistance.
2. The mutual aid agreement is in written form and signed by authorized officials of the agreeing parties prior to the disaster.
3. The mutual aid agreement applies uniformly in emergency situations. The agreement must not be contingent upon a declaration of a major disaster or emergency by the Federal government or on receiving Federal funds.
4. The providing entity may not request or receive grant funds directly. Only the eligible applicant receiving the aid may request grant assistance.
5. Upon request, the applicant must be able to provide FEMA with documentation that the services were requested.
6. Upon request, the applicant must be able to provide FEMA with documentation of services received and costs incurred.

B. Reimbursement Under Provisions of Written Mutual Aid Agreements.

1. The agreement is treated as a contract, therefore, the labor and equipment rates outlined in the agreement are acceptable provided they are reasonable in terms and costs.
2. The labor force of the providing entity is considered contract labor. Therefore, straight time for the force account labor of the providing entity is an eligible expense. Straight time for the force account labor of the receiving entity is not an eligible expense and remains limited by 44 CFR 206.228(a)(4).
3. If the providing entity is staffed with volunteer labor, the value of the volunteer labor may be credited to the non-Federal cost share in accordance with the provisions of the Donated Resources policy (#9525.2).
4. If the agreement provides for an initial period of unpaid assistance before the receiving entity reimburses the providing entity, assistance during that period may be credited to the non-Federal cost share under the provisions of the Donated Resources policy (#9525.2).
5. If the agreement states that there is no cost to the applicant receiving the emergency assistance, assistance may be credited to the non-Federal cost share under the provisions of the Donated Resources policy (#9525.2).

C. Reimbursement Without an Existing Written Mutual Aid Agreement. There are no provisions for reimbursement for mutual aid when there is no formal written agreement.

D. Permanent Work. Long term use of these agreements is not expected. Temporary modification of the terms in the agreement to increase rate costs for work beyond emergency assistance, such as permanent repairs, will not be recognized by FEMA. Applicants must advertise and award competitive bid contracts for permanent repairs.

E. Additional Requirements and Exceptions.

1. FEMA recognizes only mutual aid agreements that are between governments or PNPs in separate areas. FEMA does not recognize "mutual aid agreements" between agencies, departments or entities of the same town, county or State government. For example: A Public Works Department cannot arrange to be reimbursed for force account regular time in an emergency by developing a "mutual aid agreement" with the Water Department.
2. When there is a jurisdictional overlap, such as a county and city, with a long standing practice that each entity helps the other without reimbursement, limitations on eligibility of force account labor under 44 CFR 206.228(a)(4) applies to both entities. Normal procedures prevail.
3. There may be times when a providing entity is also an eligible applicant in its own right. When this occurs, there may be differences in eligible costs in the two capacities. For example, provisions governing mutual aid agreements are different from the Public Assistance Program reimbursement provisions for eligible applicants using their own resources to meet emergencies in their own jurisdictions. Appropriate records would be needed to support any claims made.
4. Participants in mutual aid agreements may not mutually redirect their forces to assist other political entities in such a way as to circumvent the limitations of 44 CFR

§206.228 (a)(4).

- 8. Supersession:** This policy updates and replaces previous public assistance policy documents on this subject.
- 9. Authorities:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended and the implementing regulations of 44 CFR 206.

10. Originating Office: Infrastructure Division, Response and Recovery Directorate 11.

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

9523.6 – Mutual Aid Agreements for Public Assistance and Fire Management Assistance (2004)

This policy specifies criteria by which the Federal Emergency Management Agency (FEMA) will recognize the eligibility of costs under the Public Assistance Program and the Fire Management Assistance Program incurred through mutual aid agreements between applicants and other entities. This policy is applicable to all major disasters, emergencies, and fire management assistance declarations declared on or after August 11, 2004. This policy is intended for personnel involved in the administration of the Public Assistance Program and the Fire Management Assistance Program. This policy applies to emergency work authorized under Sections 403, 407, and 502, and work under Section 420 Fire Management Assistance of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act).

1. **Date Published:** September 22, 2004 (Superseded on August 13, 2007)
2. **Recovery Division Policy Number:** 9523.6
3. **Title:** Mutual Aid Agreements for Public Assistance and Fire Management Assistance
4. **Purpose:** This policy specifies criteria by which the Federal Emergency Management Agency (FEMA) will recognize the eligibility of costs under the Public Assistance Program and the Fire Management Assistance Program incurred through mutual aid agreements between applicants and other entities.
5. **Scope and Audience:** This policy is applicable to all major disasters, emergencies, and fire management assistance declarations declared on or after August 11, 2004. This policy is intended for personnel involved in the administration of the Public Assistance Program and the Fire Management Assistance Program. This policy applies to emergency work authorized under Sections 403, 407, and 502, and work under Section 420 Fire Management Assistance of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act).
6. **Background:** Many State 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 other crises. 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 NIMS Integration Center (NIC) 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 establishing standard criteria for determining the eligibility of costs incurred through mutual aid agreements.

7. Policy:

Terms Used in this Policy:

- Declared Disaster. An emergency or major disaster as defined at 44 CFR § 206.2 (a)(9) and (17), respectively.
- Declared Fire. An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster for which the Recovery Division Director has approved a declaration in accordance with the criteria listed in 44 CFR § 204.21.
- Incident Commander. The ranking official responsible for overseeing the management of fire operations, planning, logistics, and finances of the field response.
- Providing Entity. The entity providing mutual aid assistance to a Requesting Entity pursuant to a local or statewide mutual aid agreement.
- 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.

A. General.

1. To be eligible for reimbursement by FEMA, the mutual aid assistance must 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. 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 Emergency Management Assistance Compact (EMAC).

B. 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 these circumstances, the Requesting Entity must 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 must obtain from the Requesting Entity the certification required in section G(4) 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 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 is silent on reimbursement, FEMA will not provide reimbursement for the first eight (8) hours of assistance performed at the incident site, but will provide reimbursement of eligible costs thereafter pursuant to this policy.
 - 4. 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 (the minimum unpaid period must be eight (8) hours) and thereafter pursuant to this policy.

C. Post-Event Mutual Aid Agreements.

- 1. When the parties do not have a pre-event written mutual aid agreement, the Requesting and Providing Entities may verbally agree on the type and extent of mutual aid resources to be provided in the current event, and on the terms, conditions, and costs of such assistance. Post-event verbal agreements must be documented in writing and executed by an official of each entity with authority to request and provide assistance, and provided to FEMA as a condition of receiving reimbursement.
- 2. When the parties have a post-event mutual aid agreement, FEMA will not provide reimbursement for the first eight (8) hours of assistance performed at the incident site, but will provide reimbursement of eligible costs thereafter pursuant to the provisions of this policy.

D. 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), § 204.42(c) 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 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 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 D(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 in such a way as to circumvent the limitations of paragraph D(1) or (2) of this policy.
5. Backfill costs incurred by either Requesting or Providing Entities are not eligible for reimbursement.

E. Eligible 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 Public Assistance and Fire Management Assistance Grant (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.
 - a. Examples of eligible emergency work include:
 1. Search and rescue, sandbagging, emergency medical care, debris removal;
 2. Reasonable supervision and administration in the receiving State that is directly related to eligible emergency work;
 3. The cost of transporting equipment and personnel by the Providing Entity to the incident site, subject to the requirements of paragraphs A(1) and (2) of this policy;
 4. Costs incurred in the operation of the Incident Command System, 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;
 5. Emergency Operations Center or Disaster Field Office assistance in the receiving State to support emergency assistance;
 6. Assistance at the National Emergency Operations Center and Regional Emergency Operations Center, if requested by FEMA (labor, per diem and transportation);
 7. Dispatch operations in the receiving State;
 8. Donations warehousing and management (eligible only on the approval of the Recovery Division Director);
 9. Firefighting activities under section 420 of the Stafford Act and 44 CFR § 204; and
 10. Dissemination of public information authorized under Section 403 of the Act.
 - b. Examples of mutual aid work that are not eligible, include:
 1. Permanent recovery work;
 2. Training, exercises, on-the-job training;

3. Backfill costs;
 4. Long-term recovery and mitigation consultation;
 5. Costs outside the receiving State that are associated with the operations of the EMAC system (except for FEMA facilities noted in paragraph E(1)(a)(v) and (vi) above);
 6. Costs for staff performing work that is not eligible under the Public Assistance Program or the Fire Management Assistance Grant Program;
 7. Costs of preparing to deploy or "standing-by" [except to the extent allowed in the Fire Management Assistance Grant Program pursuant to 44 CFR § 204.42(e)];
 8. Dispatch operations outside the receiving State;
 9. Tracking of EMAC resources; and
 10. Situation reporting.
 2. Grant Management Work. 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.
- F. Eligible Applicants.
1. Only Requesting Entities are eligible applicants for FEMA assistance. With the exception of F(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.
- G. Reimbursement of Mutual Aid Costs.
1. To be eligible for FEMA assistance, the reimbursement provisions of a mutual aid agreement must apply uniformly to both Federal awards and other activities of the governmental unit, and not be contingent on a declaration of an emergency, major disaster, or fire by the Federal government.
 2. 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.
 3. 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.
 4. A request for reimbursement of mutual aid costs must 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.
 5. 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 Recovery Division Policy #9525.2.
 - 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 Recovery Division Policy #9525.2.
6. Reimbursement for work beyond emergency assistance, such as permanent repairs, is not eligible for mutual aid assistance.
 7. For Public Assistance 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.
 8. For Public Assistance only, reimbursement for damage to equipment used in emergency operations will be based on Recovery Division Policy #9525.8.
 9. For Public Assistance only, reimbursement for equipment purchased by a subgrantee to support emergency operations will be based on Recovery Division Policy #9525.12.
8. **Supersession:** This policy replaces Recovery Division Policy #9523.6. Mutual Aid for Public Assistance, dated August 17, 1999.
 9. **Authorities:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C §§ 5121-5206, and the implementing regulations of 44 CFR § 204 and § 206.
 10. **Originating Office:** Recovery Division, FEMA, Emergency Preparedness and Response Directorate, U. S. Department of Homeland Security.
 11. **Review Date:** Three years from date of publication.
 12. **Signature:**

____//Signed//____
Daniel A. Craig
Recovery Division Director
Emergency Preparedness & Response Directorate
Department of Homeland Security
 13. **Distribution:** Regional Directors, Regional and Headquarters Recovery Division Directors, Regional Public Assistance Officers.

9523.6 - Mutual Aid Agreements for Public Assistance and Fire Management Assistance (2007)

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

II. DATE: August 13, 2007 (Superseded on November 10, 2012)

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 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 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 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 sub-grant 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 Written 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.

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 sub-grant 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.
 - 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;
 - 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.
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).
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. ORIGINATING 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

9523.6 – Mutual Aid Agreements for Public Assistance and Fire Management Assistance (2012)

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

II. DATE: November 10, 2012 (Superseded on January 1, 2016)

III. PURPOSE: This policy specifies criteria by which the Federal Emergency Management Agency (FEMA) will recognize the eligibility of costs under the Public Assistance 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 applies to all emergencies and major disasters declared on or after October 27, 2012. It will continue in effect until three years after its date of issuance. If rescinded or superseded, this policy will continue to apply to all emergencies and major disasters declared between the date in Paragraph II and the date it is rescinded or superseded. The policy is intended for all personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY: This policy applies to emergency and permanent work authorized under Sections 403, 406, 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 Title 44 Code of Federal Regulations (44 CFR) §204 and §206.

VI. OBJECTIVES:

- A. The objective of this policy is to reimburse eligible applicants for work performed by other entities through mutual aid agreements. Eligible expenses must be directly related to a Presidentially-declared major disaster, emergency or fire; incurred in the performance of eligible work; and reasonable. Reimbursement will be at the Federal cost share rate established in the Presidential declaration, which is generally 75 percent.
- B. There are three types of mutual aid work eligible for FEMA assistance (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;
 2. Permanent Work - Work that is of a permanent nature but is necessary for the emergency restoration of utilities (Category F). For example, work performed to restore electrical and other power.
 3. 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.
- C. 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. (See Paragraph VIII below for definition of italicized terms).

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

VII. DEFINITIONS:

1. Backfill. Replacement personnel who perform the regular duties of other personnel while they are performing eligible 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 Regional 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 (PA eligible applicant) that requests mutual aid assistance from a Providing Entity for 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 from 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 jurisdictions that cross State boundaries, or are adjacent to 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.

VIII. POLICY:

A. General.

1. To be eligible for reimbursement by FEMA, the mutual aid assistance should be 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.
5. Reimbursement will be at the Federal cost share rate established in the Presidential declaration, which is generally 75 percent.

B. 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 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 E.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.
 - a. 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.
 - b. 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.

C. 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.

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2. Post-event verbal agreements must subsequently 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 to the Regional Administrator for review and approval.

D. 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, other than any relevant exceptions in accordance with 44 CFR §206.228(a)(2)(ii) Allowable costs, Force Account Labor Costs 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 costs for contract labor or temporary hires performing eligible work are eligible for reimbursement. However, straight- or regular time salaries and benefits of force account labor overseeing contractors performing emergency work are not eligible in calculating the cost of eligible emergency work, other than any relevant exceptions in accordance with 44 CFR §206.228(a)(2)(ii) Allowable costs, Force Account Labor Costs. The force account labor of a Providing Entity will be treated as contract labor, with regular- time and overtime wages and benefits eligible for reimbursement, provided labor rates are reasonable. When the Requesting Entity is the State or local government, the force account labor costs of the Providing Entity will not be treated as contract labor if the force account labor is employed by a governmental subdivision (such as an agency) within that 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 D.1. and D.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, other than any relevant exceptions in accordance with 44 CFR §206.228(a)(2)(ii) Allowable costs, Force Account Labor Costs.
4. Requesting and Providing Entities may not mutually deploy their labor forces to assist each other so as to circumvent the limitations of paragraph D.1 or D.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.

E. Types of Mutual Aid Work.

There are three types of mutual aid work that may be eligible for FEMA assistance: Emergency Work, Permanent Work, and Grant Management Work. All 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.
 - 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 jurisdiction 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 A.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 Recovery 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. Training, exercises, on-the-job training;
 - ii. Long-term recovery and mitigation consultation;
 - iii. Costs outside the receiving State that are associated with the operations of the EMAC system (except for FEMA facilities noted in paragraph E.1.a.v. and vi. above);
 - iv. Costs for staff performing work that is not eligible under the PA or the FMAG programs;
 - v. Costs of preparing to deploy or “standing-by” [except to the extent allowed in the FMAG program pursuant to 44 CFR §204.42(e)];
 - vi. Dispatch operations outside the receiving State;
 - vii. Tracking of EMAC and U.S. Forest Service I-Suite/Incident Cost Accounting and Reporting System (ICARS) resources; and
 - viii. Situation reporting not associated with ICS operations under VIII.E.1.a.iv.
 2. Permanent Work. Work that is of a permanent nature but is necessary for the emergency restoration of utilities (Category F). For example, work performed to restore electrical and other power.

3. 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.

F. Eligible Applicants.

1. Only Requesting Entities are eligible applicants for FEMA assistance. With the exception of F.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.

G. Reimbursement of Mutual Aid Costs.

1. The State or Requesting Entities, as appropriate, must provide an executive summary of the services requested and received and the associated costs (i.e., labor, equipment, materials, etc.). Both Requesting and Providing Entities must keep detailed records of the services requested and received, and maintain those records for at least three years after project closeout. FEMA may review a sample of project costs, and reserves the right to review all documentation if it deems necessary. All documentation must be provided to FEMA upon request. Undocumented costs may be subject to de-obligation.
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 work;
 - b. The labor and equipment rates used to determine the mutual aid cost reimbursement request; and
 - c. That all work performed was eligible under the Stafford Act and applicable FEMA regulations and policies.
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 Recovery 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 Recovery Policy 9525.2, Donated Resources.

5. 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. Equipment used can be reimbursed as outlined in the terms of the agreement or for hours utilized/in performance of eligible work.
6. 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.
7. 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.
8. For FMAG only, reimbursement for equipment provided to a Requesting Entity will be based on 44 CFR § 204.42 (b)(3) and (4).
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).

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

IX. SUPERSESSION: For all disasters declared on or after October 27, 2012, this policy supersedes DAP9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance, dated August 13, 2007, and all previous guidance on this subject.

X. REVIEW DATE: This policy expires three years from the date of issuance.

____//Signed//____

Deborah Ingram
Assistant Administrator
Recovery Directorate

9523.7 – Public Housing Authorities (2001)

- 1. Date Published:** March 19, 2001 (Superseded on April 14, 2003)
- 2. Response and Recovery Directorate:** 9523.7
- 3. Title:** Public Housing Authorities (PHAs)
- 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 HUD have agreed to in regard to funding the repair of PHA properties that are damaged by a major disaster, as declared by the President.
- 5. Scope and Audience:** This policy is applicable to all major disasters declared after January 8, 2001. It is for use by Federal Emergency Management Agency (FEMA) personnel making public assistance eligibility determinations for the Public Assistance Program.
- 6. Background:** Although HUD has had specific authority to repair disaster damage to PHAs, FEMA has generally funded these costs in the past. FEMA and HUD developed this policy to eliminate confusion among the respective agencies and applicants and to ensure that PHAs have access to appropriate federal assistance following major disasters. This policy does not result in a significant reduction in assistance for PHAs.
- 7. Policy:** The policy is attached.
- 8. Supersession:** This is a new policy.
- 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))
- 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 and Regional and Headquarters RR Division Directors.

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) [i.e., 9523.7 from 2001]

DATE: January 8, 2001

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 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 Presidential 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.

9523.7 – Public Housing Authorities (2003)

1. **Date Published:** April 14, 2003 (August 13, 2009)
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

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 Presidential 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.

9523.7 – Public Assistance Funding for Public Housing Facilities (2009)

I. TITLE: Public Assistance Funding for Public Housing Facilities

II. DATE: August 13, 2009 (Rescinded on January 23, 2013)

III. PURPOSE:

This policy provides guidance on the eligibility of publicly-subsidized housing facilities for Public Assistance funding.

IV. SCOPE AND AUDIENCE:

This policy is effective retroactively for major disasters and emergencies declared on or after October 1, 2008. It is applicable to public housing facilities, including those authorized and previously funded under section 9(k) of the Housing Act of 1937, as amended. It is intended for personnel involved in the administration of the Public Assistance Program, including applicants.

V. AUTHORITY:

Sections 403 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended [42 U.S.C. §5170b(3)]; section 9(k) of the United States Housing Act of 1937 (Housing Act), 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); Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110- 411); and the Public Housing Disaster Relief Act of 2008 (Pub. L. 110-289).

VI. BACKGROUND:

Section 9(k) of the Housing Act of 1937, as amended, authorized the Department of Housing and Urban Development (HUD) to provide disaster assistance from the Public Housing Capital Fund to repair disaster-damaged Public Housing Authority (PHA) facilities. Therefore, FEMA provided disaster assistance for the permanent repair of all PHA facilities except those authorized by section 9(k) of the Housing Act of 2008, as amended. On July 30, 2008, Congress passed the Public Housing Disaster Relief Act of 2008, which repealed section 9(k) of the Housing Act of 1937. FEMA now has authority to fund the permanent repair of all PHA facilities.

VII. POLICY:

Emergency Work: FEMA may provide essential assistance under Section 403 of the Stafford Act to PHAs and American Indian and Alaskan Native designated public housing entities. 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.

Permanent Work: FEMA may provide assistance to repair, replace or reconstruct disaster-damaged PHA facilities unless Congress appropriates funds to HUD for emergency capital needs to repair, restore, or replace certain PHA facilities damaged by presidentially-declared major disasters. American Indian and Alaskan Native designated public housing entities may apply directly to FEMA for disaster assistance.

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

IX. SUPERSESSION: This policy supersedes Recovery Policy RP9523.7, Public Housing Authorities (PHAs), dated April 14, 2003 and 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//____

Elizabeth A. Zimmerman
Assistant Administrator
Disaster Assistance Directorate
Federal Emergency Management Agency

9523.9 – 100% Funding for Direct Federal Assistance and Grant Assistance (2006)

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

II. DATE: June 9, 2006 (Rescinded on October 6, 2015)

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.

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.
 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.
 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)

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

9523.10 – Eligibility of Vector Control (2006)

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

II. DATE: September 12, 2006 (Superseded on January 1, 2016)

III. PURPOSE:

This policy describes the criteria the Federal Emergency Management Agency will use to

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.
- 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:

1. Aedes: The genus name for a mosquito that transmits yellow fever and dengue.ⁱ
2. Arbovirus: A virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.ⁱⁱ
3. Culex: Common mosquito genus comprised of 29 species in North America.ⁱⁱ
4. Dengue: An infectious tropical disease transmitted by mosquitoes and marked by fever, rash, and severe joint pain.ⁱ
5. Encephalitis: A pathological condition characterized by inflammation of the brain.ⁱⁱ
6. 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.ⁱⁱ
7. Landing Rate: An adult mosquito surveillance measure utilizing human volunteers as bait. Expressed as number of mosquitoes landing per minute.ⁱⁱ
8. 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.ⁱⁱ
9. Psorphora: Mosquito genus comprised of 13 species in North America.ⁱⁱ
10. Sentinel Organism: An organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.ⁱⁱ
11. Seroconversion: The development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.ⁱⁱ
12. Trap Count: The number of female mosquitoes captured in a trap receptacle each night the traps are set.ⁱⁱ

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.

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.

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).
 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)

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

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

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

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

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

9523.11 - Hazardous Stump Extraction and Removal Eligibility (2006)

I. TITLE: Hazardous Stump Extraction and Removal Eligibility

II. DATE: May 1, 2006 (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 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 - the same equipment 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. Straightening or bracing of trees is not eligible for reimbursement.

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

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

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

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David Garratt
Acting Director of Recovery
Federal Emergency Management Agency

9523.11 - Hazardous Stump Extraction and Removal Eligibility (2007)

I. TITLE: Hazardous Stump Extraction and Removal Eligibility

II. DATE: May 15, 2007 (Superseded on January 1, 2016)

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 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. SUPERSESSION: 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.

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David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

9523.12 – Debris Operations, Hand-Loaded Trucks and Trailers (2006)

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

II. DATE: May 1, 2006 (Superseded on January 1, 2016)

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 trailers or trucks 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 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 percent 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 a 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.

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David Garratt
Acting Director of Recovery
Federal Emergency Management Agency

9523.13 – Debris Removal from Private Property (2007)

I. TITLE: Debris Removal from Private Property

II. DATE: July 18, 2007 (Superseded on January 1, 2016)

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:
 - Eliminate immediate threats to life, public health and safety; or
 - Eliminate immediate threats of significant damage to improved public or private property; or
 - 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.

- 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.
- 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)).
- 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)).
- 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)).
- 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)).

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 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.
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 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.

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

9523.15 – Eligible Costs Related to Evacuations and Sheltering (2007)

I. TITLE: Eligible Costs Related to Evacuations and Sheltering

II. DATE: April 6, 2007 (Superseded on January 1, 2016)

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 congregate refuge to evacuees, but that day-to-day serves a non-refuge function. Examples include schools, stadiums, and churches.
 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.
 - o Minor modifications to buildings used for congregate sheltering, if necessary to make the facility habitable.
 - o Facility lease or rent (at the market rate; loss of revenue is not eligible).
 - o Utilities, such as power, water, and telephone.
 - o Generator operation (but not purchase).
 - o Shelter safety and security.
 - o Shelter management.
 - o 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:
 - o Cots.
 - o Food and water.
 - o Linens/blankets/pillows.
 - o Personal comfort kits (e.g., shampoo, soap, toothpaste, toothbrush, etc.).
 - o Towels/washcloths.
 - o Televisions or radios (1 per 50 shelterees; basic CATV service is eligible).
 - o 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).
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:
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:
 - 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 the date of publication.

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David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

9523.17 – Emergency Assistance for Human Influenza Pandemic (2007)

I. TITLE: Emergency Assistance for Human Influenza Pandemic

II. DATE: March 31, 2007 (Superseded on November 25, 2009)

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:

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 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:

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).

A. 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 three 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.

B. 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.);
 - 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 a 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.
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 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 test 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.
 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 Services 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:
- Definitive care (defined as medical treatment or services beyond emergency medical care, initiated upon inpatient admissions to a hospital).
 - Cost of follow-on treatment of disaster victims is not eligible, in accordance with FEMA Recovery Policy 9525.4 – Medical Care and Evacuation.
 - Costs associated with loss of revenue.
 - Increased administrative and operational costs to the hospital due to increased patient load.
 - Rest time for medical staff. Rest time includes the time a staff member is unavailable to provide assistance with emergency medical care.
 - Because the law does not allow disaster assistance to duplicate insurance benefits, disaster assistance will not be provided for damages covered by insurance. The Public Assistance applicant 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 policy and guidance on this subject.

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

____//Signed//____
David Garratt
Acting Director of Recovery
Federal Emergency Management Agency

9523.17 – Emergency Assistance for Human Influenza Pandemic (2009)

I. TITLE: Emergency Assistance for Human Influenza Pandemic

II. DATE: November 25, 2009 (Rescinded on January 23, 2013)

III. PURPOSE:

To 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:

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. The policy is applicable to all declarations made on or after the date of publication of this policy. It is intended for personnel involved in the administration of FEMA's programs.

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 CFR §206.35 Requests for emergency declarations §206.37 processing requests for declarations of a major disaster or emergency, and §206.225 Emergency work.

VI. BACKGROUND:

The Department of Homeland Security (DHS), including the Federal Emergency Management Agency (FEMA), in cooperation and coordination with various State and Federal agencies, is prepared to take appropriate and authorized action in response to requests for Federal assistance through the Stafford Act as a result of a pandemic influenza.

In order to assist States in assessing impacts and evaluating the need for Federal assistance in a pandemic influenza, FEMA has developed these guidelines for requesting Stafford Act assistance from the Federal Government.

VII. POLICY:

A. Emergency Declarations.

1. For the purpose of emergency declarations under the Stafford Act for pandemic influenza, FEMA anticipates that its recommendations to the President will be:
 - a. Limited to Public Assistance Emergency Protective Measures, also called "Category B" measures (see further clarification below);
 - b. Further limited to Direct Federal Assistance (DFA); and
 - c. That the Federal Government pays 75% of the cost of these direct Federal resources, with the State responsible for the remaining 25%.

2. As with all declaration requests, FEMA utilizes a variety of evaluation criteria and factors, as established under Title 44 Code of Federal Regulations. However, the four primary evaluation criteria for a State request for a pandemic influenza emergency declaration are:
 - a. Whether the State has directed execution of its State emergency plan; m4
 - b. Whether the requesting State has demonstrated that its incidence of influenza is significantly higher than the State's seasonal average; and
 - c. Whether the State can demonstrate that effective response to the pandemic event is beyond the capability of the State and affected local governments; and
 - d. Whether the State has identified specific, supplemental direct Federal emergency assistance that is required to save lives, protect public health and safety, or lessen or avert the threat of a disaster.
3. Other federal agencies, such as the U.S. Department of Health and Human Services (HHS), also have authority to provide assistance to support jurisdictions during pandemic events. Assistance provided by FEMA under the Stafford Act may not duplicate assistance provided or available under the authority of another Federal agency.
4. The President retains sole authority to approve all declaration requests, irrespective of any FEMA recommendation.

B. Direct Federal Assistance.

1. Under a Presidential declaration as described above, the following Emergency Protective Measure assistance may be provided directly by the Federal Government
 - a. 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).
 - b. Temporary medical facilities (for treatment of disaster survivors when existing facilities are overloaded and cannot accommodate the patient load).
 - c. Purchase and distribution of food, water, ice, medicine and other consumable supplies.
 - d. Management, control, and reduction of immediate threats to public health and safety (e.g., to include sanitizing eligible public facilities).
 - e. Movement of supplies and persons.
 - f. Security, barricades and fencing, and warning devices.
 - g. Congregate sheltering (for disaster survivors when existing facilities are overloaded and cannot accommodate survivors' needs).
 - h. Communicating health and safety information to the public.
 - i. Technical assistance to state and local governments on disaster management and control.
 - j. Search and rescue to locate and recover members of the population requiring assistance and to locate and recover human remains.

- k. Storage and interment of unidentified human remains.
- l. Mass mortuary services.
- m. 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).

VIII. ORIGINATING OFFICE:

Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION:

This policy supersedes Disaster Assistance Policy 9523.17, Emergency Assistance for Human Influenza Pandemic, dated March 31, 2007, and all previous guidance on this subject.

X. REVIEW DATE:

This policy does not automatically expire, but will be reviewed three years from the date of publication.

____//Signed//____

Elizabeth A. Zimmerman
Assistant Administrator
Disaster Assistance Directorate

9523.17 POLÍTICA DE ASISTENCIA POR DESASTRE (2009)

I. TÍTULO: Asistencia por Emergencia para Pandemia de Influenza Humana

II. FECHA: 25 de noviembre de 2009 (rescindido 23 de enero de 2013)

III. PROPÓSITO:

Establecer los tipos de medidas de protección en emergencias que son elegibles bajo el Programa de Asistencia Pública (Infraestructura) durante una respuesta federal a un brote de pandemia de influenza humana en los EEUU y sus territorios.

IV. ALCANCE Y PÚBLICO:

La política aplica a todas las declaraciones hechas en o después de la fecha de publicación de esta política. Está destinada al personal que participa en la administración de los programas de FEMA.

V. AUTORIDAD:

Secciones 403 (42 EEUUC. 5121-5206) y 502 (42 EEUUC. 5192) respectivamente, de la Ley Robert T. Stafford de Ayuda en Desastres y Asistencia en Emergencias (Ley Stafford), y el 44 CFR § 206.35 Solicitudes de declaraciones de emergencia, § 206.37 Procesamiento para solicitudes de declaración de un desastre mayor o una emergencia y § 206.225 Trabajos de emergencia.

VI. TRASFONDO:

El Departamento de Seguridad Nacional (DHS, por sus siglas en inglés), incluida la Agencia Federal para el Manejo de Emergencias (FEMA, por sus siglas en inglés), en cooperación y coordinación con varias agencias estatales y federales, está preparado para tomar las acciones pertinentes y autorizadas de responder a solicitudes de asistencia federal a través de la Ley Stafford como resultado de una pandemia de influenza. Con el fin de asistir a los estados a evaluar los impactos y la necesidad de asistencia federal durante una pandemia de influenza, FEMA ha desarrollado estas guías para solicitar asistencia del gobierno federal a través de la Ley Stafford.

VII. POLÍTICA:

A. Declaraciones de Emergencia

1. Para propósitos de las declaraciones de emergencia bajo la Ley Stafford por pandemia de influenza, FEMA prevé que hará las siguientes recomendaciones al presidente:
 - a. Limitado a Medidas de Protección en Emergencias para Asistencia Pública (Infraestructura), también llamadas medidas de “Categoría B” (ver a continuación para mayor aclaración);
 - b. Limitado más aún para Asistencia Federal Directa (DFA, por sus siglas en inglés) y c. Que el gobierno federal pague el 75% del costo de estos recursos federales

directos, y que el estado sea responsable del 25% restante. Al igual que con todas las solicitudes de declaración, FEMA utiliza una variedad de criterios y factores de evaluación, según establecidos en el Título 44 del Código de Reglamentos Federales.

2. Sin embargo, los cuatro criterios primarios de evaluación de una solicitud estatal para declaración de emergencia por influenza pandémica son:
 - a. Si el estado ha indicado que se ejecute su plan de emergencia estatal y
 - b. Si el estado que solicita ha demostrado que su incidencia de influenza es significativamente mayor que el promedio de la influenza estacional del estado
 - c. Si el estado puede demostrar que la respuesta efectiva al evento pandémico sobrepasa las capacidades del estado y los gobiernos locales afectados y
 - d. Si el estado ha identificado asistencia federal directa complementaria específica por emergencia que se requiere para salvar vidas, proteger la salud y seguridad públicas o aliviar o prevenir la amenaza de un desastre. Otras agencias federales, como el Departamento de Salud y Servicios Humanos (HHS, por sus siglas en inglés), también tienen la autoridad de proveer asistencia para apoyar a las jurisdicciones durante eventos pandémicos.
3. La asistencia provista por FEMA bajo la Ley Stafford no puede duplicar la asistencia provista o disponible bajo la autoridad de otra agencia federal.
4. El presidente retiene la autoridad absoluta de aprobar todas las solicitudes de declaración, independientemente de cualquier recomendación de FEMA.

B. Asistencia Federal Directa

1. Bajo una declaración presidencial, según se describe arriba, el gobierno federal podría proveer la siguiente asistencia para Medidas de Protección en Emergencias directamente:
 - a. Cuidado médico de emergencia (tratamiento médico no diferible de víctimas de un desastre en un refugio o instalación médica provisional y servicios y suministros de instalaciones médicas relacionadas, incluida transportación médica, rayos X, servicios de laboratorio y patología, y pruebas de diagnóstico por máquina).
 - b. Instalaciones médicas provisionales (para tratar a sobrevivientes del desastre cuando las instalaciones existentes se sobrecarguen y no puedan acomodar la carga de pacientes).
 - c. Adquisición y distribución de alimentos, agua, hielo, medicamentos y otros suministros de consumo.
 - d. Manejo, control y reducción de amenazas inmediatas a la salud y seguridad públicas (p. ej., que incluya el saneamiento de instalaciones públicas elegibles).
 - e. Movimiento de suministros y personas.
 - f. Seguridad, barricadas y cercas, y dispositivos de alerta.
 - g. Refugio congregado (para sobrevivientes de desastres cuando las instalaciones se sobrecarguen y no puedan acomodar las necesidades de los sobrevivientes).
 - h. Comunicación de información de salud y seguridad al público.

- i. Asistencia técnica a gobiernos estatales y locales sobre el manejo y control de desastres.
 - j. Búsqueda y rescate para encontrar y recuperar miembros de la población que requieren asistencia y para encontrar y recuperar restos humanos.
 - k. Almacenamiento y entierro de restos humanos sin identificar.
 - l. Servicios mortuorios en masas.
 - m. Recuperación y disposición de cadáveres de animales (excepto si otra autoridad federal provee fondos para la actividad – p. ej., el Servicio de Inspección de Salud de Animales y Plantas del Departamento de Agricultura provee para el recogido y la disposición de ganado).
2. Podría haber Asistencia Federal Directa disponible a través de asignaciones de misión (véase el Anejo #1), capacidades internas de FEMA, o una combinación de las dos.

VIII. OFICINA RESPONSABLE:

División de Asistencia por Desastre (Programa de Asistencia Pública).

IX. SUSTICIÓN:

Esta política remplaza la Política de Asistencia por Desastre 9523.17, Asistencia por Emergencia para Pandemia de Influenza Humana, con fecha del 31 de marzo de 2007 y cualquier otra orientación anterior al respecto.

X. FECHA DE REVISIÓN:

Esta política no expira automáticamente, pero será revisada a los 3 años después de la fecha de publicación.

____ //firmado// ____

David Garratt
Administrador Auxiliar
División de Asistencia por Desastre

9523.18 – Host-State Evacuation and Sheltering Reimbursement (2007)

I. TITLE: Host-State Evacuation and Sheltering Reimbursement

II. DATE: June 18, 2007 (Superseded on July 23, 2010)

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:
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.
 - 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.

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

IX. SUPERSESSION: None

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

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Carlos Castillo
Assistant Administrator
Disaster Assistance Directorate

9523.18 – Host-State Evacuation and Sheltering Memo (2008)

MEMORANDUM FOR: FEMA Regional Administrators
Regions I-X

FROM: Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

SUBJECT: Guidance for the Implementation of the Host-State Evacuation and Sheltering Reimbursement Policy

DATE: August 30, 2008 (Superseded on July 23, 2010)

This memorandum provides additional and clarified guidance for the implementation of Disaster Assistance Policy 9523.18 "Host-State Evacuation and Sheltering Reimbursement," which was issued on July 18, 2007. The purpose of the Policy is to establish the procedures for reimbursing host-States for the costs of evacuation and sheltering support that they provide to impact-States.

Under the Policy, FEMA may reimburse a host-State for evacuation and sheltering support provided to evacuees from an impact-State in two ways. First, host-States may be reimbursed through the impact-State via established mutual aid arrangements (including EMAC agreements) with the impact-State. Second, FEMA may provide direct reimbursement to a host-State when the host-State agrees to: (1) accept evacuees via any requested mode of organized transportation; and (2) make at least 10% of identified sheltering capacity within the host-State available to support impact-State evacuees.

As indicated in the Policy, and assuming the two conditions above are satisfied, FEMA may (following a Presidential declaration of an emergency or major disaster for the impact-State that includes public assistance, category B) provide direct reimbursement to a host-State for its eligible evacuation and sheltering costs when FEMA requests, and a host-State agrees to provide, evacuation and/or sheltering support for evacuees from an impact-State.

ADDITIONALLY, and assuming the two conditions above are satisfied, FEMA may (following a Presidential declaration of an emergency or major disaster for the impact- State that includes public assistance, category B) provide direct reimbursement to a host- State for its eligible evacuation and sheltering costs when **THE IMPACT STATE** requests, and a host-State agrees to provide, evacuation and/or sheltering support for evacuees from an impact-State.

The agreement of a host-State to the terms of the Policy should be transmitted in writing, either electronically or in hard copy, by an authorized official of the host-State to the FEMA Regional Administrator (or his/her designee).

When the terms of the Policy are agreed to, the host-State may enter into a grant agreement with FEMA and be reimbursed directly through a grant from FEMA that is paid for from the impact-State's emergency or major disaster declaration. As stated in the Policy, the impact-State will be responsible for any non-Federal share of evacuation and sheltering support provided by a host-State, and this applies whether the request to the host-State is made by FEMA or by the impact-State, and whether reimbursement is done directly by FEMA or through mutual aid agreements.

For additional information, contact James Walke, Director Public Assistance Division, Disaster Assistance Directorate, at (202) 646-2751.

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9523.18 – Host-State Evacuation and Sheltering Reimbursement (2010)

I. TITLE: Host-State Evacuation and Sheltering Reimbursement

II. DATE: July 23, 2010 (Superseded on January 1, 2016)

III. PURPOSE:

To establish the procedures for reimbursing host-States for the cost of evacuation and/or sheltering support provided to impact-States when the impact-State or FEMA request such support.

IV. SCOPE AND AUDIENCE:

This guidance applies to host-States that provide evacuation and/or sheltering support to evacuees from an impact-State when the impact-State or FEMA requests, and a host-State agrees to provide, evacuation and/or sheltering support. This guidance is effective upon the date of issuance. All FEMA personnel are directed to follow this guidance.

V. AUTHORITY:

Titles IV and V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§5170a, 5170b, and 5192, as amended, and implementing regulations at Title 44 of the Code of Federal Regulations (CFR) Part 206, Subparts A, B, C, G, and H.

VI. POLICY:

A. Definitions.

1. **Host-State:** A State or Indian Tribal Government that by agreement with FEMA provides sheltering and evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a “Host-Tribe.”
2. **Impact-State:** The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to §206.208.

B. Host-State Reimbursement. Title 44 CFR §206.223(a)(2), General work eligibility, General, authorizes reimbursement of eligible evacuation and sheltering costs that applicants incur outside of a designated area. See also 44 CFR §206.2(a)(6) for definition of “designated area.” Host-State sheltering and evacuation costs must meet Public Assistance Category B, Emergency Protective Measures, eligibility requirements found in 44 CFR §206.225, Emergency work, and FEMA Disaster Assistance Policy DAP9523.15, Eligible Costs Related to Evacuations and Sheltering, dated April 6, 2007. Host-States may receive assistance for evacuation and sheltering support provided to evacuees from an impact-State in two ways:

1. Mutual Aid Agreements: Host-States may receive assistance for evacuation and sheltering support through existing mutual aid agreements with an impact-State (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, dated August 13, 2007.

- a. The impact-State may reimburse the host-State for 100 percent of eligible costs that the host-State incurred in providing evacuation and/or sheltering support.
 - b. The impact-State may reimburse the host-State for the straight-time salaries of the host-State's regular employees who performed eligible work.
2. Direct Reimbursement: Host-States may receive assistance for evacuation and sheltering support through direct reimbursement from FEMA. Host-States may receive direct reimbursement through a grant agreement, when an impact-State has requested assistance from FEMA in accordance with 44 CFR §206.208, Direct Federal assistance, to address evacuation and sheltering needs of disaster survivors that are beyond its ability to address in-state, and a host-State agrees to FEMA's request to provide such assistance. In deciding whether to award a grant to the host-State, FEMA will consider whether a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State and, depending on the circumstances, FEMA will consider whether the host-State will agree to accept impact-State evacuees via any requested mode of organized transportation.
- a. FEMA may reimburse the host-State for 100 percent of eligible evacuation and sheltering support costs, regardless of the impact-State's cost share obligation under the declaration.
 - b. The straight-time salaries and benefits of a host-State's permanently employed personnel are eligible for reimbursement in accordance with 44 CFR §206.202(f)(1)(ii), Application procedures.
 - c. The Impact-State will pay the non-Federal share of eligible costs for evacuation and/or sheltering provided by the host-State.
- C. Direct Reimbursement Commitments. The Governor of the host-State, or his/her designee, will sign the FEMA/host-State Agreement. The FEMA/host-State Agreement must meet the terms and conditions outlined in 44 CFR §206.44, FEMA-State Agreements, to establish the host-State as the grantee. The regulations, policies, guidance and procedures of the Public Assistance program will apply to reimbursement under the agreement.
- D. Cost Share. The Federal cost share for grant assistance to a host-State to evacuate and/or shelter disaster survivors from the impact-State is the Category B, Emergency Protective Measures, cost share approved for the declared emergency or major disaster. The impact-State is responsible for the non-Federal cost share, if any, of assistance FEMA provides to the host-State. When the impact-State requests that FEMA assist with evacuation and/or sheltering, it agrees 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. Therefore, host-States will receive 100 percent reimbursement of their eligible costs.
- E. Coordination. The FEMA Administrator, or his/her designee, to include the Assistant Administrator for Recovery, Regional Administrator, or Federal Coordinating Officer,

will coordinate with States to determine which state(s) are available and appropriate to support the evacuation and/or sheltering needs of individuals from the impact-State.

- F. Other. This policy establishes the procedures for reimbursing host-States for the cost of evacuation and/or sheltering support provided to impact-States when the impact-State or FEMA request such support, and does not limit the ability of a Governor to request or the President, in his discretion, to declare emergencies or major disasters.

VII. RESPONSIBLE OFFICE:

Recovery Directorate (Public Assistance Division)

VIII. SUPERSESSION:

This policy supersedes Disaster Assistance Interim Policy DAP9523.18, Host-State Evacuation and Sheltering Reimbursement, dated July 18, 2007, and all previous guidance on this subject.

IX. REVIEW DATE:

This policy does not automatically expire, but will be reviewed three years from the date of publication.

____//Signed//____

Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9523.19 – Eligible Costs Related to Pet Evacuations and Sheltering (2007)

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

II. DATE: October 24, 2007 (Superseded on January 1, 2016)

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 include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.
2. **Service Animal.**¹ 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.

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

3. **Congregate Household Pet Shelters.** Any private or public facility that provides refuge to rescued household pets and the household pets of sheltenees 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.
 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 sheltenees' 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, 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.
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 Branch).

IX. SUPERSESSION:

This policy supersedes all previous policy and guidance on this subject.

X. REVIEW DATE:

Three years from date of publication.

____//Signed//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9524.1 – Welded Steel Moment Frame Policy (1999)

1. **Date:** August 17, 1999 (Superseded on October 17, 2003)
2. **Response and Recovery Directorate Policy Number:** 9524.1
3. **Title:** Welded Steel Moment Frame Policy
4. **Purpose:** To revise the policy by which FEMA determines the eligibility of funding for inspection, evaluation and repair of welded steel moment frames of structures damaged by earthquakes.
5. **Scope and Audience:** This policy 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 applies to all disasters declared after publication of this document. It is intended to guide FEMA personnel responsible for the administration of the FEMA Public Assistance Program.
6. **Background:** The Stafford Act and implementing regulations in 44 CFR Part 206 provide an allowance to reimburse sub-grantees 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 inspection of welded steel moment frame connections that potentially can have brittle fractures. These connections are typically 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 the Federal Emergency Management Agency (FEMA) would determine the eligibility of funding for inspection, evaluation and repair of this damage.

7. **Policy:** The policy combines programmatic considerations and the unique inspection problems posed by welded steel moment frame brittle fracture damage. 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) Strong likelihood of significant welded steel moment frame damage.

FEMA will reimburse the costs of visual bottom flange connection inspections performed at locations selected in accordance with the *Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Steel Moment Frames*, Federal Emergency Management Agency, FEMA 267, August, 1995 (Guidelines) selection procedure:

- When the external building damage associated with the declared earthquake is of such an extent to indicate the strong likelihood of steel moment frame connection damage, and
- If significant connection damage, attributable to the earthquake, is found on at least one connection.

Structurally significant connection damage shall be defined as given in the Guidelines, excluding weld damage Types W1 and W5 (see below). Visual inspection of additional bottom flange connections and/or top flange connections at locations recommended by the Guidelines after 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 after a Project Worksheet (PW) for the follow-on inspection has been approved.

The Damage Index criteria of the Guidelines will be used after replacing the "1/3" coefficient in equation (4-5) by "1/2". The follow-on 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 dye penetrant testing and magnetic particle testing, but not ultrasonic testing.

2) Little likelihood of significant welded steel moment frame damage.

If the building does not satisfy the conditions of item 1 above, FEMA will reimburse the costs of connection visual inspections only for those connections where significant damage associated with the declared earthquake disaster is found. Again, significant connection damage shall be defined as given in the Guidelines, excluding weld damage types W1 and W5. Visual inspection of additional connections at locations recommended by the Guidelines 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 Damage Index criteria of the Guidelines will be used after replacing the "1B" coefficient in equation (4-5) by "1/2." The follow-on PW may also authorize non-destructive testing if the visual inspections indicate a significant potential of concealed damage.

- 3) Except as provided in item 1 above, any inspections performed that 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 the Guideline recommendations. Generally, FEMA will not fund detailed analytical or experimental studies. 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 (after changing equation (4-5) coefficient from "1/3" to "112" and excluding W1 and W5 connection repairs) may be eligible for reimbursement. Repair of the architectural finishes in the connection damage repair area also is eligible. Funding of such repairs is eligible only if a PW based on a specific scope-of-work and cost estimate is approved in advance.
 - 2) The cost to strengthen (upgrade) damaged and undamaged connections may be considered for Section 406 mitigation measures if the measures meet standards of cost effectiveness.
8. **Reference:** FEMA's policy for the inspection, evaluation and repair of WSMF connections is consistent with the professional guidance generated with Federal funds through FEMA's Mitigation Directorate. The source document which provided the information for the initial policy is called Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Steel Moment Frames, Federal Emergency Management Agency, FEMA 267, August, 1995 (Guidelines)¹. Final Guidelines are being prepared and will supersede the Interim Guidelines as the source document for this policy. The Final Guidelines will be based on the results of many studies and field experiences since 1995.
- A. Weld damage classifications W1 and W5 as defined in the Guidelines are considered now to be construction flaws and representative of the as-built condition, not earthquake-caused damage. Therefore, connections with only these indications are not considered to have earthquake damage and are not eligible for federal disaster funds. Specifically, they are defined as follows:
 - W1 – Weld root indications – These include both W1a and W1b indications
 - W5 – Ultrasonic Testing (Uf) detectable indication – non-rejectable
 - B. The Guidelines provide a post-earthquake evaluation process which includes a process of identifying which buildings should be inspected and a detailed connection evaluation procedure. Visual inspection of the bottom flange welded connections and a limited number of Uf inspections of the column flange near these girder connections have been

¹ These "interim guidelines" provide recommended actions, but are not legal requirements.

recommended since the Guidelines were published. When significant visual welded bottom flange damage is observed, top flange connections should be visually inspected. Until more definitive recommendations are made, visual inspections should follow a procedure given by the three alternative methods to select which connections are to be inspected; method A - random selection, method B - deterministic selection, and method C - analytical selection. The initial number of connections that require inspection depends upon the method selected. However, additional visual inspections should be considered as earthquake related connection damage is identified. The Damage Index approach for recommending additional connection inspection and repair criteria has been found to be conservative. The current recommendations are to decrease some of the connection damage severity indices and to change the cumulative damage index at any floor from 1/3 to V2. For this revision of the policy only the change in equation (4-5) coefficient from 1/3 to Y_i has been implemented. This change in the coefficient will be reviewed and new damage index values will be established after the Final Guidelines are published.

- 9. Supersession:** Response and Recovery Policy Number 4511.300 PO, EX
- 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. Review Date:** Two years from date of publication or upon publication of the Final Guidelines, whichever occurs first.

____//Signed//____
Lacy E. Suitar
Executive Associate Director
Response and Recovery Directorate

9524.1 – Welded Steel Moment Frame Policy (2003)

- 1. Date Published:** October 17, 2003 (Superseded on November 5, 2007)
- 2. Recovery Division Policy Number:** 9524.1
- 3. Title:** Policy on the Eligibility of Welded Steel Moment-Frame Inspections
- 4. Purpose:** To revise the policy by which the Federal Emergency Management Agency (FEMA) determines the eligibility of costs for inspection, evaluation and repair of welded steel moment frames of building structures damaged by earthquakes.
- 5. Scope and Audience:** This policy prescribes eligible and ineligible costs associated with the inspection, evaluation and repair of welded steel moment frames of building 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 for FEMA personnel involved in making eligibility determinations for the Public Assistance Program. This policy is applicable to all major disasters declared on or after the publication of this document.
- 6. Background:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, ("Stafford Act") and implementing regulations in 44 CFR Part 206.228(a)(2) provide an administrative allowance (sometimes called "the sliding scale") to reimburse applicants 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. The Stafford Act specifies that the cost of field inspections is part of the administrative allowance. However, the costs associated with the inspection of welded steel moment-frame connections seems to go beyond the types of work contemplated by the Stafford Act.

FEMA recognizes 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 the inspection of connections. Because of the numerous incidents of structural damage to welded steel moment-frame connections caused by the Northridge Earthquake, it was necessary to establish a policy by which FEMA would determine the eligibility for funding of 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:

- The evaluation of steel moment-frame buildings affected by strong earthquake ground shaking to determine if they have been damaged, and to what extent;

- The identification of those buildings that have been so severely damaged that they constitute a safety hazard; and
- The repair of damaged structures such that they may 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*, which replaces the interim guidelines of *FEMA 267*, is the technical basis for this policy.

FEMA has identified two potential cost impacts resulting from changes between *FEMA 267* and *FEMA 352*. The potential cost impacts are as follows:

- Physical indications that require the search for damaged welded steel 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 0.20g whereas *FEMA 352* uses local ground accelerations equal to or greater than 0.25g.
 - 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.
- The minimum number of connections to be inspected in the search for damaged connections has been increased. Whenever significantly damaged connections are found, *FEMA 352* recommends that, for an exterior moment frame, nine (9) additional connections rather than four (4) additional connections be inspected, and, for an interior moment frame, thirteen (13) additional connections rather than twelve (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 more significant.

7. **Policy:** This policy provides eligibility criteria for the unique inspection problems posed by brittle fracture damage to welded steel moment frames. Only otherwise 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.

This policy is intended to prescribe the eligibility of post-earthquake damage inspection and evaluation costs pursuant to *FEMA 352*. In any case where this policy is at variance with *FEMA 352*, the guidance and recommendations of *FEMA 352* shall govern.

- A. Reimbursement for Preliminary Assessment Under Section 406 of the Stafford Act –

1. Preliminary Post-earthquake Assessment. The preliminary post-earthquake assessment described in *FEMA 352, Chapter 3* is intended to allow rapid identification of those buildings that likely did not experience sufficient ground shaking to cause significant damage and which, therefore, need not be subjected to further evaluation.

 - a. Screening. *Chapter 3.2 of FEMA 352* describes criteria for determining the likelihood that a building experienced ground shaking of sufficient intensity to cause significant damage. Preliminary Screening is typically performed by building department officials immediately following an earthquake to determine if a building needs to be subjected to further evaluation. Costs incurred in the process of Preliminary Screening are not eligible for FEMA assistance.
 - b. Preliminary Evaluation. *Chapter 3.3* describes an evaluation used to determine, on a preliminary basis, whether a building has sustained either structural or nonstructural damage that results in a hazardous condition. The criteria in *Section 3.3.4* are used to determine if a building has sustained damages that create an imminent risk of life safety. FEMA will reimburse the costs of visual inspections only when the conditions described in *Chapter 3.3*, associated with the declared disaster, are found.
2. Strong likelihood of significant welded steel moment-frame damage . Buildings posted as condition Yellow or Red (see *Table 3-2, Chapter 3*) are subjected to further evaluation of damage to welded steel-moment connections described in *FEMA 352, Section 3.3.4*.

 - a. FEMA will reimburse the costs of visual bottom flange connection inspections performed at locations selected in accordance with *FEMA 352, Chapter 4, Method 2*.
 - 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 Project Worksheet (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:
 - 1) Removal of necessary architectural finishes such as plaster/drywall;
 - 2) Removal of fire retardants in the inspection area of the connection;
 - 3) Visual inspections;
 - 4) Nondestructive testing as appropriate, necessary and approved by FEMA. 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. In circumstances where a building is not required to undergo a Preliminary Assessment or where a Green Posting is assigned according to Table 30-2 of FEMA 352, we 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 (Table 4-1a: Connection Damage Indices)*, as dj ³ 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. No significant welded steel moment frame damage . 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. Reimbursement for Detailed Evaluations . All buildings estimated to potentially have steel moment-frame fractures, as identified in the screening process, should be subjected to detailed evaluation. Eligible costs may 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 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 PW based on a specific scope of work and cost estimate is approved in advance.
 - C. 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 of 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.
8. **Reference:** *Recommended Post-earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame-Buildings*, Federal Emergency Management Agency, FEMA 352, July, 2000.
 9. **Supersession:** RR Policy #4511.300 PO, EX, *Welded Steel Moment Frame Inspection, Evaluation and Repair Policy*; RR Policy #9524.1, August 17, 1999, *Welded Steel Moment Frame Policy*; RR Policy #9524.7, June 8, 2001, *Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster*.

10. Authorities: Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5172, and 44 CFR 206

11. Originating Office: Recovery Division, Emergency Preparedness & Response Directorate

12. Review Date: Five (5) years from date of publication.

13. Signature:

____//Signed//____

Laurence W. Zensinger
Acting Director, Recovery Division
Emergency Preparedness & Response Directorate
Department of Homeland Security

14. Distribution: Regional Directors; Regional and Headquarters Recovery Division Directors; and Regional Public Assistance Branch Chiefs

9524.1 – Welded Steel Moment Frame (2007)

I. TITLE: Welded Steel Moment Frame

II. DATE: November 5, 2007 (Superseded on January 1, 2016)

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 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 Post-earthquake 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 post-earthquake damage inspection and evaluation costs pursuant to *FEMA 352*.
- C. Reimbursement for Preliminary Post-earthquake 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.
 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 Post-earthquake 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.
 - 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 $dj \geq 3$, 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.
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

9524.2 – Landslide Policy Relating to Public Facilities (1999)

1. **Date Signed:** August 17, 1999 (Superseded on May 23, 2006)
2. **Response and Recovery Directorate Policy Number:** 9524.2
3. **Title:** Landslide Policy Relating to Public Facilities
4. **Purpose:** The attached policy is being renumbered to become part of the redesigned FEMA Public Assistance Policy publication system.
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.
7. **Policy:** The policy is attached.
8. **Supersession:** Response and Recovery Directorate Policy No. 4511.300 A, EX, dated November 30, 1995, Landslide Policy Relating to Public Facilities is now renumbered as Response and Recovery Policy #9524.2.
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
Distribution: Regional Directors, Regional and HQ RR Division Directors

DATE: November 30, 1995

Response and Recovery Directorate Policy No. 4511.300 A, EX

TITLE: *Landslide Policy Relating to Public Facilities*

PURPOSE: To iterate FEMA policy on eligible and ineligible costs associated with the repair of public facilities that involve restoration of integral ground and slope and hill stabilization.

SCOPE AND AUDIENCE: This policy is intended to prescribe eligible and ineligible costs associated with the repair of public facilities that involve restoration of integral ground for FEMA Public Assistance managers, staff and public assistance applicants. This policy is effective immediately and is applicable to all projects for which a DSR for the areas addressed below has not yet been approved (papped).

BACKGROUND: In March 1984, a policy memorandum entitled, *Landslide Policy Relating to Public Facilities*, was issued by Samuel Speck, former Associate Director for State and Local Programs and Support, to all Regional Directors. In summary, policy was established that before a public facility involving a landslide could be restored, the following actions were to be taken:

- Evaluate the stability of the natural site and, if necessary, conduct a feasibility study to determine the practicability of replacing the facility at the original site;
- If the site is stable, the most cost-effective method of restoring the facility to its pre-disaster condition is eligible; and,
- If the site is unstable, the applicant is responsible for stabilizing the site. After the site is stabilized, the cost to restore the facility at the site is eligible.

Because of recent disasters that have caused landslides and road embankment failures, the Infrastructure Support Division initiated a review of the March 1984 FEMA policy. After review, FFMA policy on this subject remains substantially unchanged. This policy provides guidance and interpretation of sections 403, 406, 407 and 502 of the Stafford Act and applicable regulations under 44 CFR part 206 as they relate to eligible repair costs of public facilities that involve landslides.

POLICY: Generally, public assistance applicants are eligible for certain and specific facility and integral ground restoration costs, emergency protective measures and debris removal when landslides are involved. Only the ground necessary to physically support a facility is considered integral to its function. Slope or hill stabilization exceeds these limits and is not considered integral ground restoration.

Essential Assistance

Under sections 403 and 502 of the Stafford Act, emergency protective measures to stabilize slopes and hills that were damaged by a disaster may be eligible only if necessary to eliminate or lessen immediate threats to life, public health, safety, or significant additional damage to improved public or private property. Technical investigations may be eligible to determine appropriate engineering methods for reducing the immediate threats. Examples of eligible

emergency protective measures which eliminate immediate threats to life and property caused by landslides include:

- Excavation at the head of the sliding mass to reduce the driving force;
- Filling or buttressing at the toe of the potential sliding mass (e.g. gabions, rock toes, cribwalls, binwalls, etc.); and
- Construction of subsurface drainage to lessen the pore-water pressure along the potential sliding surface.

In accordance with 44 CFR 206.204, emergency work must be completed within six months of the disaster (plus approved extensions).

Repair, Restoration, and Replacement of Damaged Facilities

Under section 406 of the Stafford Act, damaged or destroyed public facilities and the related integral ground mass are eligible for restoration. Before funding to restore the facility at the original site is approved, the stability of the site must be ascertained. The Regional Director may approve a geotechnical study that should be limited in scope (site investigation, borings, etc.) to determine: 1) the stability of the site before restoration of the facility; and 2) the stability of the site after restoration (conceptually) of the facility.

- If the site is found to be stable, the cost to restore the facility at the original site (including integral ground restoration) is eligible.
- If the site is found to be unstable and the instability was exclusively caused by the disaster, the cost to restore the facility at the original site (including integral ground restoration) is eligible.
- If the site is found to be unstable due to an identified, pre-existing condition (e.g., a deep-seated slip-plane), the applicant is responsible for stabilizing the site. Once the site has been stabilized, the cost to restore the facility at the original site is eligible.

Permanent earth repair that is not integral to the restoration of a public facility on a stable site is not eligible for reimbursement. In accordance with 44 CPR 206.204, permanent work must be completed within 18 months of the disaster (plus approved extensions).

An applicant may choose to apply for funding under the section 404 Hazard Mitigation Grant Program to stabilize a site which is unstable due to an identified, pre-existing condition or to relocate the original structure to a more stable area. Projects must meet program eligibility criteria of 44 CPR 206, Subpart N. The State, as grantee, prioritizes and selects projects for funding under this program.

Debris Removal

Under sections 407 and 502 of the Stafford Act, removal of landslide debris from public or private property when it is necessary to eliminate immediate threats to life, public health, and safety; or, significant damage to improved public or private property; or, ensure economic recovery of the affected community to the benefit of the community at large is an eligible cost. In accordance with 44 CFR 206.204, debris clearance must be completed within six months of the disaster (plus approved extensions).

KEY WORDS: Landslide, Integral Ground, Essential Assistance, Emergency Protective Measures, Facility Restoration, Stability and Debris Removal

SUPERSESSION: This policy updates and replaces all relevant FEMA past policy memoranda on this subject, including a March 21, 1984, memorandum entitled, *Landslide Policy Relating to Public Facilities*, from Samuel Speck.

AUTHORITIES: Sections 403, 406, 407 and 502 of the Stafford Act, 44 CFR section 206

ORIGINATING OFFICE: Infrastructure Support Division, Response and Recovery Directorate

REVIEW DATE: December 1997

SIGNATURE:

____//Signed//____
William C. Tidball
Associate Director
Response and Recovery Directorate

DISTRIBUTION: Regional Directors, Regional R&R Division Directors

9524.2 – Landslides and Slope Failures (2006)

I. TITLE: Landslides and Slope Failures

II. DATE: May 23, 2006 (Superseded on October 8, 2010)

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 Presidential-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.

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.
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).
4. 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, crib walls, bin walls, soldier pile walls);
 - e. Installation of barriers to redirect the debris flow; and
 - f. Temporary relocation of facilities' function, when cost effective.
5. 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).

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:
 - i. **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.
 - ii. **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.)

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

Attachment A

FIGURE 1

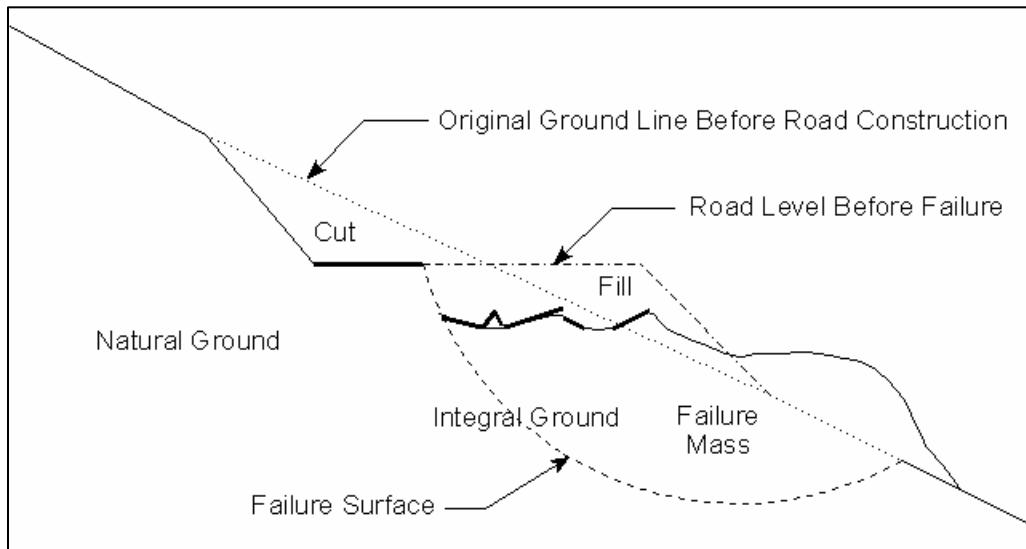


Figure 1: Slope failure in a typical cut-and-fill road section, illustrating the failure mass and the concept of integral ground beneath the facility. Restoration of integral ground in this case would constitute an eligible component of work required to repair the road, and would involve excavation slightly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

Attachment B

FIGURE 2

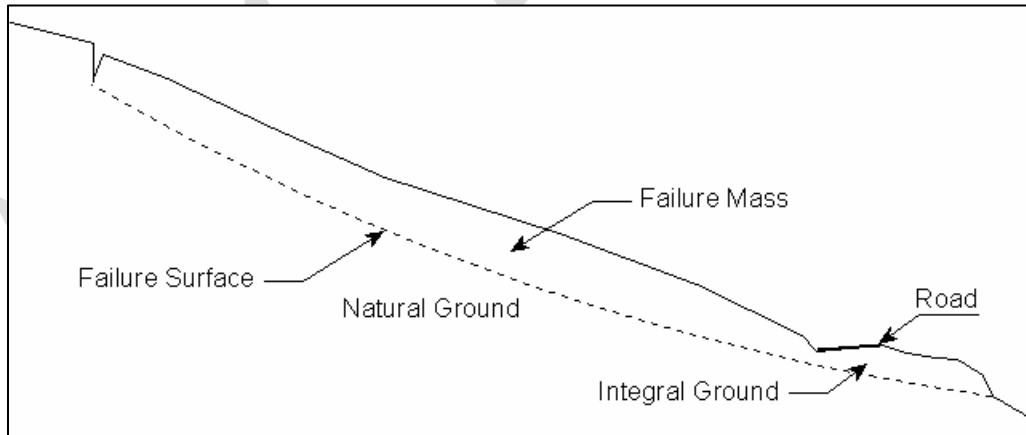


Figure 2: Failure of a large lateral extent of natural ground. While the failure mass threatens or otherwise impacts an eligible facility (the road) that portion of the natural ground integral to the support of the facility is small relative to the total failure mass of natural ground. Restoration of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

Attachment C

FIGURE 3

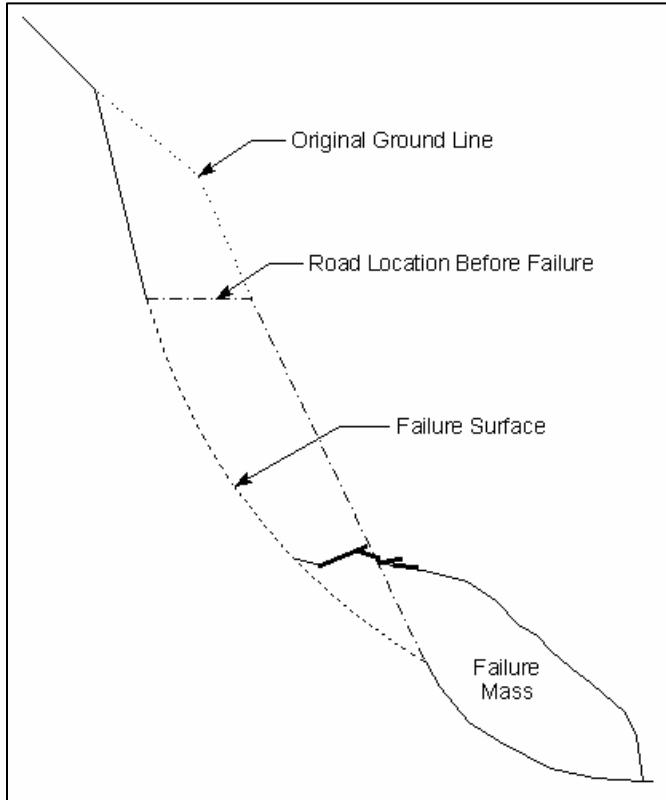


Figure 3: Failure of a slope along a road constructed by excavating into a hillside. In this case it may be more cost effective to pursue other options under the Public Assistance Program.

9524.2 – Landslides and Slope Stability Related to Public Facilities (2010)

I. TITLE: Landslides and Slope Stability Related to Public Facilities

II. DATE: October 8, 2010 (Superseded on January 1, 2016)

III. PURPOSE:

This policy determines the eligibility or emergency work to protect eligible facilities threatened by landslides or slope failures that are the direct result of Presidentially-declared emergencies or disasters as well as the eligibility of permanent repairs to eligible facilities damaged by landslides or slopes that failed during an event that resulted in a Presidentially-declared emergency or major disaster.

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 use by personnel involved in the administration of the Public Assistance program.

V. AUTHORITY:

Sections 403, Essential Assistance, 406, Repair, Restoration, and Replacement of Damaged Facilities, and 502, Federal Emergency Assistance, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, and Title 44 Code of Federal Regulations (CFR) Part 206, Federal Disaster Assistance.

VI. BACKGROUND:

A landslide is the downward and outward movement of slope-forming materials, such as rocks, soil and artificial fill. Landslides are generally caused by triggering events (e.g. earthquakes, heavy rains, floods and volcanic activity) that may destabilize or weaken an earthen slope and cause it to fail. A triggering event increases the gravitational influence on the slope, which overburdens the slope's resisting strength causing it to fail. Slope saturation by water is the most common triggering event that causes landslides. Periods of intense rainfall, rapid snowmelt or changes in groundwater levels can saturate the upper part of a slope and weaken its slope-forming material and cause it to fail.

Landslides may also be triggered by human activity. The excavation of a slope, placement of fill at its crest, deforestation and overgrazing, irrigation, mining, road building and the drawdown of reservoirs can weaken a slope's stability. While landslides generally occur in mountainous regions, they can also occur in low-relief areas as a result of cut-and-fill failures caused by activities such as roadway or building excavations, or the collapse of mine-waste piles.

Improperly or poorly-conceived construction projects can cause slope failures by increasing slope angle, decreasing the slope's toe or lateral support, loading the head of an existing or potential landslide, or inducing slope creep. Additionally, structures that are built on expansive

soils, such as clay, clay stone or shale – which shrink or swell in relation to the moisture content of the soil – may experience shifting, cracking and breakage.

Slopes that have failed can be expected to experience future slope failures as a result of the same geologic, geomorphic and hydrologic conditions that caused past and present failures. However, the absence of a past event in a specific area does not preclude future slope failures. All slopes are unstable in geologic time. The geologic history of an area directly determines or contributes to the conditions that lead to slope failures. While physical measures can be taken to attempt to control or stabilize failed slopes, it is not possible or feasible to prevent all slope movements.

See FEMA 182, Landslide Loss Reduction: A Guide for State and Local Government Planning. Earthquake Hazards Reduction Series 52 for additional information.

VII. POLICY:

A. Definitions

1. Artificial fill refers to a foundational layer of well-graded soil material that is designed and compacted to engineered specifications in order to support a roadbed, building or other structure.
2. Debris flow refers to rapid mass movement in which loose soils, rocks and organic matter combine with entrained air and water to form slurry that flows downslope.
3. Immediate threat is defined in 44 CFR §206.221 (c), Definitions, Immediate Threat, as “the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years,” i.e., a 20 percent chance of occurrence per year.
4. Integral ground refers to natural or improved ground upon which an eligible facility is located and which is essential to support the structural integrity and utility of the facility.
5. Landslide refers to the downward and outward movement of slope-forming materials including soil, artificial fill or a combination of these materials.
6. Natural ground refers to unimproved ground existing at its original location of formation or deposition that has not been reworked, mechanically altered, constructed or improved. Natural ground may constitute part of the integral ground supporting a facility. (See Attachment, Figures 1 and 2.)
7. Slope creep refers to imperceptibly slow, steady downward movement of slope-forming material. The movement is caused by shear stresses that are sufficient to cause permanent deformation of the slope but too small to produce an immediate slope failure.
8. Slope failure refers to limited ground movement, tens of feet high and up to several hundred feet long, which transports earthen debris downhill by sliding, rolling, falling or slumping.

B. Eligible Work

1. Section 403, Essential Assistance (42 U.S.C. 5170b).

Pursuant to 44 CFR §206.255 (a)(3), Emergency Work, General, FEMA may fund emergency protective measures to stabilize slopes that failed as a direct result of a Presidentially-declared disaster if the measure (1) lessens or eliminates immediate threats to life, public health and safety; or (2) is cost-effective and lessens or eliminates immediate threats of significant additional damage to improved property. Emergency

protective measures should be the least costly option necessary to alleviate the threat and should be consistent with sound engineering practice.

- a. Reasonable costs for site inspections and limited geotechnical assessments to determine if the failed slope poses an immediate threat to lives, public health and safety or improved property are eligible.
 - b. Examples of eligible emergency protective measures include but are not limited to:
 - i. Temporary drainage measures;
 - ii. Temporary ground protection to better stabilize the mass (e.g. riprap, sheeting);
 - iii. Partial excavation at the head of a sliding mass to reduce driving force;
 - iv. Backfilling or buttressing at the toe of a sliding mass (e.g. gabions, rock toes, cribwalls, binwalls, soldier pile walls);
 - v. Installation of barriers to redirect debris flows; and
 - vi. Temporary relocation of a facility's function.
2. Section 407, Debris Removal.
- Pursuant to 44 CFR §206.224, Debris Removal, removal of debris generated by a slope failure is eligible when necessary to eliminate immediate threats to life, public health and safety or eliminate immediate threats of significant damage to improved property, or to ensure the economic recovery of the affected community to the benefit of the community at-large.
3. Section 406, Repair, Restoration and Replacement of Damaged Facilities (42 U.S.C. 5172).
- FEMA must determine the stability of the site where the damaged facility is located before it can approve funding to repair or restore an eligible facility and its integral ground. Reasonable costs for site inspections and limited geotechnical assessments to determine site stability and the exact cause of the slope failure are eligible.
- a. If the site is stable, FEMA will fund the permanent repair or restoration of an eligible facility and its integral ground.
 - b. If the site is unstable and the instability is the direct result of the declared disaster (i.e., there is no evidence of instability after the facility was constructed and before the disaster), FEMA will fund the permanent repair or restoration of an eligible facility and its integral ground.
 - c. Pursuant to 44 CFR §206.226(g), Relocation, FEMA may approve the permanent relocation of a facility if it determines that the facility is and will be subject to repetitive heavy damage. FEMA will make this determination on a case-by-case basis. If the site will likely fail again, FEMA may determine that it is not wise to restore the eligible facility in its original location. If FEMA approves permanent relocation of a facility, eligible work would include land acquisition and ancillary facilities, such as roads and utilities, and demolition and removal of the old facility.
 - d. Pursuant to 44 CFR §206.203 (d)(2), Federal Grant Assistance, Funding Options, Alternate Projects, an applicant may request an alternate project if the repair, restoration or replacement of a facility is not feasible due to soil instability. (See

Attachment, Figure 3). Additional guidance is available in Disaster Assistance Policy DAP9525.13, Alternate Projects.

- e. Pursuant to 44 CFR §206.226 (e) Restoration of damaged facilities, Hazard mitigation, FEMA may provide discretionary hazard mitigation funding under Section 406 of the Stafford Act in conjunction with the repair of eligible disaster-damaged facilities. The mitigation measures must be related to eligible disaster-related damage and should directly reduce the potential of future, similar disaster damages to the eligible facility. This work is usually performed on the parts of the facility that were actually damaged by the disaster. FEMA will consider exceptions to this provision on a case-by-case basis:
 - i. Mitigation measures must be cost-effective and appropriate for the damaged facility and address the triggering event that caused the slope failure.
 - ii. Mitigation measures should not require or induce further destabilization of the slope during work.
 - iii. When possible, mitigation measures should increase slope stability by reducing the amount of ground water that is able to collect and rise in the slope or collect in the foundation of a facility.
 - iv. Mitigation may include replacing failed integral ground with fill that is well-graded material, designed and compacted to engineered specifications to support the eligible facility.

C. Ineligible Work

- 1. Permanent repair to stabilize natural ground that is not integral to an eligible facility's function is ineligible. (See Attachment, Figure 2).
- 2. Permanent repair or restoration of natural ground is ineligible.
- 3. Restoration of a facility's integral ground is ineligible if the site instability was NOT caused by the disaster (i.e., there is evidence of instability after the facility was constructed and before the disaster).

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

IX. SUPERSESSION: This policy supersedes Recovery Policy RP9524.2, Landslides and Slope Failures, dated May 23, 2006.

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

____//Signed//____

Deborah Ingram
Acting Assistant Administrator
Recovery Directorate

Attachment

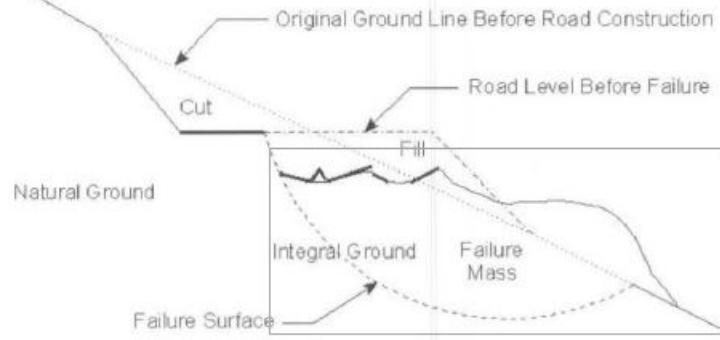


Figure 1: Slope failure in a typical cut-and-fill road section. Restoration of integral ground is a necessary component of work required to repair the road, and would involve excavation slightly beyond the limits of the failure surface.

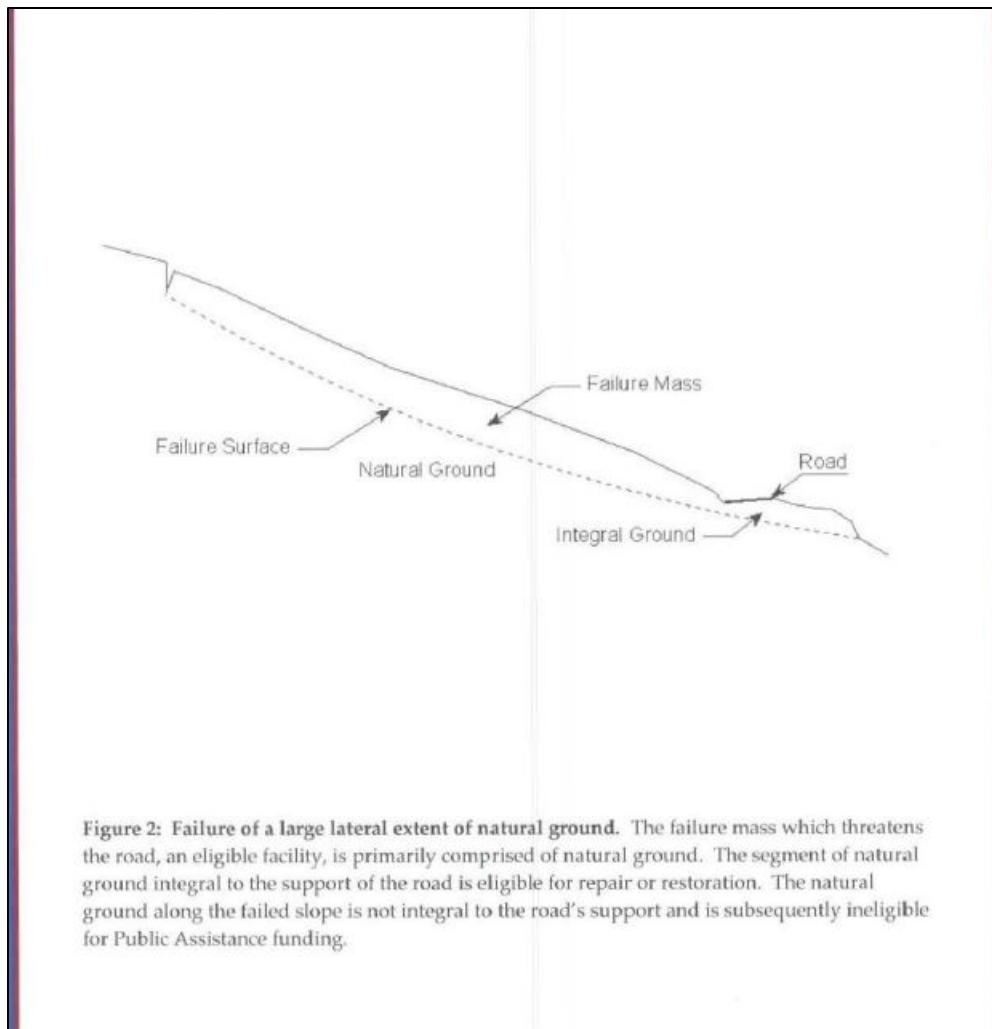


Figure 2: Failure of a large lateral extent of natural ground. The failure mass which threatens the road, an eligible facility, is primarily comprised of natural ground. The segment of natural ground integral to the support of the road is eligible for repair or restoration. The natural ground along the failed slope is not integral to the road's support and is subsequently ineligible for Public Assistance funding.

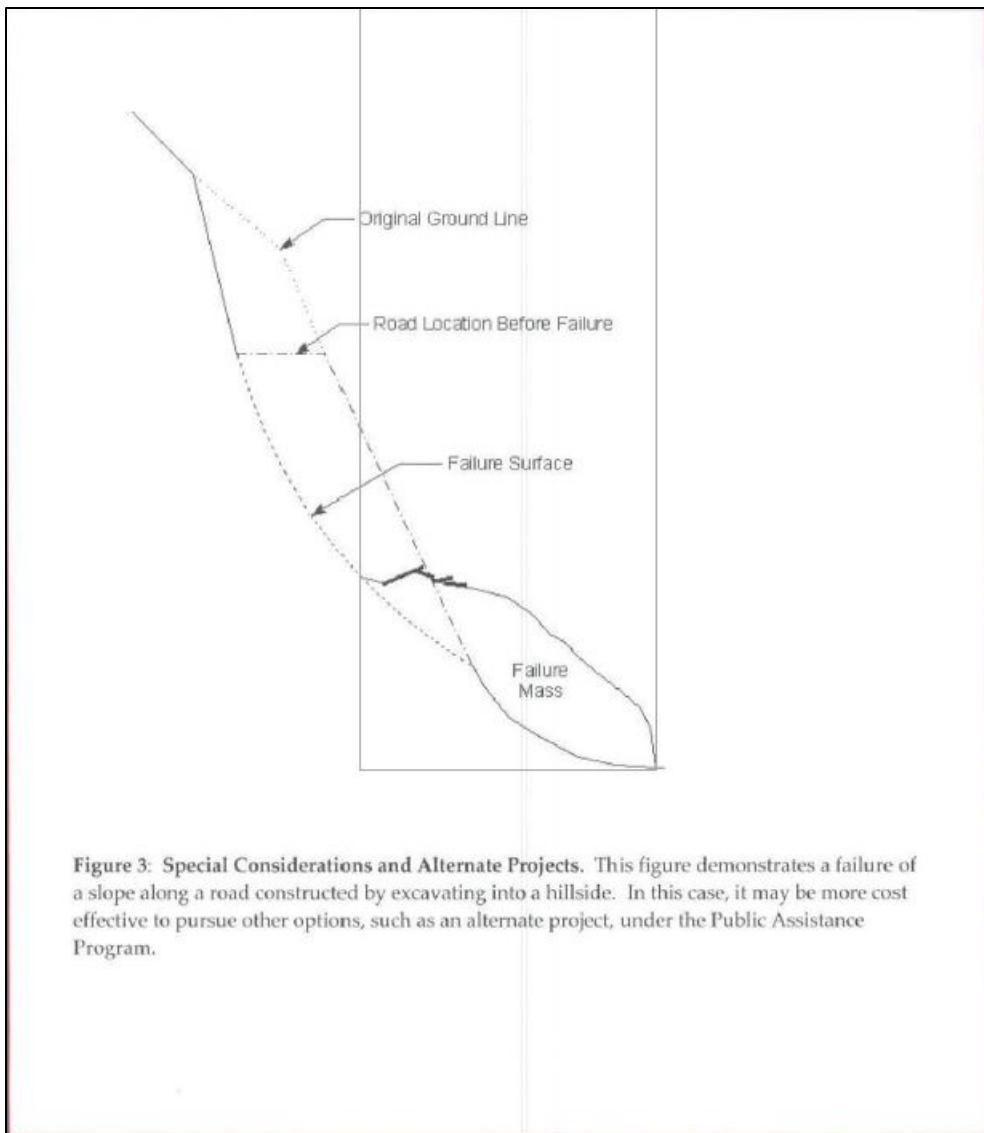


Figure 3: Special Considerations and Alternate Projects. This figure demonstrates a failure of a slope along a road constructed by excavating into a hillside. In this case, it may be more cost effective to pursue other options, such as an alternate project, under the Public Assistance Program.

9524.3 – Rehabilitation Assistance for Levees and Other Flood Control Works (1999)

- 1. Response and Recovery Directorate Policy Number:** 9524.3
- 2. Title:** Policy for Rehabilitation Assistance for Levees and Other Flood Control Works
- 3. Date Signed:** August 17, 1999 (Superseded on February 25, 2009)

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

Response and Recovery Directorate Guidance No. 4511.300 PO, EX

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

DATE: September 11, 1996

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. sandbagging, 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 pre-disaster 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.
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

SUPERSESSION: 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



Federal Emergency
Management Agency



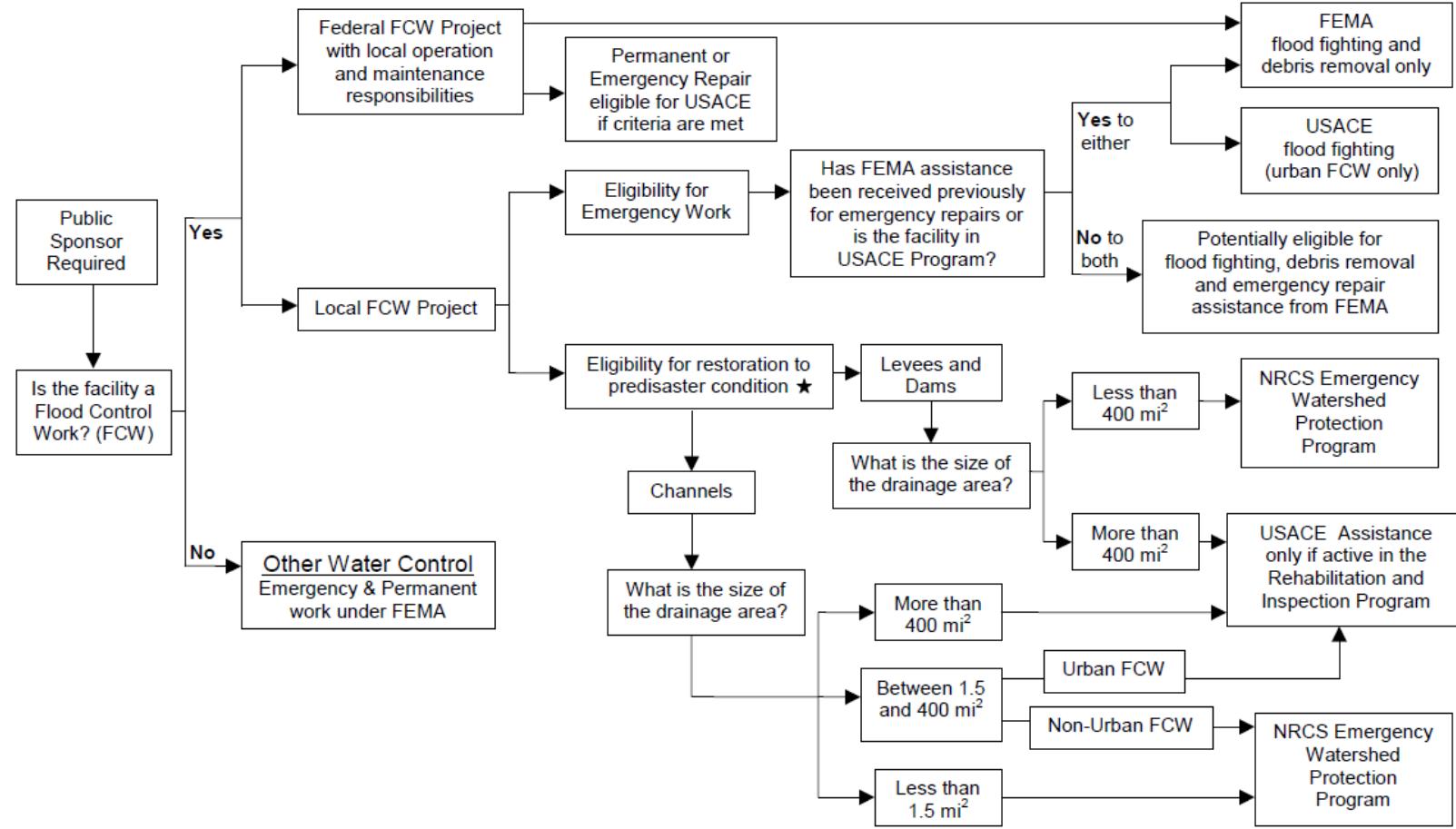
US Army Corps
of Engineers



Natural Resource
Conservation Service

Flood Control Works

Eligibility for Federal Assistance in Presidentially Declared Disasters



★ No FEMA assistance in this category

March 1998

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.

9524.3 – Rehabilitation Assistance for Levees and Other Flood Control Works (2009)

I. TITLE: Rehabilitation Assistance for Levees and Other Flood Control Works

II. DATE: February 25, 2009 (Superseded on September 23, 2011)

III. PURPOSE:

This policy delineates FEMA's authority to fund repairs to certain levees and other flood control works.

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 Program.

V. AUTHORITY:

Sections 403 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, and 44 CFR §206.226(a).

VI. BACKGROUND:

The United States Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) have primary authority for the repair of flood control works. USACE's authority is contained in the Flood Control and Coastal Emergency Act, PL 84-99, and NRCS' authority is contained in Section 216 of the Flood Control Act of 1950 PL 81-516, and Sections 430-405 of the Agriculture 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.

In 1986, USACE and NRCS signed a Memorandum of Agreement to provide general policy guidance and coordination between the two agencies for the repair of levees and other flood control works. The agencies agreed that, depending on program eligibility, NRCS would generally be responsible for repairing flood control works in watersheds with contributing drainage areas less than 400 square miles and USACE would be responsible for repairs to eligible non-federal flood control works in urban areas regardless of watershed size. The agreement remains in effect.

The USACE Rehabilitation and Inspection Program (RIP) provides for the inspection and rehabilitation of Federal and non-Federal flood control projects. To be eligible for RIP assistance following a disaster, a flood control work must have a public sponsor, be regularly maintained and have an Active RIP status prior to the event. Additional RIP criteria are available in the USACE manual entitled "Emergent Employment of Army and Other Resources – Civil Emergency Management Program," ER 500-1-1.

The NRCS Emergency Watershed Protection (EWP) program assists with the implementation of emergency measures for repair and restoration of EWP-eligible facilities where a sudden

impairment of a watershed threatens life or property as determined by the NRCS State Conservationist, the benefits associated with repairing the flood control work exceed the cost of repair and the public sponsor agrees to meet NRCS eligibility requirements. Additional EWP criteria are available in the Final Rule, 7 CFR Part 624.

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 specific authority to repair facilities that are also eligible under the Stafford Act, FEMA generally defers to the other Federal agencies. This is codified in 44 CFR §206.226 (a). If a facility is not eligible under the RIP or EWP program, then FEMA may provide assistance.

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

VII. POLICY:

A. Definitions:

- a. Active Status: Flood control works that USACE designates “Acceptable” or “Minimally Acceptable,” following an inspection, are assigned an Active Status in the USACE RIP.
- b. Emergency Work: Work performed to eliminate an immediate threat to life, public health and safety or improved property.
- c. Flood Control Works: Structures such as levees, floodwalls, flood control channels, and water control structures that the USACE determines were designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level. The NRCS generally follows this definition.
- d. Flood Fighting: Activities that are intended to prevent or stop flooding, e.g., sandbagging, buttressing.
- e. Inactive Status: Flood control works that the USACE designates as “Unacceptable” due to lack of maintenance are assigned to Inactive status in the USACE RIP.
- f. Other Water Control Structures: Structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, interior drainage or to protect against land erosion or saltwater intrusion. These structures are not flood control works.

B. Eligible:

FEMA may fund repairs to flood control works that are not eligible to participate in the USACE RIP program because they were constructed or repaired with funding from a Federal agency other than USACE. FEMA may also fund repairs to flood control works that are not eligible to receive funding from NRCS because they were not constructed with Federal funding (See Attachment). Eligible work may include:

1. Emergency and permanent repairs to restore the structure to its pre-disaster condition in accordance with 44 CFR Part 206;
2. The removal of debris deposited in a channel project of a flood control work, if the debris is the direct result of the disaster and presents an immediate threat to life, public health and safety, or improved property;

3. The placement and removal of flood fighting measures if such activity is necessary to eliminate a public health and safety threat, to operate the flood control work as a public facility, or to repair the facility; and
4. Dewatering of areas behind levees by breaching or pumping is eligible if there is a threat to public 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.

C. Ineligible:

1. Flood control works enrolled in RIP, either Active or Inactive, are ineligible for assistance from FEMA for emergency and permanent repairs, debris removal or flood fighting activities.
2. Flood control works that were pending an Initial Eligibility Inspection by the USACE at the time of a disaster are ineligible if the USACE determines that the structure is eligible to participate in the RIP.
3. Flood control works that are eligible under NRCS' authority are ineligible for assistance from FEMA.
4. Dewatering areas behind levees for the primary purpose of drying land is ineligible.
5. Secondary levees riverward of a primary levee are ineligible for repair unless they protect human life.
6. Generally, increasing the height of a flood control work is ineligible.

VIII. ORIGINATING OFFICE:

Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION:

This policy supersedes Response and Recovery Policy 95243, dated August 17, 1999.

X. REVIEW DATE:

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

____//Signed//____

James A. Walke
Acting Assistant Administrator
Disaster Assistance Directorate

9524.3 – Rehabilitation Assistance for Levees and Other Flood Control Works Memorandum (2009)

MEMORANDUM FOR: Regional Administrators
 Acting Regional Administrators
 FEMA Regions I-X
 Federal Coordinating Officers

ATTENTION: Disaster Assistance Division Directors

FROM: Elizabeth A. Zimmerman
 Assistant Administrator
 Disaster Assistance Directorate

DATE: August 5, 2009 (Superseded on September 23, 2011)

SUBJECT: Disaster Assistance Policy DAP9524.3 *Rehabilitation Assistance for Levees and Other Flood Control Works*

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

With this memo, I am amending Section VII.C.1 of the February 25, 2009 version of Disaster Assistance Policy (9524.3) Rehabilitation Assistance for Levees and Other Flood Control Works, by deleting “debris removal or flood fighting activities.” This action is effective retroactive to February 25, 2009.

By amending Section VII.C.1 of the February 25, 2009 policy, financial assistance to state and local governments for debris removal and flood fighting activities associated with flood control works may be eligible through the Federal Emergency Management Agency (FEMA) Public Assistance (PA) program.

The purpose of the February 25, 2009 policy was to update the August 17, 1999 policy and to clarify the roles and responsibilities of those Federal agencies with authorities and programs that provide assistance for levees and flood control works. Since the issuance of the February 25, 2009 version of the policy, a number of questions have been raised about the policy. FEMA is currently engaged with USACE to address those questions. FEMA will issue a revised version of the policy once all of the issues have been addressed and the policy is fully coordinated with USACE, the Natural Resources Conservation Service (NRCS), and other stakeholders.

If you have any questions, feel free to call me, or contact Tod Wells, Acting Director, Public Assistance Division.

9524.3 - Rehabilitation Assistance for Levees and other Flood Control Works (2011)

I. TITLE: Rehabilitation Assistance for Levees and other Flood Control Works

II. DATE: September 23, 2011 (Superseded on January 1, 2016)

III. PURPOSE:

This policy delineates FEMA's authority to fund emergency protective measures and repairs on levees and other flood control works.

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 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b and 5172, and 44 CFR §206.226(a).

VI. BACKGROUND:

The United States Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) have primary authority for the repair of flood control works. USACE's authority is contained in the Flood Control and Coastal Emergency Act, Public Law (PL) 84-99 (33 U.S.C. 701n) and Title 33: Navigation and Navigable Waters, and NRCS' authority is contained in Section 216 of the Flood Control Act of 1950, PL 81-516 and Sections 403-405 of the Agriculture Act of 1978, PL 95-334, as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127.

In 1986, USACE and NRCS signed a Memorandum of Agreement to provide general policy guidance and coordination between the two agencies for the repair of levees and other flood control works. The agencies agreed that, depending on program eligibility, NRCS would generally be responsible for repairing flood control works in watersheds with contributing drainage areas less than 400 square miles and USACE would be responsible for repairs to eligible non-federal flood control works in urban areas regardless of watershed size. The agreement remains in effect.

The USACE Rehabilitations and Inspection Program (RIP) provides for the inspection and rehabilitation of Federal and non-Federal flood control projects. To be eligible for rehabilitation assistance following a disaster, a flood control work must have a public sponsor, be regularly maintained, and have an active RIP status prior to the event. USACE can provide flood fighting assistance to applicants during a flood event. However, USACE cannot reimburse applicants for their own flood fighting efforts or for the removal of debris from flood control works. Additional RIP criteria are available in the USACE manual entitled "Emergency Employment of Army and Other Resources – Civil Emergency Management Program," ER 500-1-L.

The NRCS Emergency Watershed Protection (EWP) program assists with the implementation of emergency measures for repair and restoration of EWP-eligible facilities where a sudden impairment of a watershed threatens life or property as determined by the NRCS State Conservationist, the benefits associated with repairing the flood control work exceed the cost of repair, and the public sponsor agrees to meet NRCS EWP eligibility requirements. EWP assistance includes: removal of debris deposited by a natural disaster that creates a watershed impairment affecting runoff or erosion; the repair of levees (less than 400 square miles); and other practices associated with restoring the natural environment to the greatest extent practical after a natural disaster. Additional EWP criteria are available in Final Rule, 7 CFR Part 624, as well as in part 501 of the EWP Program Manual.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act (See 42 U.S.C. 5170b and 5173). Although such measures may include flood fighting, debris removal, and emergency repairs, the NRCS has specific authority to provide assistance to protect life and property in watersheds from erosion and flooding, and USACE has specific authority to provide assistance for flood fighting activities during flooding.

FEMA will not provide assistance for emergency protective measures under the Stafford Act where NRCS or USACE authority is applicable, as these authorities are more specific than FEMA's. When other Federal agencies have the specific authority to repair facilities that are also eligible under the Stafford Act, FEMA defers to the other Federal agencies. This is codified in 44 CFR 206.226(a), Assistance under Other Federal Agency (OFAs) programs.

This policy delineates FEMA's authorities on levees and other flood control works. The policy was coordinated with USACE and NRCS.

VII. POLICY:

A. Definitions:

1. **Active Status:** Flood control works that USACE has determined have met PL 84-99 rehabilitation assistance eligibility criteria and have been rated "Acceptable" or "Minimally Acceptable," following an inspection, are assigned an Active Status in the USACE RIP.
2. **Flood Control Works:** Structures such as levees, floodwalls, flood control channels, and water control structures that were designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.
3. **Flood Fighting:** Activities or measures (e.g., sandbagging, buttressing) that are intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.
4. **Inactive Status:** Flood control works that USACE has determined have met initial eligibility criteria for PL 84-99 rehabilitation assistance, but have subsequently been rated "Unacceptable" by USACE following an inspection, are assigned an Inactive Status in the USACE RIP.
5. **Other Water Control Structures:** Structures built for channel alignment, navigation, recreation, fish and wildlife, interior drainage, or to protect against land erosion or saltwater intrusion. These structures are not flood control works.

B. Eligible:

1. FEMA may provide assistance for emergency repairs and permanent repairs to flood control works and other water control structures, if the structures are not eligible for repair assistance from USACE or NRCS.
2. FEMA may provide assistance to remove debris from flood control works that are eligible for USACE's RIP program, if the debris is the direct result of the disaster and presents an immediate threat to life, public health and safety, or improved property.
3. FEMA may provide assistance to remove debris from flood control works and other water control structures that are NOT eligible for NRCS' EWP program, if the debris is the direct result of the disaster and presents an immediate threat to life, public health and safety, or unproved property.
4. FEMA may provide assistance for the placement and removal of flood fighting measures (e.g., sandbags, buttresses) on flood control works that are eligible for USACE's RIP program, if such activity is necessary to eliminate an immediate threat to life, public health and safety, or improved property.
5. FEMA may provide assistance for the placement and removal of flood fighting measures (e.g., sandbags, buttresses) on flood control works and other water control structures that are NOT eligible for NRCS' EWP program, if such activity is necessary to eliminate an immediate threat to life, public health and safety, or improved property.
6. FEMA may fund the dewatering of areas behind levees and other water control structures by breaching or pumping if there is an immediate threat to public health and safety, or improved property; or, if required to facilitate the initiation of an eligible FEMA repair project. Deliberate breaches made by an applicant to accomplish such dewatering are eligible for repair assistance.

C. Ineligible:

1. Flood control works that are eligible for USACE's RIP program, either Active or Inactive, are ineligible for assistance from FEMA for emergency repairs and permanent repairs.
2. Flood control works that were pending an Initial Eligibility Inspection by USACE at the time of a disaster are ineligible for assistance for emergency repairs and permanent repairs if USACE determines that the structure is eligible to participate in the RIP.
3. Flood control works and other control structures that are eligible for assistance from NRCS' EWP program are ineligible for debris removal assistance from FEMA.
4. Flood fighting activities performed after water levels recede below flood stage are ineligible for assistance because an immediate threat to life, public health and safety, or improved property is no longer present.
5. Dewatering areas behind levees and other water control structures for the primary purpose of drying land is ineligible.
6. Secondary levees riverward of a primary levee are ineligible for emergency repairs and permanent repairs unless the secondary levee protects human life.
7. Generally, increasing the height of a flood control work is ineligible.

VIII. ORIGINATING OFFICE:

Recovery Directorate (Public Assistance Division)

IX. SUPERSESSION:

This policy supersedes Disaster Assistance Policy 9524.3, dated February 25, 2009.

X. REVIEW DATE:

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

____//Signed//____

Deborah Ingram
Assistant Administrator
Recovery Directorate

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9524.4 - Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) [The 50% Rule] (1998)

1. Response and Recovery Directorate Policy Number: 9524.4

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

3. Date Signed: September 24, 1998 (Superseded on March 25, 2009)

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) from June 1, 1995.

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

Response and Recovery Directorate Guidance No. 4511.61 E

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

DATE: June 1, 1995

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.

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

SUPERSESSION: 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

Title: The 50% Rule – 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 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.*”

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. However, when code-triggered upgrade costs are included together with the costs of the repairs to the damaged elements, 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.

	CONDITIONS	ELIGIBLE COSTS
1.	<ul style="list-style-type: none">▪ Damage repair¹ does not exceed 50% of the replacement cost² AND▪ No upgrade is triggered	<ul style="list-style-type: none">▪ Repair of eligible damage only
2.	<ul style="list-style-type: none">▪ Damage repair does not exceed 50% of the replacement cost AND▪ Whole-building upgrade is triggered by an applicable code or standard BUT▪ The total of the two items is greater than 50% but less than 100% of replacement cost	<ul style="list-style-type: none">▪ Repair of eligible damage PLUS▪ Mandatory upgrade cost
3.	<ul style="list-style-type: none">▪ Damage repair does not exceed 50% of the replacement cost AND▪ Whole-building upgrade is triggered AND▪ The total of the two items is estimated to be greater than 100% of replacement cost	<ul style="list-style-type: none">▪ Repair of eligible damage plus upgrade cost BUT▪ The total eligible cost is capped at the replacement cost
4.	<ul style="list-style-type: none">▪ Damage repair exceeds 50% of the replacement cost	<ul style="list-style-type: none">▪ Full building replacement cost BUT▪ Capped at the replacement cost only

¹ “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.)

² “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).

9524.4 - Repair vs. Replacement of a Facility under 44 CFR §206.226(f) [50 Percent Rule] (2009)

I. TITLE: Repair vs. Replacement of a Facility under 44 CFR §206.226(f) (50 Percent Rule)

II. DATE: March 25, 2009 (Superseded on January 1, 2016)

III. PURPOSE:

This policy clarifies the application of 44 CFR §206.226(f) to determinations of whether a disaster-damaged facility is eligible for repair or replacement.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared on or after the date of publication. 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. §5172, and 44 CFR §206.226(f).

VI. BACKGROUND:

According to 44 CFR §206.226(f)(1), "A facility is considered repairable when disaster damages do not exceed 50 percent 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." This regulation is often referred to as the "50 Percent Rule."

VII. POLICY:

A. Definitions

1. Disaster damage, as used in 44 CFR §206.226(f)(1), refers to the costs related to the repair of the disaster damage only. It does not include all eligible costs.
2. 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."
3. Permanent Work means "restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its pre-disaster design and current applicable standards" (see 44 CFR §206.201(g)).
4. Pre-disaster 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 to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity."
5. Repair cost is the eligible cost to repair damaged components of a facility.
6. Replacement cost is the cost to build a new facility based on the damaged facility's pre-disaster design and in conformity with applicable codes and standards (see section 406(e) of the Stafford Act).

7. Standards, as defined in 44 CFR §206.221(i), means “codes, specifications or standards required for the construction of facilities.”

B. Facilities

1. The definition of facilities includes single structures and systems. The application of the 50 Percent Rule to various facilities depends upon how the facility is constructed. Appendix A to this policy contains examples of how to apply the 50 Percent Rule to various facilities.
2. Individual elements of buildings should not be segregated when applying the 50 Percent Rule (e.g., windows, roof, HV AC, electrics, plumbing, etc.). For example, it is not appropriate to segregate windows in a disaster-damaged building and conclude that if 51 percent of windows are destroyed, then all windows require replacement.
3. For facilities that are systems composed of multiple components that can be easily segregated, it is practical to apply the 50 percent Rule to individual components of the system, rather than the system as a whole. For example, a component of a sewer system may be a section from “manhole to manhole.”

C. Computations

1. In accordance with 44 CFR §206.226(f), a facility is eligible for replacement when the repair cost exceeds 50 percent of the replacement cost. The comparison of repair costs with replacement costs results in a fraction that expresses repair as a percentage of replacement.
2. The numerator of the fraction is the cost of repairing disaster damage only and includes costs associated with codes and standards upgrades that apply to the repair of the damaged elements only. The numerator does not include costs associated with:
 - a. Upgrades of other elements triggered by codes and standards;
 - b. Design associated with upgrades;
 - c. Demolition of the entire facility (demolition essential to the repair only of the damaged elements may be included in the numerator);
 - d. Site work;
 - e. Applicable project management costs;
 - f. Contents; and/or
 - g. Hazard mitigation measures.
3. The denominator of the fraction is the cost of replacing the facility on the basis of its pre-disaster design and in accordance with applicable codes and standards. These codes may relate to structural elements such as seismic resistance, mechanical or electrical systems, or the size of a structure. For example, a code may require a greater amount of space per student in a school, or wider lanes on a bridge. The use of a code related to size is limited in that the replacement facility must have the same capacity as the original facility (even though the physical size of the structure may be greater) (see 44 CFR §206.201(h)).
 - a. When circumstances require a greater capacity for the replacement facility (e.g., a school designed for 400 students now serves a population of 600 students), the costs to increase the capacity are not eligible and are not included in the denominator. In this example, the eligible replacement facility would be one with a capacity of 400 students at a size required by the current space-per-student code.

- b. The denominator does not include demolition, site work, applicable project management costs, contents, and/or hazard mitigation measures.
4. The following table illustrates eligible costs determinations.

	CONDITIONS	ELIGIBLE COSTS
1	The repair cost does not exceed 50 percent of the replacement cost and no upgrades are triggered	Repair of eligible damage only
2	The repair cost does not exceed 50 percent of the replacement cost and upgrades to undamaged elements are triggered by codes and standards and the total of the two items is greater than 50 percent but less than 100 percent of the estimated replacement cost	Repair of eligible damage plus mandatory upgrade cost
3	The repair cost does not exceed 50 percent of the replacement cost and upgrades to undamaged elements are triggered by codes and standards and the total of the two items is greater than 100 percent of the estimated replacement cost.	Repair of eligible damage plus mandatory upgrade cost, but total eligible costs capped at the estimated replacement cost. In this case, the applicant may elect to replace the facility, but total eligible costs are capped at the estimated replacement cost
4	The repair cost exceeds 50 percent of the estimated replacement cost	The facility's actual replacement cost is eligible. In accordance with 44 CFR §206.226(f)(2), the applicant may elect to repair the facility in conformity with applicable codes and standards; in this case, eligible costs are limited to the estimated costs of repair or replacement, whichever is lower.

D. Exceptions.

44 CFR §206.226(f)(3) provides an exception to the 50 Percent Rule for facilities that are listed on or eligible for listing in the National Register of Historic Places. If an applicable code or standard requires that the historic facility be restored in a certain manner and does not allow other options, the cost to restore the facility in accordance with the code or standard is an eligible cost and may exceed the estimated replacement cost.

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

IX. SUPERSESSION:

This policy supersedes Response and Recovery Directorate Policy 9524.4, Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) dated September 24, 1998.

X. REVIEW DATE:

This policy does not, but will be reviewed 3 years from the date of publication.

____//Signed//____

James A. Walke
Acting Assistant Administrator
Disaster Assistance Directorate

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APPENDIX A

Examples

Following are examples for the application of the 50 percent rule:

Damaged Facility	Part of the Facility considered when applying the 50 percent rule
Bridge or Culvert	Each individual bridge or culvert
Building	Each building
Drainage Channel	System section from node to node
Electrical Distribution System	Each individual pole and conductor from pole to pole, transformer station system
Equipment	Each piece of equipment
Irrigation System	System section from node to node
Lighting	Each individual lighting structure
Piers (with other structures)	Each individual component (e.g., pier, rest room, other structures)
Pool	Each individual component (e.g., pool and integral pumping, bathhouse)
Pumping Station	Each individual pumping station
Roads	Each damaged roadway section
School Campus	Each individual building
Signs	Each individual sign
Water or Wastewater Line	Each individual component (e.g., lift station, manhole structure, piping from manhole to manhole)
Water or Wastewater Treatment Plant	Each individual component (e.g., control building, clarifier, sedimentation treatment plant pond)

9524.4 – Repair vs. Replacement (50 Percent Rule) Clarification Memo (2015)

MEMORANDUM FOR: FEMA Regional Administrators
FEMA Regions I - X

ATTENTION: Recovery Division Directors

FROM: Alex Amparo
Assistant Administrator
Recovery Directorate

DATE: September 14, 2015 (Superseded on January 1, 2016)

SUBJECT: Recovery Policy 9524.4 *Repair vs. Replacement of a Facility Under 44 CFR §206.266 (f) (The 50 Percent Rule)* – Policy Clarification and Cost Estimating and Review Requirements

On August 7, 2014, the Department of Homeland Security’s Office of Inspector General (OIG) published its findings regarding FEMA’s process in clarifying its “50 Percent Rule,” in Audit Report Number OIG 14-123-D. In response to this report and feedback received from the stakeholders, FEMA is clarifying the existing policy language of Recovery Policy 9524.4. These clarifications are delineated below and will be included in the Public Assistance (PA) unified guidance document currently under development and scheduled for publication by January 1, 2016. FEMA is also implementing new cost estimating and review requirements related to the evaluation of the eligibility of repair versus replacement using the 50 Percent Rule for all disasters declared on or after the date of this memorandum.

Clarification to the 50 Percent Rule policy

The current policy states the numerator of the fraction is the cost of repairing disaster damage only. It specifically excludes codes and standards that apply to non-damaged elements, but does not reference local floodplain management ordinances specifically as codes and standards to be excluded. Additionally, it does not specify exclusion of all soft codes and emergency protective measures in the calculation.

The following clarifies the policy and will be included in the PA unified guidance document. For the purposes of the 50 Percent Rule:

1. The cost of compliance with floodplain management ordinances requiring upgrades to the entire facility is not included in the repair cost (numerator) for the purpose of evaluating the eligibility of replacement. These costs are included in the replacement cost (denominator).
2. Neither the repair (numerator) nor replacement (denominator) cost includes soft costs. Soft costs are defined as those costs not considered direct construction costs, including architectural costs, engineering costs, and other pre-/post-construction expenses.

3. The cost of any Emergency Work is not included in the repair cost (numerator).
 - a. Emergency Work includes, but is not limited to, extracting water and removing mud, silt, or debris and mold remediation performed in a facility to address an immediate threat of additional damage or to provide access to a facility for assessment.
 - b. Emergency Work does not include extracting water and removing mud, silt, or debris and mold remediation performed in conjunction with restoring a facility. These measures are Permanent Work and are included in the repair cost (numerator).
4. The costs excluded from the 50 Percent Rule calculation may be eligible for PA funding even though they are excluded from the calculation.
5. A floodplain manager's Substantial Damage determination, which is part of the National Flood Insurance Program eligibility process, is separate and distinct from FEMA's eligibility determination of repair or replacement under the 50 Percent Rule. A Substantial Damage determination does not trigger eligibility for replacement.

Review Procedures

The review procedures detailed below establish standards and a comprehensive process for reviewing requests for replacement and 50 Percent Rule calculations and related cost estimates.

- **Applicant Request for Replacement**
 - FEMA will encourage Applicants to submit requests for replacement through the Grantee to the appropriate field or regional office within one year of the major disaster declaration.
 - The request should include both repair and replacement cost estimates with supporting documentation, prepared and signed by a licensed engineer/architect with cost estimating expertise or a certified cost estimator. In lieu of a license or certification, the cost estimates may be prepared and signed by an individual with professional experience and proficiency in the field of cost estimating. FEMA will validate the applicant's estimates.
 - If the applicant lacks the resources, it may request technical assistance from FEMA to develop the cost estimates.
- **FEMA Review of Requests**
 - FEMA's review of an applicant's request for replacement shall be conducted by a licensed engineer/architect with cost estimating expertise or a certified cost estimator.
 - If requested by the applicant, FEMA may develop cost estimates to evaluate the eligibility of replacement. It is recommended that FEMA utilize a licensed engineer/architect with cost estimating expertise or a certified cost estimator.
 - If requested by the applicant, FEMA may develop cost estimates to evaluate the eligibility of replacement. It is recommended that FEMA utilize a licensed engineer/architect with cost estimating expertise or a certified cost estimator to

develop these estimates. If a sufficient number of staff with these credentials are not available, the estimates should be prepared by an individual with professional experience and proficiency in the field of cost estimating and then reviewed by a licensed engineer/architect with cost estimating experience or a certified cost estimator. FEMA field offices should identify resource needs to support the implementation of this review process early in the recovery process. The PA Division will facilitate resourcing any gaps through available, qualified reservists and the use of Technical Assistance Contractors. Further, the PA Division will work to build additional FEMA estimating capacity within its cadre.

- **USACE Review of Repair and Replacement Estimates**

- For any replacement request over \$5 million, the United States Army Corps of Engineers (USACE) Center for Excellence for Cost Engineering will perform an additional review of the repair and replacement estimates. Further, at FEMA's request, USACE may also assist with requests under \$5 million. When this additional review would be beneficial, Regional and JFO staffs are encouraged to utilize this resource for any repair and replacement estimates. FEMA retains the final authority in determining the repair and replacement estimates. FEMA has an existing agreement with USACE for these services which can be modified for any disaster operation. Regional or JFO staff should contact Kim Callan, Chief, USACE Center for Excellence for Cost Engineering at Kim.c.callan@usace.army.mil to initiate a Mission Assignment.

Placing these controls on repair versus replacement eligibility determinations will allow for thorough review by qualified individuals, increase accuracy of the estimates; and provide an independent review of estimates by USACE.

If you have questions, please contact Hunter Clark at hunter.clark@fema.dhs.gov or (202) 212-5297.

9524.5 - Trees, Shrubs and Other Plantings Associated with Facilities (1998)

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

II. DATE: September 24, 1998 (Superseded on July 18, 2007)

III. PURPOSE:

To define ineligible work related to trees, shrubs and other plantings, except grass and sod which may be associated with facilities eligible for repair and restoration.

IV. SCOPE AND AUDIENCE:

The policy defines ineligible work relative to trees, shrubs and other plantings, except grass and sod, which may be associated with facilities eligible for repair and restoration. It is provided for FEMA staff involved in administering the public assistance program, state staff and potential subgrantees which are local governments. State agencies, Indian tribes, Alaska Native Villages or eligible private non-profit groups.

V. AUTHORITY:

Section 406 of Public Law 93-228, as amended, 44 CFR Part 206, Subparts G and 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, replacing trees, shrubs and other plantings after disasters is not unusual for non-recreational areas such as median strips in roadways and as landscaping for public buildings. We have found that the law and implementing regulations do no 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 sites and other sites where trees, shrubs and other plantings are in an integral and maintained portion of the entire facility.

In response to the comments received on the draft policy, 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 as well, it has been determined that not providing assistance to replace disaster-damaged trees, shrubs and other plantings will not impact essential public services.

VII. POLICY:

Trees, shrubs and other plantings, except grass and sod, will no longer be eligible under Section 406 of Public Law 93-288, as amended (Repair, Restoration and Replacement of Damaged Facilities), for all disaster declarations beginning with FEMA-1152-DR-WA. 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, except grass and sod – including but not limited to replacement, non-emergency removal for purposes of replacement and remedial actions taken to abate disaster damage. Grass and sod will not be eligible for cosmetic purposes. This policy does not affect eligible debris removal and emergency measures that may be taken under Sections 403 and 407 of Public Law 93-228, as amended.

VIII. KEY WORDS:

Trees, Shrubs, Other plantings, Facilities, Damaged facilities

VIII. ORIGINATING OFFICE:

Infrastructure Support Division, Response and Recovery Directorate

IX. SUPERSESSION:

This policy supersedes guidance on pages 68-69 of the Public Assistance Guide (FEMA 286, September 1996) and the November 22, 1995, policy letter in Section 4511.300 in the Public Assistance Policy Compendium.

X. REVIEW DATE: September, 1999

____//Signed//____

Lacy E. Suitor
Executive Associate Director
Response and Recovery Directorate

9524.5 - Trees, Shrubs, and Other Plantings Associated with Facilities (2007)

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

II. DATE: July 18, 2007 (Superseded on September 4, 2013)

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 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

9524.5 – Trees and Plantings Associated with Eligible Facilities (2013)

I. TITLE: Trees and Plantings Associated with Eligible Facilities

II. DATE: September 4, 2013 (Superseded on January 1, 2016)

III. PURPOSE:

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

IV. SCOPE AND AUDIENCE:

This policy applies to all major disasters declared on or after the date of publication of this policy. It will continue in effect until three years after its date of issuance. If rescinded or superseded, this policy will continue to apply to all emergencies and major disasters declared between the date in Paragraph II and the date it is rescinded or superseded. The policy is intended for all personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406, Repair, Restoration, and Replacement of Damaged Facilities 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 – Public Assistance Eligibility.

VI. BACKGROUND:

The United States Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) have primary authority for the repair of flood control works. USACE's authority is contained in the Flood Control and Coastal Emergency Act, Public Law (PL) 84-99 (33 U.S.C. 701n) and Title 33: Navigation and Navigable Waters, and NRCS' authority is contained in Section 216 of the Flood Control Act of 1950, PL 81-516 and Sections 403-405 of the Agriculture Act of 1978, PL 95-334, as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127.

In 1986, USACE and NRCS signed a Memorandum of Agreement to provide general policy guidance and coordination between the two agencies for the repair of levees and other flood control works. The agencies agreed that, depending on program eligibility, NRCS would generally be responsible for repairing flood control works in watersheds with contributing drainage areas less than 400 square miles and USACE would be responsible for repairs to eligible non-federal flood control works in urban areas regardless of watershed size. The agreement remains in effect.

The USACE Rehabilitations and Inspection Program (RIP) provides for the inspection and rehabilitation of Federal and non-Federal flood control projects. To be eligible for rehabilitation assistance following a disaster, a flood control work must have a public sponsor, be regularly

maintained, and have an active RIP status prior to the event. USACE can provide flood fighting assistance to applicants during a flood event. However, USACE cannot reimburse applicants for their own flood fighting efforts or for the removal of debris from flood control works. Additional RIP criteria are available in the USACE manual entitled “Emergency Employment of Army and Other Resources – Civil Emergency Management Program,” ER 500-1-L.

The NRCS Emergency Watershed Protection (EWP) program assists with the implementation of emergency measures for repair and restoration of EWP-eligible facilities where a sudden impairment of a watershed threatens life or property as determined by the NRCS State Conservationist, the benefits associated with repairing the flood control work exceed the cost of repair, and the public sponsor agrees to meet NRCS EWP eligibility requirements. EWP assistance includes: removal of debris deposited by a natural disaster that creates a watershed impairment affecting runoff or erosion; the repair of levees (less than 400 square miles); and other practices associated with restoring the natural environment to the greatest extent practical after a natural disaster. Additional EWP criteria are available in Final Rule, 7 CFR Part 624, as well as in part 501 of the EWP Program Manual.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act (See 42 U.S.C. 5170b and 5173). Although such measures may include flood fighting, debris removal, and emergency repairs, the NRCS has specific authority to provide assistance to protect life and property in watersheds from erosion and flooding, and USACE has specific authority to provide assistance for flood fighting activities during flooding.

FEMA will not provide assistance for emergency protective measures under the Stafford Act where NRCS or USACE authority is applicable, as these authorities are more specific than FEMA's. When other Federal agencies have the specific authority to repair facilities that are also eligible under the Stafford Act, FEMA defers to the other Federal agencies. This is codified in 44 CFR 206.226(a), Assistance under Other Federal Agency (OFAs) programs.

This policy delineates FEMA's authorities on levees and other flood control works. The policy was coordinated with USACE and NRCS.

VII. POLICY:

- A. Eligible Costs: Generally, plantings such as trees, shrubs, and other vegetation are not eligible for replacement under Section 406 of the Stafford Act (Repair, Restoration, and Replacement of Damaged Facilities). There are limited instances where plantings are eligible for replacement:
 1. Grass and sod replacement if it is an integral part of the repair or replacement of the eligible recreational facility (e.g. publicly owned football, soccer, and baseball fields, etc.);
 2. Plantings when they are part of the restoration of an eligible facility for the purposes of stabilizing slopes (including dunes on eligible improved beaches), erosion control, or minimizing sediment runoff; and
 3. Plantings required for the mitigation of environmental impacts, such as impacts to wetlands or endangered species habitat. Examples include projects that fill wetlands and

where the regulatory agency requires planting of wetland vegetation as a method of compensation, projects that affect endangered species or migratory bird habitat where vegetation planting is a condition to reduce impacts on protected species, or projects that require vegetation planting for slope or dune stabilization. Eligibility of these plantings is limited to plantings that are required under a Federal, State, Tribe, or local government code or regulation.

- B. Ineligible Costs: Examples of plantings ineligible for replacement include, but are not limited to:
 1. Replacement of dead or dying trees, shrubs, and other vegetation;
 2. Plantings for mitigation of environmental impacts that are not a Federal, State, Tribe, or local government permit requirement; and
 3. Replacement that is not directly associated with the primary function of the facility, but rather for cosmetic or aesthetic purposes.
- C. This policy 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: Recovery Directorate (Public Assistance Division)

IX. SUPERSESSION: For all disasters declared after the date of issuance in Paragraph II, this policy supersedes DAP 9524.5, Trees, Shrubs, and Other Plantings Associated with Facilities, dated July 18, 2007, and all previous guidance on this subject.

X. REVIEW DATE: This policy will be reviewed 3 years from the date of issuance in accordance with Directive 112-12.

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Deborah Ingram
Assistant Administrator
Recovery Directorate

9524.6 – Collections and Individual Objects (1999)

1. **Date Published:** August 17, 1999 (Superseded on June 30, 2008)
2. **Response and Recovery Policy Number:** 9524.6
3. **Title:** Collections and Individual Objects
4. **Purpose:** This policy clarifies terms associated with the eligibility of collections and individual objects of exceptionally significant cultural value located within or on the property of public or private nonprofit facilities, for the purpose of funding stabilization and treatment. The policy also establishes and describes the eligibility criteria for collections and individual objects.
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.
6. **Background:**
 - A. Under 44 CFR 206.226 (f) and (g), "equipment and furnishings" of an eligible facility are eligible for FEMA assistance, as are "library books and publications," including cataloging and other work incidental to replacement. The Mexican Museum appeal in 1991 (FEMA-845-DR; P.A. 075-90561) addressed the inclusion of displayed "art objects" as eligible "equipment and furnishings" of an eligible public or private nonprofit facility. Further, the appeal addressed FEMA's treatment of these objects.
 - B. This policy broadens the scope of eligible collections and objects beyond "art objects," to include other collections and objects of exceptionally significant cultural value. The policy also broadens the function of eligible objects beyond those "on display," and it re-defines FEMA's approach to treatment measures for eligible collections and objects.
 - C. Relevant definitions have been adapted from those used in the professional conservation and cultural resources community to best meet FEMA's needs. Specifically, definitions are derived from those published by the American Association for State and Local History (AASLH), the American Association of Museums (AAM), and American Institute for Conservation of Historic and Artistic Works (AIC).
7. **Policy:**
 - A. Definitions:
 1. An individual object of exceptionally significant cultural value is a non-living artifact, specimen, or work of art whose value is intangible because of its artistic, historic, scientific, educational, or social importance as an individual piece.

2. A collection of exceptionally significant cultural value is a set of non-living objects acquired and preserved because of their potential value as examples, as reference material, or as objects of artistic, historic, scientific, educational, or social importance as a collection.
3. The owner of the collection or object has legally purchased or obtained the collection or object, and inventoried/catalogued it as part of the institution or individual's collection.
4. The responsible institution is the entity formally assigned the responsibility to care for the collection or objects by the owner during the period in which the collection or object suffered damage. The responsible institution is normally also the owner of the collection or object, except in some cases where the collections or objects are on loan.
5. An accessioned collection or object is one that has been formally accepted as worthy of being collected by the institution and has been legally conveyed to and recorded by the institution as part of their collection.
6. A reproduction is a collection or object that is an imitation in materials, form, and workmanship of an original collection or object of exceptionally significant cultural value. The reproduction itself may or may not possess exceptionally significant cultural value in its own right for artistic, historic, scientific, educational, or social importance.
7. Complete devastation or loss refers to a state in which a disaster destroys the collection, or a portion thereof, or object in its entirety; thus, stabilization of the collection or object to a point where it retains its physical integrity and conveys the characteristics for which it is exceptionally significant is no longer practicable or possible.

B. Eligibility.

1. All damaged collections and individual objects of exceptionally significant cultural value are eligible for FEMA assistance if the damage is the result of a major disaster event, the collections or objects are located within a designated disaster area, and the owner of the collections or objects is an eligible applicant. For collections or individual objects that are on loan, the responsible institution must be an eligible applicant in order for the collections or objects to be eligible for treatment.
2. FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative responsible for the collection or object, and a State official) has determined that the collection or object possesses exceptionally significant cultural value and the collection or object meets other criteria established in this policy.
3. The eligible facility has accessioned and catalogued/inventoried, or in the case of loan, inventoried and documented the collections or objects.
4. The collections or objects are in storage, on display, or are part of an exhibition and are accessible to the general public for educational purposes. This applies to both eligible public and private nonprofit facilities. Collections and objects located outside the facility, such as outdoor sculpture and exhibits/displays, are also eligible for FEMA assistance.

5. The collections or objects are non-living.
 6. The collections or objects have exceptionally significant cultural value in their own right. Some reproductions may be eligible under this clause because they possess exceptionally significant cultural value (artistic, historic, scientific, educational, or social); however, collections or objects that can be replaced are not eligible as "collections and objects of exceptionally significant cultural value," although they may be eligible as "equipment and furnishings" according to 44 CFR 206.226(f).
- C. Insured Collections and Objects: In accordance with 44 CFR 206.250(c), "actual and anticipated insurance recoveries" from collections and individual objects of exceptionally significant cultural value "will be deducted from otherwise eligible costs." FEMA will approve assistance for collections and objects of exceptionally significant cultural value only under the conditions of 44 CFR 206.252, 206.253, requiring the grantee to obtain and maintain such types of insurance as are reasonable and necessary to protect against future loss to such collections and objects from the types of hazards which caused the major disaster.
- D. Materials and Equipment Used to Conserve, Exhibit, Display, or Store Eligible Collections and Objects
- The materials and equipment associated with the storage, display, preservation, or exhibition of collections or objects of exceptionally significant cultural value are eligible for FEMA assistance as "equipment and furnishings" of a facility, according to 44 CFR 206.226(f). This may include (but is not limited to): equipment regulating temperature or humidity; exhibit panels; models; video and audio equipment; and, multimedia containing oral histories or photographs of significant cultural value. FEMA will provide assistance to replace or repair the damaged item (or other incidental expenses required to replace or repair the item), but will not provide assistance for original research associated with replacement. General equipment and furnishings not essential to the collection may be eligible for assistance under the provisions of 44 CFR 206.226.
- E. Treatment of Eligible Collections and Individual Objects
1. Determination of Treatment Measures: FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and a State official) will determine the appropriate treatment measures for the eligible collections or objects.
 2. Complete Devastation or Loss: FEMA's Preservation Officer will determine the extent of damage to the collections or objects; those that have been completely destroyed by the disaster will not receive any FEMA assistance.
 3. Stabilization and Restoration: The goal of FEMA assistance for damaged collections and objects will be to treat the damaged collection or object through stabilization, in order to prolong its existence, maintain its integrity, and minimize deterioration from the damaging effects of the disaster. FEMA will not restore the collection or object to its pre-damage condition. FEMA will, however, take the minimum steps necessary to return the collection or

object to a condition in which it can function in the same capacity as it did prior to the disaster. However, FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and the State official) will use professional judgement to determine if additional treatment beyond stabilization is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

Example 1: A wagon in a living history museum, possessing significant cultural value and functioning as a wagon for educational purposes, should be minimally restored to a condition in which the institution may again use the wagon for this purpose. However, if the wagon's intended use is to be part of a display or exhibit, then FEMA will take the minimum steps necessary to stabilize the wagon so that it may return to the display.

Example 2: A damaged painting of significant cultural value, which functioned prior to a disaster as part of an exhibition, may require additional treatment measures beyond stabilization. These measures may be necessary in order to restore the aesthetic qualities that convey the value of the painting so that the painting may be returned to public display.

8. **Professional Standards and Guidelines:** The treatment will be conducted by a qualified conservation professional with the appropriate specialty, in accordance with the American Institute for Conservation of historic and Artistic Works' (AIC) Code of Ethics and Guidelines for Practice. When non-intervention best serves to promote the preservation of the collection or object, it may be appropriate to recommend that no treatment be performed.
9. **Extent of Compensation:** FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and a State official) will determine the extent of compensation to the applicant that will be provided for the treatment of the collection or object.
10. **Eligible Costs of Expertise:** Reasonable costs associated with the development of the treatment plan and the subsequent treatment for the collection or object, as determined by FEMA, are considered eligible costs of expertise for FEMA assistance.
11. **Supersession:** This policy updates and replaces relevant provisions of previous Public Assistance policy documents.
12. **Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended; 44 CFR 206.226; 44 CFR 206.250; 44 CFR 206.252-253.
13. **Originating Office:** Infrastructure Division, Response and Recovery Directorate
14. **Review Date:** Two years from date of publication

15. Signature:

 signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

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9524.6 – Collection and Individual Object Eligibility (2008)

I. TITLE: Collection and Individual Object Eligibility

II. DATE: June 30, 2008 (Superseded on January 1, 2016)

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.
- 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).
2. 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).
3. 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).
4. 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).
5. 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).
6. 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.
7. 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).
8. 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.
9. Extraction/Removal refers to removing a collection or individual object from an unstable environment, e.g., mud and humidity.
10. Inventory is a detailed, itemized list, report, or record of items in one's possession (American Heritage Dictionary).
11. 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.

12. 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 catalogued 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.
13. 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.
14. 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).
15. 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.
16. 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 pre-disaster (though not original) condition.
17. 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.
18. 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.

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). 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 pre-disaster function. In some cases, costs associated with restoring an item to pre-disaster (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.

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

9524.7 - Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster (2001)

1. Response and Recovery Directorate Policy Number: 9524.7

2. Title: Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster

3. Date Published: June 8, 2001 (Rescinded on January 23, 2013)

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 RR9524.1, 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 RR9524.1 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:

1. First, physical indications that require the search for damaged welded moment frame connections are similar in FEMA 267 and FEMA 352 but not identical.
 - a. 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.
 - b. However, the number of buildings to be inspected may also increase slightly because FEMA 352 dropped the condition of permanent inter-story drift and change in building period, and added local Modified Mercalli Intensity condition.
2. 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 (RR9524.1) 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 RR9425.1 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 RR9526.1, 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 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: Post-earthquake

- 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.

RESCINDED

9524.8 – Eligibility for Permanent Repair and Replacement of Roads on Tribal Lands (2007)

I. TITLE: Eligibility for Permanent Repair and Replacement of Roads on Tribal Lands

II. DATE: July 24, 2007 (Superseded on January 1, 2016)

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.

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

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

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

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Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

¹ 25 U.S.C. Sec. 2201(4), as amended.

9524.9 – Replacement of Animals Associated with Eligible Facilities (2008)

I. TITLE: Replacement of Animals Associated with Eligible Facilities

II. DATE: August 18, 2008 (Superseded on January 1, 2016)

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 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.

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.
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. ORIGINATING 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.

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Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9524.10 – Replacement of Equipment, Vehicles, and Supplies (2009)

I. TITLE: Replacement of Equipment, Vehicles and Supplies

II. DATE: September 8, 2009 (Superseded on January 1, 2016)

III. PURPOSE:

This policy provides guidance for the replacement of equipment, vehicles, and supplies that are destroyed by a major disaster.

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(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172, and Title 44 Code of Federal Regulations (CFR) §206.226(h).

VI. BACKGROUND:

- A. Previous Federal Emergency Management Agency (FEMA) policy limited funding for the replacement of damaged equipment, vehicles, and supplies to the same number of items of approximately the same age, capacity, and condition.
- B. Following a major disaster, applicants may determine that replacing damaged or destroyed equipment, vehicles or supplies with the exact number and capacity of the destroyed equipment, vehicles and supplies is not cost-effective or in the public interest. This policy provides increased flexibility in funding for replacement items.

VII. POLICY:

- A. Definitions:
 1. Equipment, as defined in 44 CFR §13.3, is "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."
 2. Supplies, as defined in 44 CFR §13.3, are "all tangible personal property other than equipment."
- B. Eligibility
 1. The cost to replace equipment, vehicles, and supplies that are destroyed by a major disaster is eligible for reimbursement, but applicants are not required to replace destroyed equipment, vehicles, and supplies with the same number of items of the same age, condition, and capacity that existed at the time of the disaster. Applicants may replace equipment, vehicles, and supplies for use for the same general purpose. Eligible cost should not exceed the amount estimated in section VII.B.2. of this policy.

2. Eligible costs are limited to the costs of replacing the destroyed equipment, vehicles, and supplies with the same number of items of approximately the same age, condition, and capacity.
3. The cost to replace the same number of destroyed equipment, vehicles, and supplies with new items may be eligible if applicants can provide written justification that a used item is not reasonably available, or does not meet applicable national consensus standards.
4. When applicable, salvage value of the damaged items and insurance should be deducted from the estimated replacement costs.

VIII. ORIGINATING OFFICE:

Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION:

The provisions of this policy supersede guidance on this issue contained in the Public Assistance Policy Digest (FEMA 321, January 2008) and the Public Assistance Guide (FEMA 322, June 2007).

X. REVIEW DATE:

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

____//Signed//____
Elizabeth Zimmerman
Assistant Administrator
Disaster Assistance Directorate

9525.1 – Post-Disaster Property Tax Reassessment (1998)

- 1. Date Signed:** November 30, 1998 (Superseded on December 12, 2007)
- 2. Response and Recovery Directorate Policy Number:** 9525.1
- 3. Title:** Post-Disaster Property Tax Reassessment
- 4. Purpose:** To state FEMA policy that post-disaster real property reassessment costs are not eligible for reimbursement under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act).
- 5. Scope and Audience:** This policy applies to all disasters. It should be used by all personnel involved in the administration of the public assistance program.
- 6. 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 reimbursements 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 of the Stafford Act in that it is not essential to meeting an immediate threat to life or property resulting from a major disaster. Such activity also is not connected with permanent restoration of facilities authorized under Section 406 of the Act.
- 7. 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.
- 8. Supersession:** Post-Disaster Property Tax Reassessment, Response and Recovery Directorate Policy No. 4511.100 A, EX, dated October 17, 1995. This document validates/reproduces the text of the 1995 document.
- 9. Authorities:** Sections 403 and 406 of the Stafford Act and 44 CFR 206.223
- 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 HQ Response and Recovery Division Directors; and Regional Infrastructure Branch Chiefs

ARCHIVED

9525.1 – Post-Disaster Property Tax Reassessment (2007)

I. TITLE: Post-Disaster Property Tax Reassessment

II. DATE: December 12, 2007 (Superseded on January 1, 2016)

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.

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. ORIGINATING 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. 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

ARCHIVED

9525.2 – Donated Resources (1999)

- 1. Date Signed:** August 17, 1999 (Superseded on April 9, 2007)
- 2. Response and Recovery Directorate Policy Number:** 9525.2
- 3. Subject:** Donated Resources
- 4. Purpose:** This policy describes criteria by which the Federal Emergency Management Agency (FEMA) will credit applicants for volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work -Categories A and B.
- 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 personnel involved in the administration of the Public Assistance Program.
- 6. 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. A Government Accounting Office report (GAO/RCED-96-113, Improvements Needed in Determining Eligibility for Public Assistance) contained a suggestion that credit for donated resources be eliminated. FEMA considered the suggestion but found implementing it would have an adverse impact on communities with limited cash flow. Instead, FEMA opted to allow credit, but to be clear and restrictive in the crediting policy.
- 7. 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. Donated resources may include volunteer labor, donated equipment and donated materials.
 - A. **Eligibility.** Donated resources are eligible to offset the cost of 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 Directors may establish alternate documentation requirements when required by an extraordinarily demanding situation.
 2. The donated resources must apply to emergency work that is eligible under the Public Assistance Program. Examples include:
 - a. Removing eligible debris.
 - b. Filling and placing sandbags.
 - c. Donating equipment to raise or reinforce a levee.

- d. Donating materials, such as rock 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) (I). 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 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 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 rock, 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, labor 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 no11=Federal cost share percentage by the Federal cost share percentage (e.g., $25\% / 175\% = .333$ and $10\% / 90\% = .111$) and multiplying that factor by "out of pocket" expenses for a particular project or a group of projects.
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*.
4. When multiple *PWs* are going to be used for emergency work, the donations credit (with documentation) may be placed on one "credit" *PW* after all emergency work is completed.

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.
3. Reasonable logistical support for volunteers doing eligible work may be considered an eligible cost or donations credit by the Regional Director.
4. Donated resources submitted for credit toward the non-Federal share may not be from another Federal grant or from other Federally-funded sources.

E. PW Documentation.

1. If actual donated resources are less than or equal to the maximum amount of credit allowed, enter the amount of actual donated resources on the Project Worksheet, FEMA form 90-91, in the PROJECT COST section as the credit amount (code 9050).
2. If actual donated resources are greater than the maximum amount of donated resources allowed, calculate the excess credit by subtracting the actual donated resources from the maximum credit allowed. This is the amount of excess credit. The maximum allowed donated resources amount is to be entered on a Project Worksheet, FEMA Form 90-91 in the PROJECT COST section. The amount of excess credit is to be entered on the Project Worksheet, FEMA Form 90-91 in the SCOPE OF WORK Section. If the applicant subsequently requests funds for other Category A or Category B work, the excess credit may be credited against the non-Federal share of that work.
3. Manual calculations will not be required because the FEMA computer system will calculate donation requests.

8. Supersession: This policy supersedes:

- A. Memorandum dated August 25, 1993, to Federal Coordinating Officers, FEMA-993- DR, FEMA-994-DR, FEMA-995-DR, FEMA-996-DR, FEMA-997-DR, FEMA-998-DR, FEMA-999-DR, FEMA-1000-DR, and FEMA-1001-DR, from Laurence Zensinger, Chief, Public Assistance Division, subject: Crediting Volunteer Efforts for Essential Assistance
- B. Memorandum dated October 19, 1994, to Warren M.Pugh, Jr., Director, Response and Recovery Division, from Craig S.Wingo, Director, Infrastructure Support Division, subject: Volunteer Credit Policy Request, Iowa Emergency Management Division, FEMA-996-DR-IA
- C. Relevant provisions of other public assistance policy documents on this subject

9. Authorities: Section 403(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, 44 CFR Section 13.24, and OMB Circular A-87

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

11. Review Date: Two years from date of publication.

12. Signature:

____//Signed//____

Lacy E. Suitor
Executive Associate Director
Response and Recovery Directorate

ARCHIVED

9525.2 – Donated Resources (2007)

I. TITLE: Donated Resources

II. DATE: April 9, 2007 (Superseded on February 26, 2014)

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.

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 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.
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 the date of publication.

____//Signed//____

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

9525.2 – Donated Resources (2014)

I. TITLE: Donated Resources

II. DATE: February 26, 2014 (Superseded on January 1, 2016)

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. The policy is intended for all personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403(a), **Essential Assistance** and 502, **Federal Emergency Assistance**, 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, **Matching or cost sharing** and OMB Circular A-87.

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:

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.

- A. Donated resources are eligible to offset the non-federal share of eligible Categories 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 care and sheltering for disaster survivors.
3. The donated resources must be documented on one or more Project Worksheets (PWs).

B. Value of Resources. 44 CFR 13.24, **Matching or cost sharing**, 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), **Matching or cost sharing**. *Valuation of donated services*. 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 applicant's or FEMA's Equipment Rate, whichever is lower. The out-of-pocket cost 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 credit allowed, as defined 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, and 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 to any work performed during a 100% Federally-funded period because the non-Federal share for that period would be zero.
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:

Recovery Directorate (Public Assistance Program)

IX. SUPERSESSION:

For all disasters declared after the date of issuance in Paragraph II, this policy supersedes DAP 9525.2, Donated Resources dated April 9, 2007, and all previous guidance on this subject.

X. REVIEW DATE:

It is FEMA's policy to review policies and reissue, revise or rescind the policy within three years of the date of issuance.

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Deborah Ingram
Assistant Administrator
Recovery Directorate

9525.3 – Duplication of Benefits (1999)

- 1. Date Published:** August 17, 1999 (Superseded on October 30, 2000)
- 2. Response and Recovery Directorate Policy Number:** 9525.3
- 3. Title:** Duplication of Benefits - Non-Government Funds
- 4. Purpose:** This policy clarifies the issues related to grants and cash donations from third parties for emergency and permanent work under the 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 and to all emergency and permanent work done under Public Assistance Program grants. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.
- 6. 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 Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 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. However, grant or cash donations provided by a private benefactor also may constitute a duplication of benefits.
- 7. Policy:**
 - A. Grants and cash donations designated for specific eligible work. Grants and cash donations from non-Federal sources designated for the same purpose as Federal disaster funds are considered a duplication of benefits. These grants and cash donations will be used to reduce the cost of the total project. Cost shares will be assigned according to the FEMA-State Agreement based upon the reduced project cost.
 - 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. An adjustment for the amount that should be received from insurance coverage is required even if the applicant has not completed negotiations with the insurer.

- D. The retention of duplicated funds is illegal. Duplicated Federal funds must be returned to FEMA.
- 8. Supersession:** This policy updates and replaces the relevant provisions of previous public assistance policy documents.
- 9. Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 312; 44 CFR 13.24 and 206.226(a).
- 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

9525.3 – Duplication of Benefits, Non-Government Funds (2000)

1. **Date Published:** October 30, 2000 (Superseded on July 24, 2007)
2. **Response and Recovery Directorate Policy Number:** 9525.3
3. **Title:** Duplication of Benefits – Non-Government Funds
4. **Purpose:** This policy clarifies the issues related to grants and cash donations from third parties for emergency and permanent work under the Public Assistance Program.
5. **Scope and Audience:** This policy amends the policy of the same title issued on August 17, 1999. Due to the nature of the change, this policy is retroactive to that date. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program and is applicable to all emergency and permanent work done under Public Assistance program grants.
6. **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 Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 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. However, grant or cash donations provided by a private benefactor also may constitute a duplication of benefits.
 - C. Part 13 of 44 CFR allows, but does not require, the credit of third party donations to the non-federal cost share. FEMA's position on the credit of third party donations was to require grant and cash donations designated solely for eligible work to be used to reduce total project cost. In early 2000, it was demonstrated that this policy was unacceptably burdensome, especially on small government applicants, and on private nonprofit organizations (PNPs) without other sources of income. Therefore, the application of this policy was modified to allow all eligible applicants to use cash donations, and possibly grants (depending on source and conditions), for the non-federal share of project costs.
7. **Policy:**
 - A. Grants and cash donations designated for specific eligible work. Grants and cash donations from non-Federal sources designated for the same purpose as Federal disaster funds generally are considered a duplication of benefits. However, cash donations and grants from non-Federal sources designated for the same purpose as Federal disaster

funds may be used for the non-Federal cost-share. Funds exceeding the amount of the non-Federal obligation must be used to reduce the total project cost. If donated funds designated for specific eligible work exceed the amount of the non-Federal obligation, FEMA headquarters will provide the methodology for calculating the adjusted project cost and adjusted 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. An adjustment for the amount that should be received from insurance coverage is required even if the applicant has not completed negotiations with the insurer.
 - D. The retention of duplicated funds is illegal. Duplicated Federal funds must be returned to FEMA.
8. **Supersession:** This policy revises and replaces RR Policy #9525.3 *Duplication of Benefits, Non-Government Funds* that was issued on August 17, 1999.
9. **Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 312; 44 CFR 13.24 and 206.226(a)
10. **Originating Office:** Infrastructure Division, Response and Recovery Directorate
11. **Review Date:** Five years from date of publication
12. **Signature:**
- ____//Signed//____
Lacy E. Suitor
Executive Associate Director
Response and Recovery Directorate
13. **Distribution:** Regional Directors, Regional and Headquarters R&R Division Directors

9525.3 – Duplication of Benefits, Non-Government Funds (2007)

I. TITLE: Duplication of Benefits – Non-Government Funds

II. DATE: July 24, 2007 (Superseded on January 1, 2016)

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.
- 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).

VIII. ORIGINATING 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

9525.4 – Emergency Medical Care and Medical Evacuations (2008)

I. TITLE: Emergency Medical Care and Medical Evacuations

II. DATE: July 16, 2008 (Superseded on February 3, 2014)

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 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 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.
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 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. ORIGINATING 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

9525.4 – Emergency Medical Care and Medical Evacuations (2014)

I. TITLE: Emergency Medical Care and Medical Evacuations

II. DATE: February 3, 2014 (Superseded on January 1, 2016)

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 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 date of publication of this policy. If rescinded or superseded, this policy will continue to apply to all emergencies and major disasters declared between the date in Paragraph II and the date it is rescinded or superseded. The policy is intended for all personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 403, **Essential Assistance** and Section 502, **Federal emergency assistance** 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, **Emergency work** and § 206.223 **General work eligibility**.

VI. OBJECTIVES:

- A. The objective of this policy is to provide Federal assistance to eligible applicants for the extraordinary emergency medical care and medical evacuation expenses they incur to address immediate threats to life and property resulting from a major disaster or emergency.
- B. 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 survivors 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.
- C. When the State and local governments lack the capability to perform or contract for eligible emergency medical care or medical evacuation work, the State may request DFA from FEMA. Usually, FEMA will task the appropriate Federal agencies via mission assignments to perform the requested emergency work. FEMA may task the Department of Health and Human Services to provide emergency medical assistance when requested by the State.

VII. DEFINITIONS:

- A. **Cost-to-charge ratio.** A ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges.
- B. **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.
- C. **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.
- D. **Emergency medical care.** Medical treatment or services provided for injuries, illnesses and conditions caused as a direct result of the declared emergency or major 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.

VIII. POLICY:

- A. **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 public or private nonprofit hospital or nursing home (44 CFR §206.221, **Definitions**, and §206.222, **Applicant eligibility**). Private for-profit medical service providers are not eligible applicants for Public Assistance. However, some costs that private for-profit providers incur under contract with an eligible applicant may be eligible for Public Assistance funding, which FEMA will reimburse to the eligible applicant.
- B. **Eligible Emergency Medical Care Costs.** Eligible applicants may be eligible to receive Public Assistance funding for the extraordinary costs associated with operating the emergency rooms and with providing temporary facilities for emergency medical care of disaster survivors 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 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 major 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 permanent employees who perform eligible work.
 - b. Regular time and overtime for extra hires who provide additional support as a result of the declared emergency or major disaster (See Recovery Policy RP9525.7, *Labor Costs – Emergency Work*).
 - c. Labor costs for personnel activated and deployed to support the performance of eligible emergency work (See Recovery Policy RP9525.7, *Labor Costs – Emergency Work*).
 - d. Transport of disaster survivors who require emergency medical care to medical facilities, including EMS and ambulance services.

- e. Treatment and monitoring of disaster survivors who require emergency medical care, including costs for:
 - 1) Triage, medically necessary testing, and diagnosis.
 - 2) First aid assessment and provision of first aid, including materials (bandages, etc.).
 - 3) Prescription assistance limited up to a one-time 30-day supply for acute conditions and to replace maintenance prescriptions.
 - 4) Durable medical equipment.
 - f. Vaccinations for disaster survivors and emergency workers, including medical staff, that prevent outbreaks of infectious and communicable diseases following a disaster.
 - g. Provision of health information to the general public.
 - h. Temporary tents or portable buildings for treatment of disaster survivors.
 - i. Leased or purchased equipment for use in temporary facilities. (See Recovery Policy RP9523.3, *Provision of Temporary Relocation Facilities*).
 - j. Security for temporary facilities.
2. Ineligible costs include the following:
- a. Medical care costs incurred once a disaster survivor is admitted to a medical care facility on an inpatient basis.
 - b. Costs associated with follow-on treatment of disaster survivors beyond 30 days of the emergency or major disaster declaration.
 - c. Administrative costs associated with the treatment of disaster survivors.
 - d. Loss of revenue.
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 Disaster Assistance Policy DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*.

- C. **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.

Eligible costs include, but are not limited to, the following:

- 1. Overtime for permanent employees to evacuate and assist in the transport of patients from the original facility.
- 2. Regular time and overtime for extra hires who evacuate and transport patients from the original facility (See Recovery Policy RP9525.7, *Labor Costs – Emergency Work*).
- 3. Labor costs for permanent employees that the applicant activates and deploys to support patient evacuation (See Recovery Policy RP9525.7, *Labor Costs – Emergency Work*).
- 4. Equipment costs incurred in the transport of patients from the original facility.

5. Labor and equipment costs incurred during transport while returning the patient to the original medical or custodial care facility.
 6. 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.
 7. Costs incurred from the activation of contracts, mutual aid agreements, or force account resources in advance of an emergency or major 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.
- D. 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 pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.
- E. Mutual Aid.** States may use the Emergency Management Assistance Compact and other individual mutual aid agreements to provide emergency medical care in an emergency or major disaster. Costs that States incur through these mutual aid agreements may be eligible for Public Assistance grant funding. States' requests for reimbursement for costs related to mutual aid must comply with the requirements of Recovery Policy RP9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*.

VIII. ORIGINATING OFFICE:

Recovery Directorate (Public Assistance Division)

IX. SUPERSESSION:

For all disasters declared after the date of issuance in Paragraph II, this policy supersedes DAP9525.4, dated July 16, 2008, and all previous guidance on this subject.

X. REVIEW DATE:

This policy will be reviewed three years from the date of issuance in accordance with Directive 112-12.

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Deborah Ingram
Assistant Administrator
Recovery Directorate

9525.5 – Americans with Disabilities Act (ADA) Access Requirements (2000)

1. **Date Published:** October 26, 2000 (Superseded on January 1, 2016)
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.
 - 1) 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.
 - 2) 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. Authorities and 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 the date of publication.

12. Signature:

____//Signed//____

Lacy E. Suitor
Executive Associate Director
Response and Recovery Directorate

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

9525.6 - Project Supervision and Management Costs of Subgrantees (2001)

1. **Date Published:** April 22, 2001 (Rescinded on January 23, 2013)
2. **Response and Recovery Directorate Policy Number:** 9525.6
3. **Title:** Project Supervision and Management Costs of Sub-grantees
4. **Purpose:** This policy provides guidance in determining the eligibility of project supervision and management activities of sub-grantees.
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:** Sub-grantees 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 sub-grantee. 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 sub-grantee'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 eligible 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 sub-grantee's permanently employed personnel who supervise or manage emergency work performed by the sub-grantee'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 sub-grantee 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, sub-grantee 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 sub-grantee 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 sub-grantee'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 sub-grantee is using contractors for oversight.
 - ii. If the sub-grantee 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 sub-grantee 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 sub-grantee'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 sub-grantee'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 sub-grantee and it must be reasonable. If the sub-grantee 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 sub-grantees 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 sub-grants. 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 sub-grantee when the projects are processed. The administrative allowance may not cover all costs that a sub-grantee 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, 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. Suitor
Executive Associate Director
Response and Recovery Directorate

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

9525.7 – Labor Costs, Emergency Work (2000)

- 1. Date Published:** July 20, 2000 (Superseded on November 16, 2006)
- 2. Response and Recovery Directorate Policy Number:** 9525.7
- 3. Title:** Labor Costs – Emergency Work
- 4. Purpose:** This policy provides guidance on the eligibility of labor costs for an applicant's permanent employees who perform emergency work under Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act).
- 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 making eligibility determinations for the Public Assistance Program.
- 6. Background:**
 - A. On October 14, 1993, a Code of Federal Regulations change went into effect relative to the eligibility of straight time labor salaries for an applicant's permanent employees performing emergency work. The change made the force account labor straight time salary for work under Section 403 and 407 ineligible under the Public Assistance Program. The basis for this policy was that such salaries would be incurred whether or not the disaster occurred.
 - B. By oversight, the change to the regulation did not include emergency work accomplished under Sections 418 (Emergency Communications), 419 (Emergency transportation) and 502 (Federal Emergency Assistance) of the Stafford Act. FEMA intends to propose an additional change to the Code of Federal Regulations to correct the omission. In the interim, the ineligibility of straight time salaries for emergency work under Sections 418, 419 and 502 is to be included as a provision of the FEMA-State Agreement.
 - C. 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.
 - D. This policy will be amended in the coming months to address the eligibility/ineligibility of the costs for backfill employees. In the interim, questions on that topic should be forwarded to FEMA headquarters.
- 7. Policy:**
 - A. Sections 403, 407, 418, 419, and 502 of the Stafford Act. The cost of straight time salaries and benefits of an applicant's permanently employed personnel are not eligible in calculating the cost of eligible emergency work.
 - B. FEMA-State Agreements will stipulate the ineligibility of straight time salaries and benefits of an applicant's permanently employed personnel performing emergency work (categories A and B).

- C. 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.
 - D. Straight time and overtime will be determined according to the applicant's written policies and labor union contracts in effect prior to the disaster.
 - E. The costs of salaries and benefits for individuals sent home or told not to report due to emergency conditions are not eligible for reimbursement. However, extraordinary costs for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the costs were provided for in the written policy prior to the disaster.
 - F. Costs of contractors hired 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.
 - G. 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 the Donated Resources Policy, 9525.2.
 - H. 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.
- 8. Supersession:** Relevant portions of memo from Larry W. Zensinger to Regional Directors, dated November 19, 1993, Subject: Eligibility, Force Account Labor, and relevant provisions of previous public assistance policy documents on this subject.
- 9. Authorities:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; 44 CFR 206.228(a)(4).
- 10. Originating Office:** Infrastructure Division, Response and Recovery Directorate
- 11. Review Date:** Five years from the 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

9525.7 – Labor Costs, Emergency Work (2006)

I. TITLE: Labor Costs – Emergency Work

II. DATE: November 16, 2006 (Superseded on November 19, 2015)

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 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.
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.

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

9525.7 – Labor Costs, Emergency Work (2015)

I. TITLE: Labor Costs – Emergency Work

II. DATE: November 19, 2015 (Superseded on January 1, 2016)

III. PURPOSE:

To provide guidance on the eligibility of labor costs for an applicant's permanent, temporary, and contract employees, who perform emergency work under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5207.

IV. SCOPE AND AUDIENCE:

This policy applies to all emergencies, major disasters, and fire management assistance declarations declared on or after the date of publication of this policy. It will continue in effect until rescinded or superseded. If rescinded or superseded, this policy will continue to apply to all emergencies, major disasters, and fires declared between the date in Paragraph II and the date it is rescinded or superseded. This policy does not apply retroactively to emergencies and disasters declared prior to the date of issuance in Paragraph II. The Public Assistance (PA) Alternative Procedures Pilot Program for Debris Removal, authorized by the Sandy Recovery Improvement Act (SRIA) of 2013 (P.L. 113-2), is exempt from the provisions of this policy regarding the payment of force account labor straight-time. (SRIA also amended Section 403 of the Stafford Act to add certain labor cost provisions. FEMA is undertaking a rulemaking to implement those provisions. These provisions are not effective until FEMA completes the rulemaking.) This policy is intended for all personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403, **Essential Assistance**; 407, **Debris Removal**; 420, **Fire Management Assistance**; and 502, **Federal Emergency Assistance** of the Stafford Act and Title 44 Code of Federal Regulations (CFR) §204.42, **Eligible Costs**; §206.202 **Application Procedures**; §206.224, **Debris removal**; §206.225, **Emergency work**; and §206.228, **Allowable Costs**.

VI. BACKGROUND:

- A. The objective of this policy is to provide Federal assistance to eligible applicants for eligible labor costs they incur in the performance of emergency work resulting from a major disaster, emergency or fire declaration.
- B. Sections 403, 407, 420, and 502 of the Stafford Act authorize Federal agencies to provide assistance to eligible applicants, including labor costs to perform emergency work, essential to meeting immediate threats to life and property resulting from a major disaster, emergency, or fire, respectively. This may include labor costs incurred for prudent measures in anticipation of and immediately preceding such an event.

VII. DEFINITIONS:

- A. Force account labor: An applicant's own labor force.
- B. Emergency work: Work that must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

- C. Budgeted employee: A person whose position and salary are included in the applicant's budget.
- D. Backfill employee: Replacement employee who performs the regular duties of another employee, who is performing eligible emergency work under the PA Program.
- E. Stand-by Time: Time spent waiting to conduct activities after initial deployment or wait time between activities.

VIII. POLICY:

A. Applicant Labor Policies.

FEMA determines the eligibility of overtime, premium pay and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided that the policy:

1. Does not include a payment contingency clause subject to Federal funding.
2. Is applied uniformly regardless of a Stafford Act declaration.
3. Has set non-discretionary criteria for when the Applicant activates various pay types. All costs, including premium pay, must be reasonable and equitable for the type of work being performed.

If these requirements are not met, FEMA limits PA funding to reasonable costs for the work performed.

B. Eligibility Criteria Based on Type of Employee.

1. Budgeted Employees: For budgeted employees performing emergency work, only overtime labor is eligible. Budgeted employees may include:
 - Permanent employees
 - Seasonal employees working during their normal season of employment
2. Unbudgeted Employees: For unbudgeted employees performing emergency work, both straight-time and overtime labor are eligible. Unbudgeted employees may include:
 - Permanent employees funded from an external source
 - Temporary employees hired to perform eligible work
 - Essential employees called back from administrative leave
 - Seasonal employees who work outside of their normal season of employment
3. Backfill Employees: The costs of force account or temporary labor to backfill regular employees who perform eligible emergency work may be eligible. There are several circumstances that may affect the eligibility of costs to use backfill employees.
 - If a backfill employee is hired on a contract or temporary basis, straight-time and overtime costs are eligible.
 - If a backfill employee is a budgeted employee, the cost of straight-time salaries and benefits is not eligible, regardless of any inter-departmental agreements.
 - If the backfill employee is a budgeted employee who is called in on his/her day off (weekend or other off day), there may be an extra cost to the applicant. If so, regular and overtime costs will be eligible.
 - 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.

- 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 labor policy.

4. Other Labor Resources Including Labor Obtained Under Agreement:

- The straight-time and overtime costs of employees who are funded from sources other than the applicant's own budget (e.g., a grant from a Federal agency, statutorily dedicated funds, rate-payers, etc.) to work on specific non-disaster tasks are eligible when they perform emergency work that the external source does not fund. FEMA must confirm no duplication of funding prior to approval.
- Mutual aid costs are eligible in accordance with Disaster Assistance Policy DAP9523.6, *Mutual Aid Agreements for PA and Fire Management Assistance* and an existing agreement;
- Contract costs are eligible based on the terms of the contract, provided the Applicant meets Federal procurement and contracting requirements. The straight-time salary and benefits of force account labor overseeing the contractors performing emergency work are not eligible.

5. Volunteer Labor: The value of volunteers who perform eligible emergency work can be credited toward the non-Federal cost share of the applicant's emergency work in accordance with Disaster Assistance Policy DAP9525.2, *Donated Resources*.

C. Other Eligibility Considerations.

1. Extraordinary costs (including but not limited to, call back pay, night-time or weekend differential pay, hazardous duty pay) 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 a written policy implemented prior to the disaster.
2. Salaries and benefits for employees sent home or told not to report due to emergency conditions are not eligible for reimbursement.
3. In cases where firefighters are deployed to work on both declared and undeclared fires, the applicant should track which days/hours are related to each fire. In the event it is not tracked and documented, FEMA will evaluate any claims and determine whether sufficient data is provided to fund costs on a prorated basis.

D. Stand-by Time.

Subject to the provisions of the specific labor cost eligibility criteria above, FEMA will also reimburse costs for stand-by time incurred in preparation for and directly related to actions necessary to save lives and protect public health and safety, provided it is reasonable, necessary and consistent with the applicant's practice in non-federally declared events.

Examples of when FEMA may reimburse stand-by time include, but are not limited to:

1. When bus drivers are prudently deployed to transport evacuees, even if the bus is not ultimately used for evacuations.
2. When first responders are prudently deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives or protect health and safety, even if the employee does not ultimately perform eligible emergency work.
3. When a contract or union agreement requires payment for stand-by time.

E. Cost Reasonableness.

In order to be eligible, costs must be reasonable and necessary. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.

1. Hours worked: FEMA will determine whether the number of hours claimed are reasonable and necessary based on evaluating:
 - The severity of the incident
 - Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident
 - The function of the employee for which the hours are claimed
 - The number of consecutive hours the employee worked
2. Stand-by time: FEMA will determine whether any stand-by time claimed is reasonable and necessary based on the following:
 - If there is a contractual obligation to pay for stand-by time based on a labor agreement.
 - If the stand-by time occurred at a time when it was necessary to have resources available to save lives and protect health and safety.

For instance, Applicants may be required to pay firefighter costs from portal-to- portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. However, FEMA will limit its reimbursement to that which is reasonable and necessary, not to exceed 14 calendar days from the start of the incident period.

F. Pre-positioning resources.

Subject to the provisions of the specific labor cost eligibility criteria above, the labor costs to pre-position resources may be eligible. FEMA will only reimburse costs incurred in response to a declared incident.

1. Pre-positioning resources under the Fire Management Assistance Grant Program is eligible for a limited period if the resources were actually used to suppress a declared fire and requested and approved in accordance with 44 CFR 204.42(e), *Pre-positioning costs*.
2. Pre-positioning resources under the PA Program for the purpose of evacuating, or providing emergency medical care during the evacuation period (such as ambulances and busses), is also eligible even if those resources are not ultimately used, provided the staging of those resources was necessary and prudent based on the data at the time of staging. Pre-positioning resources for purposes other than evacuation and emergency medical care is also eligible under the PA Program when those resources are used in the performance of eligible emergency work.
3. Unused pre-positioned resources – FEMA will consider E.1. and E.2. above to determine the reasonableness of labor costs associated with the deployment of unused resources.

VIII. ORIGINATING OFFICE:

Recovery Directorate (Public Assistance Division)

IX. SUPERSESSION:

For all disasters declared after the date of issuance in Paragraph II, this policy supersedes RP9525.7 dated November 16, 2006, and all previous guidance on this subject.

X. REVIEW DATE:

It is FEMA's Policy to review policies and reissue, revise or rescind the policy within three years of the date of issuance.

____//Signed//____

Alex Amparo
Assistant Administrator
Recovery Directorate

9525.8 – Damage to Applicant-Owned Equipment (1999)

- 1. Date Published:** August 17, 1999 (Superseded on December 17, 2008)
- 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 the 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 Directors

9525.8 - Damage to Applicant-Owned Equipment (2008)

I. TITLE: Damage to Applicant-Owned Equipment

II. DATE: December 17, 2008 (Superseded on January 1, 2016)

III. PURPOSE:

This policy provides guidance for determining the eligibility of damage and extraordinary maintenance to applicant-owned equipment used to perform emergency work.

III. 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 personnel involved in the administration of the Public Assistance Program.

IV. AUTHORITY:

Section 403(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, Title 44 of the Code of Federal Regulations (CFR) §§206.223(a)(l), 206.225 and 206.228(a)(l).

V. BACKGROUND:

The FEMA *Schedule of Equipment Rates* provides authorized reimbursement rates for applicant-owned equipment, and includes parts and labor for normal maintenance and periodic equipment overhaul. These rates are expected to cover most damage to equipment used under emergency conditions. However, when equipment sustains unusual damage or requires extraordinary maintenance as a result of emergency use under severe conditions (e.g., high water or very rough terrain), and such damage cannot be reasonably avoided, repair and/or maintenance costs may be eligible for reimbursement .

Note: This policy does not address applicant -owned equipment that is damaged as a direct result of a disaster, and which may be eligible for repair or restoration in accordance with 44 CFR §206.226(h).

VI. POLICY:

- A. Extraordinary expenses for the repair and maintenance of equipment operating under severe disaster conditions may be eligible for reimbursement. Maintenance records will be required to demonstrate that the equipment was in good operational order prior to the disaster. FEMA funding will be limited to the cost of repairs less insurance proceeds, to avoid duplication of benefits, as required in Section 312(a) of the Stafford Act. Repairs to equipment in excess of \$5,000 shall require the applicant to obtain insurance equal to the amount of eligible damage to protect against future loss from the same hazard, incompliance with Section 311(b) of the Stafford Act. FEMA will use the following criteria to determine eligibility:
 1. Damage to equipment must be disaster-related and not included in the FEMA *Schedule of Equipment Rates* or in other FEMA-approved rates.

2. Equipment must have been operated in severe or unusual conditions (e.g., in high water, deep sand, fire, very rough terrain, salt water, heavy snow, or in a heavy-debris environment) during emergency operations.
- B. Equipment damaged or requiring maintenance due to routine use under normal working conditions for which the equipment was designed will not be eligible for any reimbursement costs other than those designated in the *FEMA Schedule of Equipment Rates* or other FEMA-approved rates (44 CFR §206.228(a)(1)).
- C. Damages which FEMA determines to have been reasonably avoidable are not eligible for reimbursement.
- D. Eligible Costs. Examples of potentially eligible costs resulting from operations in severe conditions include:
1. Damage caused by hitting submerged objects.
 2. Damage caused by the disaster as a direct result of accomplishing emergency work, such as equipment washed away by high water when working to repair a breached levee or dam.
 3. Necessary cleaning of moving parts to remove foreign material that would, if not removed, cause damage in the equipment.
 4. Fluid changes for equipment not designed for use in high water conditions.
 5. Repairing or replacing tires and repairing undercarriage damage as a result of operating in severe debris conditions.
 6. Damage to equipment caused by civil unrest or terrorist activity (e.g., from other than a natural disaster) when the event results in a Presidentially-declared disaster or emergency declaration.
 7. Replacement of fire hoses used to pump raw sewage or other contaminated liquids under emergency conditions, and when the cleaning of the hoses was not reasonably feasible.
 8. Damage due to vehicle accident(s) caused by conditions resulting from the declared event while performing eligible emergency work.
- Ineligible Costs. Equipment damaged or destroyed when used for other than its intended design and function is ineligible for reimbursement unless it was the only equipment available to save lives or protect property from imminent threat of harm (44 CFR §206.225(a)(1)). Examples of specific costs that are not eligible for reimbursement include:
- a) Corrosion.
 - b) Changing of fluids, except when required by other eligible damage or as provided in Section VII.D.4 of this policy,
 - c) Damage to equipment that was not related to performing eligible work, e.g., damage as the result of vandalism (except under the conditions specified in paragraph VII-D-6) or operator error.
- E. Repetitive Damage. Generally, applicants operating in a high-risk environment (e.g., areas prone to frequent flooding or hurricanes), and 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.

VII. ORIGINATING OFFICE:

Disaster Assistance Directorate (Public Assistance Division)

VII. SUPERSESSION:

This policy supersedes Response and Recovery Policy 9525.8, dated August 17, 1999, and any other relevant provisions of previous policy or guidance documents.

X. REVIEW DATE:

This policy does not automatically expire, but will be reviewed no later than 3 years from the date of publication.

____//Signed//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9525.9 – Section 324 Management Costs and Direct Administrative Costs (2007)

I. TITLE: Section 324 Management Costs and Direct Administrative Costs

II. DATE: November 13, 2007 (Superseded on January 1, 2016)

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.

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).
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 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))
 - 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.
- 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 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:

"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).
- 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.

X. 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

9525.9 – Section 324 Management Costs and Direct Administrative Costs/9525.14 – Grantee Administrative Costs Memorandum (2009)

DATE: September 8, 2009 (Superseded on January 1, 2016)

MEMORANDUM FOR: Regional Administrators
Acting Regional Administrators
FEMA Regions I – X
Transitional Recovery Office Directors
Federal Coordinating Officers

ATTENTION: Disaster Assistance Division Directors

FROM: Elizabeth A. Zimmerman
Assistant Administrator
Disaster Assistance Directorate

SUBJECT: Disaster Assistance Policy DAP9525.9, *Section 324 Management Costs and Direct Administrative Costs and Recovery Policy*
9525.14, *Grantee Administrative Costs*

This memorandum provides additional guidance on implementing Disaster Assistance Policy DAP9525.9, Section 324 Management Costs and Direct Administrative Costs and Recovery Policy 9525.14, Grantee Administrative Costs.

Grantee Direct Administrative Costs

In order to streamline and improve the efficiency of reimbursing grantees for direct administrative costs, FEMA will allow grantees to claim direct administrative costs on an applicant basis rather than on a project basis. Therefore, the grantee may request reimbursement for direct administrative costs on one category Z project worksheet (PW) per applicant, rather than multiple PWs as stipulated in paragraph VII D. (7) of DAP 9525.9, Section 324 Management Costs and Direct Administrative Costs. Grantees must continue to document its direct administrative costs on a project-by-project basis. When utilizing one Category Z PW, the PW must cross-reference each emergency work or repair project PW and document the direct administrative costs for each project separately.

Use of Contractors

Pursuant to Recovery Policy 9525.14, Grantee Administrative Costs, grantees and applicants may use contractors to perform grant management functions. Neither Federal regulations nor FEMA policy precludes Public Assistance grantees or applicants from using contractors to perform eligible Public Assistance grants management activities. Public Assistance staff should not discourage use of contractors. Such contractor costs are eligible for funding provided as section 324 management costs or as direct administrative costs.

Reasonable Contract Costs

FEMA will reimburse grantees and applicants reasonable administrative costs to perform eligible Public Assistance activities. Staff must consider the following factors when evaluating the reasonableness of requested costs:

- (1) Method of contracting for the services;
- (2) The skill level of persons performing the activities; and
- (3) The amount of time required to perform an activity.

FEMA regulations found at 44 CFR §13.36 Procurement, outline procurement requirements for grant recipients to use for all contracts funded by grants. FEMA usually considers costs resulting from competitively procured contracts to be reasonable, provided the skill levels are appropriate for the activities performed. Contract costs are typically higher than the cost of force account labor. For most Public Assistance projects, a junior or mid-level technical or program specialist (or equivalent) is appropriate for the effort. For complex projects, staff with a higher level of technical proficiency and/or experience may be appropriate. Public Assistance staff must ensure that the grantee or applicant contracted for the appropriate mix of skill levels for the types of emergency work and permanent repair projects that are eligible for FEMA funding.

The last element staff must consider in determining reasonable costs is the amount of time required to perform a particular task. Typically, the major tasks include inspecting damaged facilities, determining the extent of damage, and developing the scope of work and cost estimate required to restore the facilities. (Attached is a list of tasks related to Public Assistance projects that applicants and grantees perform.) Staff should use the amount of time it takes FEMA staff to perform similar functions as a reference point to determine if the amount of time the grantee or applicant requests is reasonable.

Small Projects

The level of effort to prepare PWs will vary from applicant to applicant. Many applicants seek FEMA support in developing scopes of work and cost estimates. However, FEMA encourages applicants to prepare project worksheets for small projects. When applicants prepare project worksheets for small projects, FEMA will validate 20 percent of the small projects for compliance with program eligibility and reasonableness. If FEMA determined that the first sample meets program eligibility requirements, FEMA will accept all of the applicant's small projects without detailed review (except for math errors). If FEMA observes issues with the first sample, it will validate another sample. If the second sample fails validation, FEMA will review all of the applicant's small projects.

Large Projects

Normally, FEMA works with the grantee and applicant to prepare the project worksheet for large projects. FEMA expects applicants to identify the scope of disaster-related damages to their facilities. Applicants may document the disaster damages, scope of work, and cost estimate on a PW and submit the project worksheet to FEMA for review. Applicants should inform FEMA of the level of effort they will invest in developing a large project PW to facilitate better coordination and avoid duplication of effort.

Travel and Per Diem

Travel and per diem costs for contractor employees that work on eligible Public Assistance projects are eligible as direct costs if such costs can be and are attributed to individual projects.

Documentation

In accordance with 44 CFR §13.20 Standards for financial management agreements, grantees and applicants must maintain documentation to support all costs they request for reimbursement. Grantees and applicants must provide a summary of backup information and a random sample of original documentation if they have completed the project when FEMA writes the project worksheets. If FEMA prepares a project based on an estimate, grantees and applicants must provide documentation on how they developed the estimates for direct grant management costs.

Direct Administrative and Section 324 Management Costs

The attached table provides a list of PA administrative activities. While all activities are eligible for reimbursement with section 324 Management Cost funding, those marked as “Direct” may be direct charged to projects if they can be fully documented as such. The table is not an exhaustive list and there may be exceptions to the categorizations.

9525.11 – Payment of Contractors for Grant Management Tasks (2001)

1. **Date Published:** April 22, 2001 (Rescinded on January 23, 2013)
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 Suiter
Executive Associate Director
Response and Recovery Directorate

9525.12 – Disposition of Equipment, Supplies, and Salvaged Materials (2000)

1. **Date Published:** August 29, 2000 (Superseded on July 14, 2008)
2. **Response and Recovery Directorate Policy Number:** 9525.12
3. **Title:** Disposition of Equipment, Supplies and Salvaged Materials
4. **Purpose:** This policy provides guidance on recouping current fair market value of equipment and supplies purchased by Grantees and subgrantees and salvaged materials.
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 personnel involved in the administration of the Public Assistance (PA) Program.
6. **Background:**
 - A. There are many instances after a disaster where a Grantee or sub grantee will not have sufficient equipment and supplies to respond to a Presidential declared disaster in an effective manner. While FEMA may assist in purchasing the 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 supplies when the items are no longer needed for a disaster.
 - B. For the purpose of this policy, the current fair market value is the value of equipment and supplies determined by selling them in a competitive market or researching advertised prices for similar items on the used market. The current fair market value should be determined at the time the equipment and supplies are no longer needed for disaster operations by the Grantee or subgrantee regardless of when actual disposition takes place.
 - C. Equipment already owned by Grantees and sub grantees or purchased without Federal funds is reimbursed at FEMA equipment rates when used for eligible purposes.
 - D. Disasters often result in large amounts of debris that may have a market value. With the exception noted in Paragraph 7.B., revenue from debris must be used to reduce the project cost.
 - E. The Federal share in disposition and salvage revenue is the same as its participation in the original cost.
7. **Policy:**
 - A. Grantees and subgrantees may be eligible to purchase supplies and equipment that are necessary to respond to the effects of a disaster and to be reimbursed through a *Project Worksheet (PW)*. The items must be needed for, and used directly on, the disaster from which funding was provided.

- 1) The term "supplies" means all tangible personal property other than equipment, as defined in 7 .A.2. Disposition of residual supplies purchased by a Grantee or subgrantee with an aggregate current fair market value exceeding \$5,000 requires compensation to FEMA as described in 44 CFR 13.33(b) when the supplies are no longer needed for the current operation of the PA Program. Aggregate value is calculated per Grantee/subgrantee.
 - 2) The word "equipment" means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
 - a. Disposition by a State Grantee. States will dispose of equipment purchased for managing the PA Program in accordance with State Jaws and procedures as described in 44 CFR 13.32(b). The State is not required to compensate FEMA for FEMA's share of the current fair market value.
 - b. Disposition by a Non-State Grantee.
 - i) A non-State Grantee disposing of equipment purchased for managing the PA Program with a current fair market value in excess of \$5,000 per unit as described in 44 CFR 13.32(e)(2) is required to compensate FEMA its share of the current fair market value.
 - ii) A non-State Grantee disposing of equipment purchased for managing the PA Program with a current fair market value less than \$5,000 per unit as described in 44 CFR 13.32(e)(1) may retain, sell or otherwise dispose of it with no further obligation to FEMA.
 - c. Disposition by a Subgrantee.
 - i) A subgrantee disposing of equipment purchased for disaster operations under the PA Program with a current fair market value exceeding \$5,000 per unit as described in 44 CFR 13.32(e)(2) is required to compensate FEMA its share.
 - ii) A subgrantee disposing of equipment purchased for disaster operations under the PA Program with a current fair market value Jess than \$5,000 per unit as described in 44 CFR 13.32(e)(1) may be retained, sold or otherwise disposed of with no further obligation to FEMA.
 - d. Fair Market Value. Fair market value will be determined by FEMA and may be based on Grantee or subgrantee research and recommendation.
 - 3) Reimbursement and Compensation.
 - a. Grantees will receive reimbursement for eligible equipment and supplies through the *PW* for management costs as allowed by 44 CFR 206.228(a)(3). Non-State Grantees must compensate FEMA for FEMA's share of the fair market value no later than financial closure of the disaster. If State Jaws and procedures provide for compensation to the entity providing the funds, State Grantees must compensate FEMA for FEMA's share of the fair market value no later than financial closure of the disaster.

- b. Subgrantees will receive reimbursement for the acquisition of eligible equipment and supplies through the *PW* process by project. Generally, reimbursement will be made without an estimated salvage value deducted on the *PW*. In accordance with 44 CFR 13.32 and 13.33 and the following guidelines, compensation to FEMA will be made, if required, when the items are no longer needed for disaster operations. (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.) Any compensation for fair market value to FEMA must be no later than financial closeout of the sub grantee.
- 4) Equipment Leasing.
- a. Leasing equipment is an eligible method of obtaining use of equipment to perform eligible work without the administrative burden of disposition requirements.
 - b. Leasing costs must be reasonable and total leasing costs cannot exceed the purchase price.
 - c. 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 still would be required to compensate FEMA for its share of the fair market value of the purchased item if the sub grantee opts to purchase instead of lease.
 - d. If the sub grantee purchases equipment outside the PA grant process, the subgrantee may be reimbursed for the eligible use of the equipment using FEMA equipment rates. If the subgrantee holds a lease-purchase agreement, the following applies:
 - i) 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 sub grantee actually incurred for the equipment.
 - ii) If the sub grantee obtains ownership through the lease-purchase contract, there is no requirement to compensate FEMA its share of the current fair market value.

- B. Disposition of salvaged materials by subgrantees must be at a fair market value and the value must be shared with FEMA. 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 sub grantee 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.

8. Supersession: This policy updates and replaces relevant provisions of previous public assistance policy documents.

9. Authorities: 44 CFR 13.32 and 13.33.

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

9525.12 – Disposition of Equipment, Supplies, and Salvageable Materials (2008)

I. TITLE: Disposition of Equipment, Supplies, and Salvageable Materials

II. DATE: July 14, 2008 (Superseded on January 1, 2016)

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.
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.
2. Disposition by Non-State Grantees and Subgrantees.
 - i. 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.
 - ii. 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:
 - i. 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.

- ii. If the subgrantee obtains ownership through the lease-purchase contract, there is no requirement to compensate FEMA.

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. ORIGINATING 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
Federal Emergency Management Agency

9525.13 – Alternate Projects (2001)

1. **Date:** July 31, 2001 (Superseded on August 22, 2008)
2. **Readiness, Response and Recovery Directorate:** 9525.13
3. **Title:** Alternate Projects
4. **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.
5. **Scope and Audience:** This policy is applicable to all major disasters declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.
6. **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. 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 facility. The proposed alternate project must be a permanent project that benefits the general public. Federal funding is reduced to a rate of 75%¹ of the Federal share of the approved estimate of eligible repair costs of the damaged facility or the Federal share of the actual cost of completing the alternate project, whichever is less. Title 44 Code of Federal Regulations (CFR) 206.203(d)(2) describes the basic requirements for alternate projects. This policy discusses applications of the regulation.
7. **Policy:** The following policy guidelines provide more detail on uses and limitations for the application of alternate project funding.
 - A. The funding is reduced to a rate of 75%² of the Federal share of the approved estimate of eligible repair costs of the damaged facility or of the Federal share of the actual costs of completing the alternate project(s), whichever is less. The eligible repair costs include the costs of meeting mandated requirements of 44 CFR 206.226. Alternate project funding in a disaster with 75/25% cost sharing would receive Federal funding of 56.25% ($75\% \times 75\%$) of the eligible cost of the original project.
 - B. Projects must meet the basic requirements outlined in 44 CFR 206.203(d)(2).
 - C. Funds may be used to repair or expand other selected public facilities, to construct new facilities, purchase equipment, or to fund hazard mitigation measures in accordance with other provisions of this policy.

¹ Ninety percent (90%) for publicly-owned facilities on unstable soil. Prior to the enactment of the Disaster Mitigation Act of 2000 on October 30, 2000, the rate for all alternate projects was 90%.

² Ninety percent (90%) for publicly-owned facilities on unstable soil.

- D. The proposed alternate project must serve the same general area that was being served by the originally funded project.
- E. A proposal for an alternate project must be submitted within 12 months of the applicant's Kickoff Meeting. The proposal must include a description of the project, an estimate of costs, starting date for work, targeted completion date, location, and identification of any historic, environmental or other legal considerations associated with the new location.
- F. Mitigation Projects. The types of mitigation projects that may be approved for alternate project funds is 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, 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, or
 - b. the eligible Private Nonprofit organization's (PNP) services and functions in the area affected by the major disaster.
 - 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.
- G. Multiple Uses 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 PA Program.
 - 2) Alternate project funds may be used across all permanent work categories (such as, expanding an existing building and replacing a sewer line).
- H. Examples. Some potentially eligible examples follow:
 - 1) Upgrading a substandard undamaged road that is subject to repeated flooding in order to better serve the general public and reduce the repetitive flood damages.
 - 2) 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.
 - 3) Relocating undamaged facilities, such as roads and utilities that are subject to repetitive damages, as a mitigation measure.
 - 4) Demolishing an outdated maintenance building (non-emergency work) and using the remainder to construct a new water treatment plant.
 - 5) Abandoning a county bridge and using the funds to build a new county maintenance shop.
 - 6) Instead of replacing a damaged/destroyed facility, using the funds to increase the capacity of a new building, to mitigate areas subject to flooding and to add a wing to an existing building being repaired.

- 7) Instead of repairing a transportation administrative building, using the funds to acquire and renovate a building to serve as a school for the arts.
 - 8) Purchasing pieces of equipment (such as scientific equipment, telecommunications switches, fire trucks, vehicles, etc.) that exceed \$5,000 per unit, have a useful life of a year or more, and would be eligible under the Public Assistance Program in a subsequent disaster.
- I. Insurance is required for the new project in accordance with Section 311 of the Stafford Act.
- J. Limitations. Ineligible uses of alternate project funds include:
- 1) Repayment of debts;
 - 2) Meeting shortfalls in a financial budget;
 - 3) Creating a new master plan for rebuilding 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); and
 - 6) The funds may not be used to pay the non-Federal share of any project, nor any operating expenses.
 - 7) Facilities that would not be eligible for Public Assistance Program funding in a subsequent disaster.

Additional requirements and limitations are cited in 44 CFR 206.203(d)(2).

- K. A facility that is not repaired, replaced, or sold must be rendered safe and secure or demolished.
- L. 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 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 is to be resolved in the original PW.
- M. There are no environmental reviews required at the original facility. Environmental compliance costs associated with the new site are the responsibility of the applicant.
- N. FEMA will ensure that an appropriate review of the alternate project site(s) [that is, where FEMA funds are being applied] is carried out in accordance with Section 106 of NHP A. The cost of this review is a FEMA eligible cost and is in addition to the capped amount for the alternate project. Costs associated with the measures to treat an adverse effect are not funded by FEMA and are not included in the capped eligible funding for the alternate project.

To encourage the applicant to protect its historic resources and as a condition of the FEMA grant for the alternate project, FEMA will require the applicant to consult with the

State Historic Preservation Officer (SHPO) to identify if the damaged facility is listed or eligible for listing on the National Register of Historic Places, and agree to measures the applicant should take to protect the historic property from any negative impacts that may result from an applicant's action under the requirements stipulated in Section 7.K. of this policy. The applicant must provide FEMA with documentation of the consultation with the SHPO. If the damaged facility is a National Historic Landmark (NHL), the applicant will immediately contact FEMA to allow FEMA to participate in the consultation process. The applicant will be responsible for all costs associated with the consultation and any measures agreed upon by the applicant and SHPO.

8. Supersession:

- A. Memorandum from Craig S. Wingo to David P. Grier dated December 4, 1995; Subject: Request for Guidance, FEMA-1031-DR-SD, PA ID# 029-00000; Codington County, County Road #4.
- B. This policy also updates and replaces relevant provisions of previous public assistance policy documents on this subject.

9. Authorities: Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Sections 101 and 406(c)(1) and (2); 44 CFR 206.203(d)(2).

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

11. Review Date: Five years from date of publication.

12. Signature:

____//Signed//____
Lacy E. Suiter
Assistant Director
Readiness, Response, and Recovery Directorate

13. Distribution: Regional Directors; Flood Insurance and Mitigation Directorate Assistant Director; Regional and Headquarters Recovery Division Directors.

9525.13 – Alternate Projects (2008)

I. TITLE: Alternate Projects

II. DATE: August 22, 2008 (Superseded on January 1, 2016)

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 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.
- 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.

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.
 - 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).
 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 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. ORIGINATING 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

9525.14 – Public Assistance Grantee Administrative Costs (2006)

I. TITLE: Public Assistance Grantee Administrative Costs

II. DATE: November 7, 2006 (Superseded on November 13, 2007)

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.

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.
- 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 the date of publication.

____//Signed//____

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

9525.15 – Disaster Recovery Operations: Telecommunications Support Lines for States (2000)

DATE: July 11, 2000 (Rescinded on January 23, 2013)

Response and Recovery Directorate Policy Number 9640
Response and Recovery Directorate Policy Number 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; and 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//____

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

DISTRIBUTION: Human Services Officers, FEMA Regions I-X; Caribbean and Pacific Area Division Chiefs; National Processing Services Centers (MNPSC, TNPSC, VNPSC) Directors; Response and Recovery Division, FEMA Regions I-X; Regional Directors, FEMA Regions I-X; Deputy Associate Director, Response and Recovery Directorate; Executive Associate Director, Response and Recovery Directorate; Chief Financial Officer, Office of Financial Management; Associate Director, Mitigation Directorate; Administrator, Federal Insurance Administration; Office of the General Counsel; Office of Emergency Information and Media Affairs; Office of Congressional and Legislative Affairs; Office of the Inspector General

9525.16 – Research-Related Equipment and Furnishings (2007)

I. TITLE: Research-related Equipment and Furnishings

II. DATE: May 4, 2007 (Superseded on May 3, 2011)

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 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.

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 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.
 - 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.

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 the date of publication.

____//Signed//____

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

9525.16 – Research-Related Equipment and Furnishings (2011)

I. TITLE: Research-related Equipment and Furnishings

II. DATE: May 3, 2011 (Superseded on January 1, 2016)

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, including applicants.

V. AUTHORITY:

Section 406, Repair, Restoration, and Replacement of Damaged Facilities, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172, 44 Code of Federal Regulations (CFR) §206.222, Applicant eligibility, 44 CFR §206.223, General work eligibility, 44 CFR §206.226, Restoration of damaged facilities, Section 311, Insurance, of the Stafford Act, 42 U.S.C. 5154, 44 CFR §206.250, General, 44 CFR §206.252, Insurance requirements for facilities damaged by flood, and 44 CFR §206.253, Insurance requirements for facilities damaged by disasters other than flood.

VI. BACKGROUND:

- A. Title 44 CFR §206.226 (h), Restoration of Damaged Facilities: Equipment and furnishings states, “If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items,” and 44 CFR §206.226 (i), Restoration of Damaged Facilities: Library books and publications states, “replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.”
- B. Title 44 CFR §13.3, Definitions, 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.” Title 44 CFR §13.3, Definitions 1 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 its institutional mission. The applicant is typically a higher education institution, a medical school, or a hospital-both public and non-profit- often conducting research, such as biomedical. 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.
- D. If an insurance policy applies to equipment and furnishings, FEMA must take that policy into account before providing funds and offset otherwise eligible disaster-related cost reimbursements by "actual and anticipated insurance recoveries." (See 44 CFR §206.250(c)). Further, the insurance requirements and conditions stated in 44 CFR §206.252 and 44 CFR §206.253, apply to a request for Public Assistance to repair or replace equipment and furnishings. The subgrantee is required to obtain and maintain such types of insurance as are reasonable and necessary to protect against future loss to such contents from the types of hazards that caused the damage.

VII. DEFINITIONS:

- A. Furnishing: For the purposes of this policy, the term "furnishing" means any tangible property other than the equipment, as defined in 44 CFR §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.

VIII. POLICY:

- A. General Eligibility. Eligible Public Assistance applicants conducting active research programs, and that have incurred damage 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 PNP research program must support an eligible PNP service, such as an educational or medical, 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. An applicant via its scientific research staff, an independent member of the scientific community, or a certified expert selected by an applicant will make reasonable decisions on the genetic likeness of the Lab animals.
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.

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 or other institutions, whichever is less. 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 service 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 should be available for purchase from commercial sources or other institutions, and support an on-going eligible educational or medical 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.
 - 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, as defined in 44 CFR §206.226(h).
- 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 will 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 major disaster may be eligible for Public Assistance grant funding.

IX. RESPONSIBLE OFFICE:

Recovery Directorate (Public Assistance Division)

X. SUPERSESSION:

This policy supersedes DAP9525.16 dated April 30, 2007, and all previous guidance on this subject as to major disasters declared on or after the date this policy becomes effective.

XI. REVIEW DATE:

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

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Deborah Ingram
Assistant Administrator
Recovery Directorate

9526.1 – Hazard Mitigation Funding Under Section 406 (1998)

1. **Date Signed:** August 13, 1998 (Superseded on July 30, 2007)
2. **Response and Recovery Directorate Policy Number:** 9526.1
3. **Title:** Hazard Mitigation Funding Under Section 406 (Stafford Act)
4. **Purpose:** Provide guidance on the appropriate use of Section 406 hazard mitigation discretionary funding. 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.
5. **Scope and Audience:** This policy applies to all disasters declared after publication of this document. It is intended to guide all FEMA personnel responsible for the administration of the FEMA public assistance grant program.
6. **Background:**
 - A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, provides FEMA the authority to fund the restoration of eligible facilities which have sustained damage due to a Presidential declared disaster. Within the enabling act, Section 406 also contains a provision for the consideration of funding additional measures, not required by applicable codes and standards (further described in 44 CFR 206.226) that will enhance a facility's ability to resist similar damage in future events. 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 opportunities to prevent recurrence of similar damage from future, similar disaster events. Such measures are in addition to any measures undertaken to comply with applicable codes and standards, although such compliance itself, could be considered a form of mitigation.
 - B. Section 406 hazard mitigation funding and Section 404 hazard mitigation funding are distinct. Proposals for measures intended to benefit undamaged facilities, and measures not directly related to the damaged elements for which restoration work on a facility is performed are candidates for funding under Section 404. Section 406 funding is more appropriately viewed as stemming from, and related directly to, the repair work required as a result of the disaster. If a combination of Section 404 and Section 406 funding is intended, the Section 404 application should be submitted in a timely manner.
 - C. Section 406 hazard mitigation funding under the Stafford Act is a discretionary spending program. While the law provides that the President may authorize funds for eligible projects, it does not require funding. FEMA, Grantee and Subgrantee 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.

- D. 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 repairs (codes and standard mandated or otherwise) it will fund pursuant to the Stafford Act. The Stafford Act and applicable regulations cannot be read or interpreted as authorizing State or local building officials or agencies to determine the amount of Federal disaster assistance funds FEMA will contribute to a project.

7. Policy:

- A. Section 406 provides discretionary authority to fund mitigation measures in conjunction with the repair of damaged facilities. 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. These opportunities usually present themselves during the repair/replacement efforts.
- B. While all parties must remain mindful of relative costs and benefits and prudent use of Federal disaster funds, a calculation of benefits and costs, using the FEMA approved computer model, no longer is necessary for justification of Section 406 funds.
- C. Mitigation measures must be determined to be cost-effective. Any one of the following means may be used to determine cost-effectiveness:
 1. 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) will be determined to be cost-effective, as long as the mitigation measure does not exceed 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 that the measure is cost-effective.
- D. Proposed 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 negatively impact a facility's operation or risk from another hazard.
- E. Costs of meeting applicable codes/standards in accordance with 44 CFR §206.226 is distinct from mitigation funding.
- F. There may be no duplication in 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.

- G. Costs approved for project-specific mitigation measures under Section 406 of the Stafford Act may not be applied to improved projects which will involve the replacement of the disaster-damaged facility, whether on the same site or an alternate site. However, funds recommended for mitigation measures may be approved for an improved project which will include the work required to repair the disaster-damaged facility and restore its function, as well as improvements.
- H. The cost caps (15% or 100%) for Section 406 hazard mitigation measures related to windows will be based on the total cost of damage to: 1) the damaged element, and 2) the affected building contents.

8. Supersessions:

- A. Paragraph 3.a) of October 14, 1994 Memorandum on "Benefit-cost Analysis in Support of Potential Hazard Mitigation Projects" directed to Regional Directors and Federal Coordinating Officers from Craig Wingo (RR) and Robert Shea (HM). The memorandum was published in Chapter 4511.600 of Public Assistance Policy and Guidance Compendium.
- B. References to Section 406 funding of March 1995 Memorandum on "Benefit-cost Analyses in Support of Potential Hazard Mitigation Projects" directed to Regional Directors and Federal Coordinating Officers from Craig Wingo (RR) and Robert Shea (HM). The memorandum was published in Chapter 4511.600 of Public Assistance Policy and Guidance Compendium.
- C. April 26, 1995, memorandum from Craig Wingo (RR) to William Tidball (FCO, DR-1008) on Section 406 Discretionary Hazard Mitigation Funding. Published in PA Compendium Chapter 4511.600

9. Authorities and References:

- A. Section 406(e) of the Robert T. Stafford Act, as amended: "(1) General Rule. For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private, nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specification, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement."
- B. Reference: March 24, 1995, memorandum entitled "ENVIRONMENTAL POLICY MEMO #3 Policy for Projects Completed without Environmental Review Required by the National Environmental Policy Act (NEPA).

10. Originating Office: RR-IS

11. Review Date: Two years after publication

12. Signature:

____//Signed//____

Lacy Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters RR Division Directors

See attached appendix for potential measures that are predetermined to be cost effective.

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APPENDIX (April 29, 1998)

The following potential mitigation measures (reference: Paragraph VII.C of the policy) 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;
- Meet standards of good professional judgment; and
- Otherwise meet requirements stipulated in the policy on Hazard Mitigation Funding Under Section 406 (Stafford Act), RR Policy Number: 9526.1.

NOTE: This list will continue to be evaluated and will evolve over time as new information becomes available.

Infrastructure Systems:

- A. Drainage/crossings and bridges.
 1. When drainage structures are destroyed, replacing the structure with multiple structures or a larger structure. However, structures need to be considered with regard to a total drainage system and should not be replaced without a watershed hydrology study.
 2. Low span bridges - Demolish/replace damaged low span bridges or other crossings that act to collect debris, increase flooding, and/or can be severely damaged.
 3. Low-water crossings - Where traffic counts are low, replacing bridges with carefully placed low-water crossings.
 4. Debris traps - Installing traps upstream of a culvert to prevent culverts from becoming clogged by vegetation.
 5. Gabion baskets, riprap, sheetpiling, and geotextile fabric installation - Installation to control erosion.
 6. Headwalls and wing walls - Installation to control erosion.
 7. Restraining cables on bridges - Installation of cables to restrain a bridge from being washed off piers or abutments.
- 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 –
 - a. Repair, lining or encasement of damaged sections to prevent infiltration or structural collapse.
 - b. Relocating sections of damaged sewer lines to avoid damage from slipout on roads or to avoid damage to lines crossing a stream or drainage area.
 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 ease the hook-up of portable emergency generators.

- 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 -Strengthening 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 floodproofing.
- E. Electric power distribution.
 - 1. Pad-mounted transformers - elevating above the base flood elevation, or lowering them or burying them in non-flood, high-wind areas.
 - 2. Using multiple poles to support transformers.
 - 3. Burying lines.
 - 4. Anchoring or otherwise protecting fuel tanks from movement in a disaster.
 - 5. Replacing damaged poles with higher-class pole, or with a different material pole such as replacing wood poles with spun concrete.
 - 6. Adding guy wire or other additional support to power lines.
 - 7. Removing large diameter communication lines from power poles.
 - 8. Providing looped distribution service or other redundancies in the electrical service to critical facilities.
- F. Above ground storage tanks - Strengthening or stiffening base connections.
- G. Underground pipelines - Installation of shut-off valves (based on accepted practice) so that damaged sections of pipeline can be isolated.

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, no Section 406 hazard mitigation funding is appropriate.
 - 2. Buildings not substantially damaged under NFIP regulations - If technically feasible, dry floodproofing. 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 never be replaced with the same material unless the cause of failure has been identified and corrected.
1. Low slope roofs - Replacement of the entire roof with a roof covering with a secondary membrane and a fully adhered roof covering that is not subject to progressive failure, such as a modified bitumen. Mechanically fastened insulation or membranes are not acceptable.
 2. Curbing and flashing -Single membrane and built up roofs can be susceptible to progressive failure from flashing and curbing failure. These items should be inspected and repaired or replaced. National Roofing Contractors can provide technical advice.
 3. Ballasted roof systems -Roof systems with gravel or other small ballast should be replaced with ballast of sufficient weight that it does not become airborne causing increased damages.
 4. Roof-mounted equipment should be attached to a foundation that will resist expected wind forces.
 5. Hurricane clips -Hurricane clips may be recommended for use in high wind areas.
- C. Shutters - In areas subject to hurricane winds, shutters are appropriate in the following areas.
1. All windows on critical facilities such as hospitals.
 2. The lower floors of buildings with windows most likely to be struck by debris.
 3. Windows of buildings with very high value contents that can be damaged by water (such as libraries and document centers).
 4. Windows of buildings subject to debris from nearby ballasted roofs, metal buildings, manufactured homes or other structures likely to fail and result in debris.
- D. Anchoring - Anchoring of mechanical and electrical equipment in critical facilities.
- 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 overhead pipes and electrical lines to meet seismic loads.
 2. Bracing interior walls and partitions that could collapse, preventing safe exit from the building.
 3. Bracing parapets, anchoring veneer or cladding, and bracing other nonstructural elements that could collapse and cause injury or block safe exit of a building during an earthquake.
- G. Replacement of glass (with break resistant material) in mullions to prevent breakage and fallout in the event of building movement.

9526.1 - Hazard Mitigation Funding Under Section 406 (2007)

I. DATE: July 30, 2007 (Superseded on March 30, 2010)

II. TITLE: Hazard Mitigation Funding Under Section 406 (Stafford Act)

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 Presidential 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 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:
 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 (bchelpline@dhs.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.
- 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.

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

See attached appendix for potential measures that are predetermined to be cost effective.

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Appendix A

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.

NOTE: This list will continue to be evaluated and will evolve over time as new information becomes available.

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.
 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. If pumps and their attached motors are damaged by storm water inundation, replace them with submersible or inline pumps as appropriate.
 - d. 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.
- 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.
 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 values between tanks and distribution lines to minimize damage and leaks.
- G. Underground pipelines.
 1. Installation of shut-off valves so that damaged sections of pipeline can be isolated.

Buildings:

- A. General effects of flood damage.
 - 1. Buildings substantially damaged under NFIP regulations - Repair, dry floodproofing, 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.
 - 2. Roof-mounted equipment should be attached to a foundation that will resist expected wind forces.
 - 3. Hurricane clips for use in high-wind areas.
 - 4. 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. 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. 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.
- 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.
 - 1. Installation of flexible piping at pipe/conduit connections to equipment to accommodate expected movement in an earthquake.

- A. 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.

- B. Replacement of glass.
 - 1. Replacement of glass with impact-resistant material.

- A. 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.

- B. 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.
 - 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.

- C. 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.

9526.1 – Hazard Mitigation Funding Under Section 406 (2010)

I. TITLE: Hazard Mitigation Funding Under Section 406 (Stafford Act)

II. DATE: March 30, 2010 (Superseded on January 1, 2016)

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. 5172. 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. AUTHORITY:

Section 406(e) Repair, Restoration, and Replacement of Damaged Facilities of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172 and Title 44 Code of Federal Regulations (CFR) §206.226 Restoration of damaged facilities.

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. Title 44 CFR §206.226 Restoration of damaged facilities contains a provision for the consideration of funding additional measures 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 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. Normally, this work is performed on the parts of the facility that were actually damaged by the disaster. In some instances, an eligible mitigation measure may not be an integral part of the damaged facility. FEMA will consider these exceptions 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:
 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. Public Assistance personnel can obtain the software from FEMA by downloading the software from <http://www.bchelpline.com>. If you need technical assistance with the FEMA BCA tools please contact the BCA helpline via e-mail (bchelpline@dhs.gov) or by calling 1-866-222-3580. The benefit/cost analysis will be based on a comparison of the total project cost to the total cost of the following projected benefits: 1) Damage to the facility and its damaged contents; 2) Emergency protective measures required as a result of that damage; 3) Temporary facilities required due to the damage; 4) Loss of function; 5) Casualty (loss of life and injury); and 6) Cost avoidance (damages avoided in the future due to mitigation measures).
- 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. FEMA must approve proposed hazard mitigation projects prior to funding. FEMA will evaluate the proposed hazard mitigation projects for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. In addition, FEMA will ensure that the proposed hazard mitigation projects do not cause a negative impact to the facility's operation, surrounding areas, or susceptibility to damage from another hazard.
- E. The cost of meeting applicable codes/standards in accordance with 44 CFR §206.226(d) Restoration of damaged facilities, *Standards* and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately.
- 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) **Restoration of damaged facilities.** *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.

VIII. RESPONSIBLE OFFICE:

Recovery Directorate (Public Assistance Division)

IX. SUPERSESSION:

This policy supersedes DAP9526.1, *Hazard Mitigation Funding Under Section 406 (Stafford Act)*, dated July 30, 2007, 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//____

Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

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Appendix A

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.

NOTE: This list will continue to be evaluated and will evolve over time as new information becomes available.

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.
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. If pumps and their attached motors are damaged by storm water inundation, replace them with submersible or inline pumps as appropriate.
 - d. 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.
- 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.
 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.
 1. Installation of shut-off valves so that damaged sections of pipeline can be isolated.

Buildings – General:

- 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 situations. Section 406 mitigation should be considered in those cases where the 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.
 - 2. Roof-mounted equipment should be attached to a foundation that will resist expected wind forces.
 - 3. Hurricane clips for use in high-wind areas.
 - 4. 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. 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. 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.
- 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.
 - 1. Installation of flexible piping at pipe/conduit connections to equipment to accommodate expected movement in an earthquake.
- F. Bracing.
 - 1. Bracing of 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.
 - 1. 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.
 - 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 pier 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 direct water away from the structure to prevent interior or basement water damage.

9527.1 – Seismic Safety, New Construction (2000)

- 1. Date Published:** January 13, 2000 (Superseded on November 21, 2007)
- 2. Response and Recovery Directorate Policy Number:** 9527.1
- 3. Title:** Seismic Safety - New Construction
- 4. Purpose:** This policy is to provide guidance in determining the seismic requirements and funding eligibility for new building construction which involves Public Assistance Program grants.
- 5. Scope and Audience:** This policy is applicable to all major disasters and emergencies. It is for use by Federal Emergency Management Agency (FEMA) personnel making public assistance eligibility determinations for the Public Assistance Program.
- 6. Background:** 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, Federal Register, Vol. 55, No. 6, pp. 835-837. 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 ... 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." Building repairs are excluded from the requirements of this Executive Order for new buildings.

Section 4(a) of Executive Order 12699 makes the Interagency Committee on Seismic Safety in Construction (ICSSC), through consensus procedures, responsible to FEMA 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 the Development of Seismic Regulations for New Buildings. On December 4, 1998, the ICSSC made its recommendations on the substantial equivalency between the 1994 NEHRP Recommended Provisions and the following current model codes and standards:

- Building Officials & Code Administrators International (BOCA), 1996, BOCA National Codes. – NOT EQUIVALENT
- International Conference of Building Officials (ICBO), 1997, Uniform Building Code. – EQUIVALENT

- Southern Building Code Congress International (SBCCI), 1997, Standard Building Code.
– NOT EQUIVALENT
- American Society of Civil Engineers, (ASCE), 1996, Minimum Design Loads for Buildings and Other Structures, ASCE 7-95. – EQUIVALENT

The model building codes were found NOT EQUIVALENT for specific items that were judged to be seismically insufficient by the ICSSC. This information is available from the ICSSC. When the International Building Code (IBC) 2000 is published, the ICSSC will consider its equivalence to the 1997 NEHRP Recommended Provisions. It is likely that the IBC 2000 will be judged equivalent, as its seismic provisions are based on the 1997 NEHRP Recommended Provisions.

We have amended this policy since it was published on December 28, 1999. At that time, the final sentence of the policy statement was inadvertently omitted.

7. Policy: All construction of new buildings that is eligible under the Public Assistance Program must use appropriate seismic design and construction standards and practices. This includes the construction of new buildings for:

- Alternate or improved projects, and
- The replacement of seriously damaged or destroyed buildings.

Standards and practices vary by location based on the probability of an event occurring in a given area.

The cause of the declared disaster does not affect the application of the Executive Order 12699's seismic requirements for all new federally funded or assisted building construction.

If FEMA funds a replacement building, the costs of meeting required and reasonable seismic codes will be eligible costs.

To the extent that eligible funds are used on new construction for an alternate or improved project, any additional costs to satisfy appropriate seismic requirements beyond those for the original approved project will not be eligible for FEMA funding.

At this time the **only** model codes that are substantially equivalent to Federal recommendations for new building seismic design and construction are the 1997 UBC and ASCE 7-95.

If a community uses a code other than those reviewed and judged equivalent by the ICSSC, the Director of the National Earthquake Program (NEP) will judge its equivalency.

8. Supersession: Policy 9527.1 published on December 28, 1999.

9. Authorities: Earthquake Hazards Reduction Act of 1977, as amended; Part 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; Executive Order 12699.

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.

9527.1 – Seismic Safety, New Construction (2007)

I. TITLE: Seismic Safety – New Construction

II. DATE: November 21, 2007 (Superseded on January 1, 2016)

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 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.
- 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 three years from the date of publication.

____//Signed//____
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9527.2 – Interim Policy on Construction Codes and Standards for the Nisqually Earthquake Disaster (2001)

1. **Date Signed:** June 8, 2001 (Archived on October 25, 2011 – Disaster Closeout Date)
2. **Response and Recovery Policy Number:** 9527.2
3. **Title:** Interim Policy on Construction Codes and Standards for the Nisqually Earthquake Disaster
4. **Purpose:** This policy provides guidance in determining the eligibility of State and local building codes and standards as they apply to the repair and restoration of facilities damaged in 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 is intended to guide FEMA personnel in making eligibility determinations for the Public Assistance Program.
6. **Background:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, ("Stafford Act") authorizes FEMA to fund the repair and restoration of eligible facilities damaged in a Presidential declared disaster. Section 406(e) of the Stafford Act requires that the 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." 44 CFR 206.226(b), which is part of the implementing regulations of the Stafford Act, provides that, to the extent a standard¹ requires changes to the predisaster construction of a facility when it is being repaired or restored, those changes will only be eligible for FEMA funding if the code meets specific criteria.

Since adoption of the specific criteria in 44 CFR 206.226(b) (hereafter generally referred to as "the five criteria"), FEMA has evaluated many local codes as they apply to the facts of specific projects. The determinations rendered in these cases with respect to the application and interpretation of the five criteria have served as precedent for decisions rendered in subsequent cases and subsequent disasters. These decisions, as well as legal requirements, current policy and current practices have been compiled in this document because code issues are especially prevalent in earthquake disasters.

7. **Policy:**
 - A. General Provisions.
 - 1) Applicability –
 - a. The five criteria apply to codes that change the predisaster design of a facility. A code changes the predisaster construction of a facility if it requires that upgrades be performed in addition to repairs to return the facility to its pre-disaster design.

¹ Codes, specifications and standards are referred to as "codes" in this document.

- b. If FEMA determines that a code meets the five criteria and the damage to the facility meets the threshold in the code, the work and associated costs – including any eligible upgrades required by the code - will be eligible for funding as a repair under §406(e) of the Stafford Act.
 - c. If a code does not meet the criteria, repair funding will be limited to funding to bring the facility back to its pre-disaster design. Upgrades will not be eligible. Similarly, if a code meets the five criteria but the damages to the facility do not meet the threshold(s) in the code, it will only be eligible for funding to repair the facility to its predisaster design.
 - d. Upgrades on specific projects which are not eligible as repairs under 406(e) of the Stafford Act and not eligible as code upgrades may be eligible as discretionary 406 hazard mitigation.
- 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. These thresholds are usually triggered when repair work exceeds either a certain dollar cost or a certain percentage of the building's replacement cost, or when there is a loss of a certain percentage of the building's lateral capacity. A trigger may mandate different types of upgrades. For instance, a trigger may require that the entire structural system be seismically upgraded or, in addition to upgrading the entire structure, that all systems (e.g. mechanical, electrical) be brought into conformance with current codes for new construction.
 - b. FEMA will determine the reasonableness of thresholds and will pay only for upgrade work triggered as a result of damages (not repairs).
- 3) Pre-disaster design –
- a. "Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time of the disaster if that is different than the most recent designed capacity.
 - b. The term, "return to pre-disaster design," means to return a structure using code conforming methods and materials to a condition that is "substantially equivalent" to its pre-disaster design and structural capacity.
- 4) In conformity with applicable code Section 406(e)(1) of the Stafford Act requires that FEMA-funded repair be to predisaster condition in conformity with current applicable codes. The Stafford Act does not require that FEMA provide funding to make an *eligible building* meet current code for new construction, only that FEMA must provide the assistance necessary for a sub grantee to undertake *eligible repairs* in a code conforming manner using current materials and workmanship.
- 5) FEMA's Authority. FEMA has the obligation and authority to determine which repairs, code-mandated or otherwise, it will fund. This is true regardless of whether a

building official may require that additional work be performed in order to obtain a building, occupancy or other permit.

B. Provisions of 44 CFR 206.226(b).

- 1) The code must apply to the type of repair or restoration required. Codes for new construction and repair work often are different.
 - a. Building code provisions that require changes or upgrades to a facility must be reasonably related to the performance of earthquake damage repairs in order to be recognized as eligible costs; that is, there must be a direct relationship between the upgrade work required by the code and the specific disaster damage being repaired. This is usually determined by reference to the code trigger.
 - b. If a facility is eligible for replacement, eligible funding will be based on the cost to construct the new facility in accord with current codes for new construction.
 - c. If a facility is eligible only for repair, FEMA will fund in accordance with the codes governing repair.
 - d. Code provisions that require upgrades to undamaged systems (HV AC, electrical, etc.) as a result of the earthquake damage repair work undertaken will not be eligible for FEMA funding. For those systems with damages, the eligible work on such systems will generally be limited to the repair of damage to the system itself and work in direct association and proximity to the repair of a damaged element. Work to upgrade or change the configuration of such systems to conform to certain code provisions will not be eligible. This is true regardless of whether or not a building official may require this additional work, or that the work may be needed to gain a building occupancy or other permit.
- 2) Be appropriate to the predisaster use of the facility.
 - a. This provision refers to predisaster use and predisaster capacity. Eligible work, either for repair of damages or for new construction, will generally be based on the facility's actual use at the time of the disaster. In cases in which a facility was being used for a lesser purpose than that for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate pre-disaster use. In cases in which the predisaster use was different from the predisaster design, the eligible work may be based on either the predisaster use or design, whichever is the lesser use or design. For example:
 - i) Case 1: a school was designed to accommodate 400 students and, at the time of the disaster, was accommodating 600 students. If the school were eligible to be replaced, it would be with a school designed to accommodate 400 students. It would not be eligible for code-required changes brought about by an increase in population. If the school did not have a swimming pool, it would not be eligible for a swimming pool even if a swimming pool were required by code. If, however, there were new requirements for increased square footage per student for the 400 students, that would be eligible for funding.

- ii) Case 2: a facility was designed as a hospital but being used as a warehouse, it will be repaired in accordance with standards applicable to a warehouse. Conversely, if the facility was designed as a warehouse but being used as a school *without redesign as a school*, it also will be repaired in accord with standards applicable to a warehouse.
- 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.
- a. "Reasonable." FEMA's authority requires it to accept only reasonable claims on recovery funds. An examination of reasonableness may involve several factors, including a determination as to the reasonableness of the code and its threshold(s) (i.e. whether they relate to the type of repair or restoration required or are technically defensible from an engineering perspective) and a determination as to the reasonableness of the method of quantifying the damages and the cost of the work. For instance, the inclusion of a very low threshold in a code that would warrant very large repairs and reconstruction may be found unreasonable. Generally, mandated upgrades to lateral force levels required for new building construction are not considered reasonable.
 - b. "Formally adopted" requires that all the requisite steps and actions be taken by the appropriate legislative body within the jurisdiction; e.g., King County or the City of Tacoma. The adopted code must be formally incorporated into the building code or the local ordinances. Design standards, guidelines, and industry practices will not be acceptable. The effective date of the code or standard must be on or before February 28, 2001.
 - c. FEMA will not recognize codes adopted by private non-profit organizations or by agencies or divisions of state or local government that are not authorized to set codes or standards applicable to both public and private facilities jurisdiction-wide.
- 4) Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility.
- a. Code provisions must apply to similar types of facilities regardless of the entity that owns the facility. This includes all buildings, both private and public, eligible and ineligible for FEMA assistance, in the entire governmental jurisdiction or in a particular hazard zone within that jurisdiction.
 - b. The phrase "similar types of facilities" refers to the type of use (e.g. hospitals, schools), type of structural system (e.g. unreinforced masonry, steel moment frame) or geographic area of equivalent seismic risk (e.g. area of known liquefaction potential). Codes that are restricted to a narrow category of facilities are not acceptable.
 - c. In order for FEMA to find that a code and its thresholds are uniformly applied, the threshold provision(s) must be triggered by the renovation of buildings, generally, and apply to the rehabilitation of buildings damaged by causes other than earthquake. Code upgrade thresholds that only apply to upgrade work as the result of earthquake-inflicted damages will not meet the five criteria.

- 5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.
 - a. This provision requires that a code that was adopted prior to the disaster also have been enforced prior to the disaster. In the unlikely event that there has been no opportunity to enforce the codes, the Acting Regional Director, Region X, is authorized to determine if this criterion is substantially met.
 - b. This criterion also requires that a code have been 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 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 enforced.
 - c. Because documents to obligate FEMA funds are frequently prepared and approved soon after an earthquake 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.

C. Special Considerations.

- 1) Americans with Disabilities Act (ADA). ADA is an applicable Federal requirement.
- 2) Historic –
 - a. If an applicant elects to perform repairs to a building that is eligible for replacement, eligible costs are limited to the less expensive of repairs or replacement. In the case of a building that is eligible for or on the National Register of Historic Properties, however, 44 CFR §206.226(d)(3) provides that if an applicable standard requires repair in a certain manner, costs associated with that code will be eligible. This exception to the cap on funding applies when there is a code that requires that the building be repaired and requires that the repair be performed in a certain manner.
 - b. Generally, state historic building codes encourage code officials to allow less intrusive alternatives to the requirements of the prevailing code. They are not prescriptive codes in that they do not establish standards that require or otherwise mandate that any particular work be performed. As a result, they generally fail to meet the five criteria.

8. Supersession: None.

9. Authorities: Section 406(e) of the Stafford Act and 44 CFR 206.226(b).

10. References: 63 Fed. Reg. No. 24, February 5, 1998, p.5896; FEMA 321, Public Assistance Policy Digest dated October 1998 and Appendix A dated August 2000; FEMA 322, Public

Assistance Guide dated October 1999; RR Policy #9524.4 Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(l) dated 9/24/98; RR Policy# 9525.5 Americans with Disabilities Act Access Requirements dated 10/26/00; RR Policy #9526.1 Hazard Mitigation Funding under Section 406 (Stafford Act) dated 8/13/98; RR Policy #9527.1 Seismic Safety-New Construction dated 1/13/00.

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

12. Signature:

____//Signed//____

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Acting Regional Director, Region X; Response and Recovery Division Director, Region X; Federal Coordinating Officer/Disaster Recovery Manager, FEMA-DR-1361-WA.

9527.3 – Interim Policy on Construction Codes and Standards for the San Simeon Earthquake (2004)

1. **Date Signed:** June 25, 2004 (Applicable to DR-1505-CA)
2. **Recovery Division Policy Number:** 9527.3
3. **Title:** Interim Policy on Construction Codes and Standards for the San Simeon Earthquake
4. **Purpose:** To prescribe policy for determining the eligibility of State and local building codes and standards as they apply to the repair and restoration of facilities damaged in the San Simeon Earthquake.
5. **Scope and Audience:** This policy is specific to the San Simeon Earthquake (FEMA DR-1505-CA) that occurred on December 22, 2003 in the State of California. It is intended to provide guidance to Federal Emergency Management Agency (FEMA) personnel in the application of 44 CFR 206.226(d) when making eligibility determinations for the Public Assistance Program.
6. **Background:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, ("Stafford Act") authorizes FEMA to fund the repair and restoration of eligible facilities damaged in a Presidential-declared disaster. Section 406(e) of the Stafford Act requires that the 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." 44 CFR.206.226(d) provides that, to the extent a code or standard¹ requires changes to the predisaster construction of a facility when it is being repaired or-restored; those changes-will only be eligible for FEMA funding if the code meets the following five criteria:
 - 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 pre-disaster use of the facility;
 - 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 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.

Since adoption of the specific criteria in 44 CFR 206.226(d) (hereafter referred to as "the Five Criteria"), FEMA has evaluated many local codes as they apply to the facts of specific projects. The determinations rendered in these cases with respect to the application and

¹ Codes, specifications and standards are referred to as "codes" in this document.

interpretation of the Five Criteria have served as precedent for decisions rendered in subsequent cases and subsequent' disasters. These decisions, as well as legal requirements, current policy, and current practices have been compiled in this document.

7. Policy:

A. 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 (i.e. work required by a code that goes beyond repair to predisaster condition) in addition to repairs, changes the predisaster construction of a facility.
 - b) If FEMA determines that a code meets all of the 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 pre-disaster design or construction. Similarly, if a code meets all of the 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 to damaged elements that are not deemed eligible pursuant to the Five Criteria and this policy, but which will enhance a facility's ability to resist similar damage in a future earthquake may be eligible as discretionary upgrades under Section 406 hazard mitigation (see Recovery DivisionPolicy#9526.I, *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. These thresholds may be triggered when repair work exceeds a certain dollar cost or a certain percentage of the building's replacement cost (damage repair thresholds), or 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 conformance. with current codes for new construction. FEMA will determine the applicability and reasonableness of all code thresholds, pursuant to subsection 7B of this policy, and will pay only for upgrade work within the same system (i.e., structural, electrical, mechanical) as the disaster-related damages. There must, consistent with this policy, be a direct relationship between the upgrade work and the disaster damage.

- 3) Guidance on Terms Used in this Policy –
 - a) "Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design (see 44 CFR §206.201(h)). It does not mean the capacity at which the facility was being used at the time of the disaster if that capacity is greater than the most recent designed capacity of the facility.
 - b) The term, "return to pre-disaster design," means to return a facility, using code conforming methods and materials, to a condition that is substantially equivalent to its pre-disaster design and structural capacity.
 - c) "Predisaster use." Means 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 immediate pre-disaster design.
- 4) In conformity with applicable codes –

Section 406(e)(1) of the Stafford Act requires that PEMA-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 current materials and workmanship.
- 5) FEMA's Authority –

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 is not obligated to 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 or other permit.

B. 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 often are different.
 - 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, based on the predisaster design of such facility, in accordance with current codes for new construction.
 - c) If a facility, system or element is eligible only for repairs (structural or nonstructural), funding will be based on the codes governing repair. Funding will be limited to 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. Work to upgrade or change the configuration of systems .that sustained

disaster-related damages to conform to certain code provisions will be evaluated for reasonableness on a case-by-case basis. This is true regardless of whether or not a building official may require this additional work, or that the work may be needed to obtain a building occupancy or other permit.

- d) Code provisions that require upgrades to undamaged structural or nonstructural elements or systems (i.e. 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 7(B)(I) specifically.
- 2) Be appropriate to the predisaster use of the facility –
- Eligible work – 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 pre-disaster use of the facility. When predisaster use is different from predisaster design, the eligible work will, in accord with the following case examples, be based on either the predisaster use or the design of the facility at the time of the disaster, whichever is the least costly.
- a) Case 1: If a 400 pupil school constructed in 1960 based on codes then requiring a certain number of square feet per student, a cafeteria and a library, but not requiring a gymnasium or swimming pool, were eligible for replacement; eligible assistance from FEMA would be based on the work required to restore a 400 student school. with a cafeteria and a library. FEMA assistance would not be available to construct a swimming pool and a gymnasium even if such facilities were required under current codes for schools. In addition, FEMA assistance would not be available to expand the school to accommodate 600 students, even though the student population at the time of the disaster was 600 students [see 7A(3)(a)]. However, if current codes required a greater number of square feet per student, the work associated with meeting that current code would be eligible but would be based on the predisaster designed capacity of 400 students [see 7 A(3)(b)].
 - b) Case 2: If a facility designed as a school was being used as a warehouse at the time of the disaster, it would be repaired in accordance with codes applicable to a warehouse: However, if the facility was designed as a warehouse but was being used as a school *without having been redesigned as a school*, it *also* would be repaired in accordance with standards applicable to a warehouse.
- 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 –
- a) "Be found reasonable." FEMA's authority requires it to accept only reasonable claims on recovery funds. An examination of reasonableness may involve such factors as reasonableness of the code, generally, and the threshold(s); whether the thresholds relate to the type of repair or restoration required by the damage; whether they are technically defensible from an engineering perspective; and whether the method of quantifying the damages 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., State of California or the particular local government. The adopted code must be formally incorporated into the building code or the local ordinance. Design standards, guidelines, policies, and industry practices will not be acceptable. The effective date of the code must be on or before January 13, 2004, the disaster declaration date. 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 is not bound by codes adopted by private non-profit organizations when determining eligible work. FEMA also is not bound by 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 criterion (4).
- 4) Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility –
- a) Code provisions must apply to all similar types and classifications of facilities regardless of the entity that owns the facility. This includes all facilities, both private and public, eligible and 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), or type of structural system (e.g. unreinforced masonry, 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, regardless of type, as well as the renovation of buildings. Code upgrade thresholds that only apply to upgrade work as the result of earthquake-inflicted damages will be evaluated on a case-by-case basis to determine if they meet the Five Criteria including, specifically, criteria 3 and 5.
- 5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect –
- 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 Director is authorized to determine if the enforcement criterion has been substantially met.
 - b) This criterion also requires that a code has been 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 officials; it must provide 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 an earthquake 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.

C. Special Considerations.

- 1) 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 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) Generally, state historic building codes encourage code officials to allow less intrusive alternatives to the requirements of the prevailing code. They are not prescriptive codes in that they do not establish standards that require or otherwise mandate that any particular work be performed. As a result, they generally fail to meet the five criteria.

8. Supersession: Not applicable.

9. Authorities: Section 406(e) of the Stafford Act and 44 CFR 206.226.

10. Originating Office: Recovery Division, Emergency Preparedness and Response Directorate.

11. Signature:

____//Signed//_____
Daniel A. Craig
Director, Recovery Division
Emergency Preparedness and Response

12. Distribution: Regional Directors; Regional and Headquarters Recovery Division Directors; Regional Public Assistance Officers.

9527.4 – Construction Codes and Standards (2008)

I. TITLE: Construction Codes and Standards

II. DATE: February 5, 2008 (Superseded on January 1, 2016)

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 pre-disaster 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 pre-disaster use of the facility;
 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. Pre-disaster 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. Pre-disaster 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 pre-disaster use of the facility, but not to a greater use or capacity than the pre-disaster design.
5. Upgrade: Work to pre-disaster design or construction that goes beyond repair.

B. General Provisions

1. Applicability
 - a. The five criteria under 44 CFR §206.226(d) apply to codes that change the pre-disaster construction of a facility. A code that mandates an upgrade in addition to repairs, changes the pre-disaster 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 pre-disaster 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 pre-disaster 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 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 pre-disaster 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 pre-disaster 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.
 - 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 pre-disaster 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 pre-disaster 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 pre-disaster use of the facility. When pre-disaster use is different from pre-disaster design, the eligible work will be based on pre-disaster 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 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., 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.
 - 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. ORIGINATING 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 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//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

IX. APPENDIX A: Case Examples

Following are case examples for the evaluation of codes using the five criteria.

1. Road shoulders are damaged in a declared event. Repair to pre-disaster 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 pre-disaster 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.
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.
3. A school damaged in a declared disaster is eligible for replacement. The school was constructed for use by 400 students, but had a pre-disaster 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 pre-disaster designed capacity of 400 students.

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 pre-disaster 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 pre-disaster use of the facility.
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 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 pre-disaster design of the facility. When pre-disaster use is different from pre-disaster design, the eligible work is based on pre-disaster design or use, whichever is the least costly.
6. During a declared event, a culvert is washed out causing road damage. Restoring the pre-disaster 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.
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.
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.

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 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.
10. Two separate disasters damaged unreinforced masonry (URM) police stations located in California and Minnesota. Both buildings are eligible for repair to pre-disaster 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.

9530.1 – Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants (1999)

1. **Date Signed:** August 17, 1999 (Superseded on 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:** The attached policy is being renumbered to become part of the redesigned FEMA Public Assistance Policy publication system.
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.
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:** Response and Recovery Directorate Policy No. 4513.100 PO,EX, dated July 19, 1996, Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants, is now renumbered as Response and Recovery Policy #9530.1.
- 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 HQ RR Division Directors

9530.1 – Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants (2000)

- 1. Date Published:** August 8, 2000 (Superseded on January 2, 2009)
- 2. Response and Recovery Directorate Policy Number:**
- 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.
9. **Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 406(d); 44 CFR 206.252.
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

9530.1 - Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Public Assistance Grants (2009)

I. TITLE:

Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Public Assistance Grants

II. DATE: January 2, 2009 (Superseded on January 1, 2016)

III. PURPOSE:

This policy reiterates the Federal Emergency Management Agency 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 Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) is requested and obtained after the declaration date.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters declared on or after the publication date of this policy. It is intended for FEMA personnel involved in making public assistance eligibility determinations.

V. AUTHORITY:

Section 406(d) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §5172; 44 CFR §206.252; and 44 CFR Parts 63, 65-70, and 72.

VI. 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 is damaged by flooding and is located in a SFHA identified for more than one year by the Administrator, and 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 available for a nonresidential building is \$500,000 and the maximum available for contents is \$500,000.
- B. There is an exception to this requirement which is specifically noted in the Stafford Act and in FEMA regulation 44 CFR §206.252, *Insurance requirements for facilities damaged by a 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 Section 406(d)(3) of the Stafford Act. If the

community enters into the NFIP, the PNP may receive Federal disaster assistance provided it purchases the required flood insurance. If the community does not enter into the NFIP within six months of the declaration, the PNP may not receive any Federal disaster assistance (44 CFR §206.252(b)).

- C. Section 406(d) of the Stafford Act requires that the amount of the Public Assistance 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, AI-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO, VI-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 is based on information that is more current 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 SFHA a specific structure or property that was inadvertently included in the SFHA on a community's FIRM. The LOMA states that the structure or property is not located within the current SFHA. An individual property owner usually submits a request for a LOMA. The LOMA request must include, among other items, a certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest adjacent grade of the structure or the lowest lot elevation, for the case of land removal, is at or 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 that officially revises 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. A community must submit new scientific or technical data that confirm physical changes within six months after the date that such information becomes available. Submission of such information is necessary to ensure that risk premium rates and floodplain management requirements will be based upon current data (44 CFR §§65.3 and 72.2).
 - 3. FEMA may choose to convert a LOMR request to a Physical Map Revision (PMR) and republish a community's FIRM panel(s) when changes are too extensive to show on a LOMR. Once issued by FEMA, PMRs, LOMAs and LOMRs officially revise the FIRM used in 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 (44 CFR §206.252).

- F. FEMA recognizes that more detailed and accurate scientific and technical information may remove a structure or land from an identified SFHA. FEMA has developed an administrative procedure for amending and revising .the SFHA shown on the current FIRMs (44 CFR Part 65). Although a FIRM may identify a structure or land as being located in a SFHA, an applicant, through a LOMA or LOMR, may confirm that the structure or land is actually outside the limits of the current 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 to have been outside the limits of the currently 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 Public Assistance Grants.

VII. POLICY:

- A. 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 an approved LOMA or LOMR, FEMA may reinstate funding, provided the parameters in Section VII.B. have been met.
- B. The applicant may submit a request for a LOMA or LOMR to FEMA up to six months after the disaster.
 1. The technical data supporting the LOMA or LOMR request reflects actual conditions that existed at the site prior to the flood event. The LOMA and LOMR applications provide the types of acceptable scientific and technical data. The applications (referred to as MT-1and MT-2) can be found on the FEMA website: www.fema.gov/library/searchTitle.do, enter MT-1or MT-2 in the Search Criteria.
 2. In the case of a LOMR, the request does not seek to have Base Flood Elevations (BFEs) modified based on new hydrology or man-made changes.
 - a. Applicants may submit a LOMR to FEMA for flood reduction projects resulting in reduced BFEs which were permitted and completed prior to the disaster date, and for which the applicant submits the data to FEMA within six months of the completion of the project.
 - b. Local governments may submit LOMRs based on federally funded flood control projects.
- C. It is the sole responsibility of a Public Assistance applicant to request a LOMA or LOMR if the applicant believes that a structure is not actually located in the identified SFHA as indicated on the current FIRM (44 CFR §§65.4 and 70.3).
- D. Costs incurred in pursuit of a LOMA or LOMR are not eligible for reimbursement (44 CFR §206.223).

VIII. ORIGINATING OFFICE:

Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION:

This policy supersedes Recovery Policy RP9530.1, Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants dated August 8, 2000, and any other previous guidance on this subject.

X. REVIEW DATE:

This policy does not automatically expire, but will be reviewed three years from the date of publication.

 //Signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9550.3 – Interim Policy on Fire Suppression Assistance (1999)

1. **Date Published:** April 15, 1999 (Superseded March 19, 2001)
2. **Response and Recovery Directorate Policy Number:** 9550.3
3. **Title:** Interim Policy on Fire Suppression Assistance
4. **Purpose:** This clarifies the Federal Emergency Management Agency's (FEMA's) policy on the eligibility of costs for staging of resources that improve response capability, mutual aid, the declaration process, the delegation of the declaration authority, and payment of Emergency Operations Center (EOC) costs. This policy reflects adjustments made and practices adopted during the 1998 and 1999 fire season.
5. **Scope and Audience:** This policy applies to all fire suppression grants approved after publication of this document. It is intended to provide guidance for FEMA and State personnel responsible for the administration of the Fire Suppression Program.
6. **Background:** We are in the process of reengineering the Fire Suppression Assistance Program in order to simplify and streamline its administration. We will work with our State partners and the U.S. Forest Service to reengineer this program, and we plan to publish proposed regulations in this regard by the end of July, 1999.

This policy is intended to clarify key elements of the current program for use in the 1999 fire season. The 1998 fire season was an important year in the evolution of Fire Suppression Assistance Program administration. There were a large number of declaration requests that provided us with a great deal of experience to clarify policy issues with the program. Early in the 1999 fire season, FEMA recognized the importance of using an EOC when dealing with wildfire situations in the wildland/urban interface.

Staging of Federal Resources. The Fire Suppression Assistance Program provides for mobilization and demobilization costs directly related to approved Federal fire suppression assistance. The regulations are silent on the eligibility of staging of Federal resources. For effective program management and simplification of the program for the State, we have established this policy for staging of Federal resources. Staging of resources enables faster response to fires.

We have determined that staging a reasonable quantity of Federal resources may be included as part of mobilization and demobilization costs when associated with a fire or fire complex approved for funding under the Fire Suppression Assistance Program.

This policy defines mobilization costs to include staging of Federal resources directly related to approved fire suppression assistance grants.

As with all FEMA programs, the Fire Suppression Assistance Program is supplemental to the State resources. Therefore, mobilization and demobilization, including staging of resources, is a State responsibility when associated with fires that are not approved under the program.

Definition. The staging of resources is accomplished when they are no longer at their original home base location but are physically moved to a location closer to the potential fire areas and are on stand-by for immediate deployment to a fire incident.

Mutual Aid. In this program we do not recognize local governmental and volunteer firefighting organizations as eligible legal entities to apply for subgrants. However, local governmental and volunteer firefighting organizations can receive Federal funding from fire suppression assistance grants by three means: mutual aid agreements with the State, State statute or Executive Order stipulating financial reimbursement of costs incurred by local governmental and volunteer firefighting organizations.

Timing of the Declaration Process. The program operates on a "real time" basis. This policy clarifies whether the decision to authorize fire suppression assistance is made on the basis of a threat of a major disaster at the time of the State's request or at the time of the actual decision. This clarification provides for effective, fair and consistent program management.

Declaration Delegation. The decision to authorize fire suppression assistance has typically been made by the Executive Associate Director or designee. During the extreme fire activity in Texas during 1998, the Executive Associate Director delegated declaration authority to the Federal Coordinating Officer. This decision to delegate this authority to the Regional level provided a more effective response during the extreme and persistent fire conditions.

Payment of Emergency Operations Center Costs. Overtime costs related to the Management of fire suppression assistance grants is particularly important when dealing with fires in the wildland/urban interface. Early in the 1999 fire season numerous fires in Florida's wildland/urban interface necessitated an organizational element to manage information and coordinate a more effective response.

7. Policy:

A. Staging of Federal Resources.

1. FEMA may reimburse a State for the cost of staging a reasonable quantity of Federal resources within a two week period prior to an approval of a fire or fire complex. Costs for mobilization to, and demobilization from, the staging area may be claimed. Demobilization may be claimed at a delayed date if deployment involved more than one approved event. When this occurs, mobilization and demobilization charges for the staging are to be claimed against the first event.
2. FEMA will authorize reimbursement to the State for the staging of Federal 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. To receive reimbursement, the State must meet all program requirements, including the floor cost requirements. For reimbursement, any asset provided by another entity must have been specifically requested by the State.
3. Reasonable staging costs will be eligible even if the State uses the staged resources against fires that are not approved, as long as at least one incident is approved for Federal assistance within the two week period and some of the staged resources are used on the declared fire.
 4. Suppression costs incurred in using staged resources while fighting the non-approved incident(s) are not eligible.
 5. In accordance with 44 CFR Part 13, the State must maintain appropriate records to support expenditures for the staging of Federal resources.
 6. FEMA does not fund pre-suppression costs. Pre-suppression costs include: costs for planning response and recovery activities, cutting fire-breaks without an imminent threat being present, training, road widening, and other activities in preparation for fire suppression. The purchase of non-expendable items such computers, phones, radios, etc. are not eligible for reimbursement.
 7. FEMA will fund staging costs on the basis of reasonable costs incurred, at a maximum of 16 hours/day for each person and 24 hours/day for equipment.

B. Mutual Aid.

State reimbursement of local governmental and volunteer firefighting organizations is eligible when there is a mutual aid agreement between the State and local entities in existence prior to the approval of the fire incident by FEMA. Additionally, FEMA accepts a State statute or Executive Order, in the absence of a mutual aid agreement that designates the State as responsible for the financial payment of its local governmental and volunteer firefighting organizations when officially responding to the State's request for assistance.

1. Mutual Aid Agreements. FEMA may, through the State, reimburse local governmental firefighting organizations for eligible fire suppression costs provided that:
 - a. There is a mutual aid agreement between the State and local entities responding to a fire incident.
 - b. The mutual aid agreement is in written form, signed and officially passed by the governing body prior to the approval of the fire incident.
 - c. The mutual aid agreement designates the State responsible for reimbursement to local governmental and volunteer firefighting organizations.
 - d. The mutual aid agreement applies uniformly in all fire incidents (i.e., the agreement is not contingent upon approval of a fire incident by FEMA).
 - e. The State submits the mutual aid agreement to FEMA's Office of General Counsel for review and determination of applicability and reasonableness.
 - f. Upon request, the State provides FEMA with the local governmental and volunteer firefighting organizations' documentation of services rendered and costs incurred.

2. Reimbursement of Mutual Aid Agreements.
 - a. Reimbursement of fire suppression assistance grants are based upon the actual and eligible costs incurred during suppression efforts. Therefore, the providing entities (i.e., local governmental and volunteer firefighting organizations) may submit their expenditures to the receiving entity (i.e., the State) for reimbursement.
 - b. Since mutual aid agreements are treated as contracts, the labor and equipment rates outlined in the agreement may be accepted provided that they are reasonable.
 - c. If the agreement provides for an initial period of unpaid assistance before reimbursement to local governmental and volunteer firefighting organizations, assistance provided during that period may be claimed:
 - 1) By the local governmental and volunteer firefighting organizations for compensation of equipment costs. Reimbursement will be made using FEMA equipment rates or the local governmental firefighting organizations rates – whichever is lower.
 - 2) By the State and applied as credit towards the State's cost share.
3. State Statutes or Executive Orders. FEMA may reimburse local governmental and volunteer firefighting organizations for eligible fire suppression costs provided that:
 - a. The statute or Executive Order designates the State responsible for the financial payment to local governmental and volunteer firefighting organizations.
 - b. The State officially passed the statute or Executive Order and placed it in effect prior to the fire incident.
 - c. The statute or Executive Order applies uniformly to all fire incidents (i.e., the statute or Executive Order is not contingent upon approval of a fire incident by FEMA).
 - d. The State submitted the statute or Executive Order to FEMA's Office of the General Counsel for review and determination of applicability and reasonableness.
 - e. Upon request, the State provides FEMA with the local governmental and volunteer firefighting organizations' documentation of services rendered and costs incurred.
 - f. Reimbursement of State Statutes or Executive Orders
 - 1) Reimbursement of fire suppression assistance grants are based upon the actual and eligible costs incurred during suppression efforts. Therefore, the providing entities (i.e., local governmental and volunteer firefighting organizations) may submit their expenditures to the receiving entity (i.e., the State) for reimbursement.
 - 2) Actual and eligible costs will be reimbursed using FEMA equipment rates or the local governmental and volunteer firefighting organization rates - whichever is lower.
 - 3) If the statute or Executive Order provides for an initial period of unpaid assistance before reimbursement to local governmental and volunteer firefighting organizations, assistance provided during that period may be claimed:

- a) By the local governmental and volunteer firefighting organizations for compensation of equipment costs. Reimbursement will be made using FEMA equipment rates or the local governmental firefighting organizations rates-whichever is lower.
 - b) By the State and applied as credit towards the State's cost share.
4. Absence of Mutual Aid Agreement. State Statute, or Executive Order. In the absence of mutual aid agreements or a State statute, the State cannot provide subgrants of Federal funds to the local governmental and volunteer firefighting organizations, however;
- a. If the State agrees to provide direct reimbursement to its local governmental and volunteer firefighting organizations outside of the fire suppression assistance grant, the State may apply the costs of the local and volunteer firefighting resources to the State's portion of the cost-share under the Fire Suppression Assistance Program as volunteer credit.
 - b. In order to be eligible for volunteer credit, the State must reimburse local governmental and volunteer organizations for eligible actual costs incurred during the suppression of a federally approved fire.

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, whether or not conditions have changed by the time the request is authorized.

D. Declaration Delegation.

The Executive Associate Director may delegate authority to a Regional Director when a State is expected to make frequent requests for fire suppression assistance during the course of the fire season. The Regional Director may re-delegate this authority as appropriate, in accordance with 44 CFR 2.6(a).

E. Payment of Emergency Operations Center Costs.

We have determined that it is appropriate to reimburse the State for 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: Any documents or parts of documents on the use of Fire Suppression funds for pre-disaster activity, mutual aid, timing of the declaration process and delegation of the authority to authorize fire suppression assistance grants.

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 be reviewed in six months or upon the effective date of the final rule for fire suppression assistance.

12. Signature:

____//Signed//____

Lacy E. Suitor
Executive Associate Directorate
Response and Recovery Directorate

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

9550.3 – Interim Policy on Fire Suppression Assistance (2001)

1. **Date Published:** March 19, 2001 (Superseded by FMAG on October 30, 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 Resources.¹**
 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.
 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.

¹ For the purposes of this policy, "staging" is synonymous with "prepositioning" of resources.

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 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.

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.

- 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 supersedes 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

9560.1 – Environmental Policy Memorandum (1999)

- 1. Date Published:** August 17, 1999 (Rescinded on January 23, 2013)
- 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)

Attachment # 1 to Environmental Policy Memoranda

DATE: APR 18, 1994

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

Attachment # 2 to Environmental Policy Memoranda

DATE: MAY 24, 1994

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.

Attachment # 3 to Environmental Policy Memoranda

DATE: 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.

Attachment # 4 to Environmental Policy Memoranda

DATE: 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 categorically excluded 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 at 202-646-3032.

See Federal Register Vol. 61, No. 24, page 4227-32, February 5, 1996. Also see 44CFR 10.8.

RESCINDED

Attachment # 5 to Environmental Policy Memoranda

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 Categorically 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:

44 CFR 10.8(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 flood-proofed 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].

9560.3 – Model Programmatic Agreement - Historic Review (1999)

1. **Date Published:** August 17, 1999 (Superseded on May 29, 2002)
2. **Response and Recovery Directorate Policy Number:** 9560.3
3. **Title:** Model Programmatic Agreement - Historic Review
4. **Purpose:** This policy makes available the Model 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 grant funds.
6. **Background:**
 - A. Section 106 of NHP A 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 800.2(e) 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."
 - B. FEMA developed the Agreement as an alternative to Section 106 compliance (36 CFR 800.13) in order to simplify and expedite coordination and to provide specific guidance to consulting parties in the historic review process. The Agreement also exempts routine disaster recovery activities with little potential of adversely affecting historic properties from the review mandated by Section 106 of NHP A.
 - C. The Advisory Council on Historic Preservation published new regulations guiding Section 106 compliance (36 CFR 800), which took effect on June 17, 1999.
7. **Policy:**
 - A. FEMA personnel should follow the standard Section 106 review procedures for undertakings in States in which an Agreement does not exist.
 - B. FEMA personnel should utilize the Agreement as a basis for the development of separate Programmatic Agreements for each State. 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
 4. The State Historic Preservation Office

- C. The Agreement is in effect immediately after all four signatories have signed the document and will continue to be in effect for four years. If a disaster occurs near the end of the four-year period, the Model Programmatic Agreement will remain in effect until the close of that disaster.
- D. Agreements executed under the former regulations (prior to June 17, 1999) will continue to be valid until they expire. However, the signatories of existing Agreements may seek to amend the Agreement to be in accordance with the new regulations. All references to Standard Section 106 (36 CFR 800) in existing Agreements must follow the new regulations.
- E. FEMA must revise all Agreements negotiated and signed after June 17, 1999 to meet the requirements of the new regulations. Consult with FEMA Headquarters to revise the Programmatic Agreement accordingly.

8. Supersession: This policy updates the previous Model Programmatic Agreement.

9. Authorities: National Historic Preservation Act of 1966, as amended; 36 CFR 800.

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

9560.3 – Programmatic Agreement - Historic Review (2002)

- 1. Date Published:** May 29, 2002 (Rescinded on January 23, 2013)
- 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(l)(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
 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) and (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.
 - 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.

¹ FEMA will provide 100 percent funding under the Stafford Act through standard procurement procedures for the performance of these delegated activities.

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 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* Date: _____

Lacy E. Suiter, Assistant Director,
Readiness, Response and Recovery Directorate

By: *signed* Date: _____

Robert F. Shea, Acting Assistant Director,
Federal Insurance Administration and Mitigation

By: *signed* Date: _____

Tamara Doherty, Acting Regional Director,
Region X

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *signed* Date: _____

John M. Fowler, Executive Director

**WASHINGTON STATE OFFICE OF ARCHAEOLOGY AND HISTORIC
PRESERVATION**

By: *signed* Date: _____

Allyson Brooks, State Historic Preservation Officer

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: _____ Date: _____
[name], Tribal Historic Preservation Officer

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.
 - 2. 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.
 - 3. 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 – The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors:
- 1. Cross bracing on pier and post foundations
 - 2. Metal fasteners
 - 3. Collar ties
 - 4. Gussets
 - 5. Tie downs
 - 6. Strapping and anchoring of mechanical, electrical and plumbing equipment
 - 7. Concealed anchoring of furniture
 - 8. Installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs
 - 9. 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. Builder's 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.

9580.2 (Fact Sheet) – Insurance Responsibilities for Field Personnel (2007)

TITLE: Insurance Responsibilities for Field Personnel

DATE: June 4, 2007 (Superseded by Public Assistance Insurance Policy on June 30, 2015)

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.

FREQUENTLY ASKED QUESTIONS:

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.

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.

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 Assistant Directorate

9580.3 (Fact Sheet) – Insurance Considerations for Applicants (2000)

TITLE: Insurance Considerations for Applicants

DATE: August 23, 2000 (May 29, 2008)

Insurance is an important element of the Public Assistance Program. Our intent with this Fact Sheet is to highlight for you, the Applicant, insurance considerations that will influence your Public Assistance grant.

Three key provisions in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (Stafford Act) guide our insurance policies and procedures:

1. Insurance coverage must be subtracted from all applicable Public Assistance Grants in order to avoid duplicated financial assistance.

Disaster assistance will not be provided for damages or losses covered by insurance.

Disaster assistance provided by FEMA is intended to supplement financial assistance from other sources. When Public Assistance funds are inadvertently duplicated, they must be returned to FEMA - (Stafford Act, Section 312).

2. Insurance must be obtained and maintained on those insurable facilities (buildings, equipment, contents, and vehicles) for which Public Assistance grant funding has been provided (Stafford Act, Section 311).

Prior to the approval of a Public Assistance grant for repair, restoration, and replacement of damaged facilities, the Applicant must commit to obtain and maintain insurance to protect against future loss to such property from the types of hazard which caused the disaster. No Federal assistance will 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.

3. A reduction of Public Assistance funding for flood losses in the Special Flood Hazard Area (SFHA) is required (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 Director and the facility is not covered (or is underinsured) by flood insurance on the date of such flooding, FEMA is required to reduce Federal disaster assistance 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.

You, the Applicant, need to:

- Identify all insurable facilities, and the type and amount of coverage (including deductibles and policy limits) for each. The anticipated insurance proceeds will be deducted from the total eligible damages to the facilities.

- Identify all facilities that have previously received Federal disaster assistance for which insurance was required. Determine if insurance has been maintained. *A failure to maintain the required insurance for the hazard that caused the disaster will render the facility ineligible for Public Assistance funding.*
- Provide all pertinent insurance information (policies, declarations and “Statements of Loss”) to the State Public Assistance Officer as soon as possible.
- Pursue payment under your insurance policies to maximize potential benefits, thereby avoiding risk of delays or loss of Federal Assistance.
- Identify all buildings, contents, building attachments, detached garages, etc. located in the SFHA. Structures and contents insurable under the NFIP, located in the SFHA, as shown on a FEMA Flood Insurance Rate Map, and damaged by flood are subject to a special reduction from the eligible amount of Public Assistance funding. If these insurable items do not have flood insurance or carry inadequate flood insurance, FEMA will reduce the total eligible costs by the maximum amount of insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.

Further, you need to be aware of the following:

- You *must* obtain and maintain insurance to cover your facility – buildings, equipment, contents, and vehicles – for the hazard that caused the damage in order to receive Public Assistance 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 insurance is not met.
- Your commitment to purchase and maintain insurance must be documented (by an insurance policy or binder) and submitted to FEMA *before* project approval.
- You must assure FEMA that you will consistently maintain insurance coverage for the anticipated life of the restorative work of the insured facility. Otherwise, you are ineligible for Federal assistance for that facility. There should be no lapse in insurance coverage for a facility which previously received assistance.
- You are exempt from this requirement for projects where the total eligible damage is less than \$5,000.

FREQUENTLY ASKED QUESTIONS

1. Are there pre-disaster insurance requirements for facilities that have not had any prior disaster assistance?

Only for flood hazards located in the SFHA, otherwise, no. State, local Governments, and private nonprofit organizations are not required to purchase insurance for non-flood risks prior to a disaster. Note that, 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 Public Assistance Program provide funding for these items?

Any eligible work not covered by an insurance policy may be eligible for a Public Assistance grant, including non-recoverable depreciation and items exceeding the policy limit.

3. Does the Public Assistance Program fund deductibles?

Yes, FEMA deducts the total insurance proceeds received or anticipated from the total cost of the project. The remaining amount is reimbursed, which usually includes deductibles, non-recoverable costs, or uninsurable losses. If the insurance policy covers both eligible costs, such as property coverage, and ineligible costs, such as business interruption coverage, then reimbursement for the deductible will be reasonably prorated based on the insurance settlement.

4. What facilities or items require the purchase of insurance as a condition of receiving Public Assistance funding from FEMA?

Buildings, contents, vehicles, and equipment.

5. Does the post-disaster insurance purchase requirement apply to a building which is outside of the Special Flood Hazard Area and damaged by flooding?

Yes. Prior to the approval of a Public Assistance 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. No Federal assistance will 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.

6. Can self-insurance be used to satisfy the insurance purchase requirement?

For the purposes of the Public Assistance Program, self-insurance is an option only for States. Local governments and eligible private non-profit organizations may not satisfy the insurance purchase requirement with self-insurance.

7. 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 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.

8. Can the insurance requirements be waived?

If the State Insurance Commissioner certifies that the type and extent of insurance is not reasonably available, the Regional Director may waive the requirement in conformity with the certification.

9. What if an Applicant does not maintain insurance on a facility as required by the Stafford Act?

The facility is ineligible for Federal disaster assistance under the Public Assistance Program.

10. What if an Applicant has maintained insurance on a facility as required by the Stafford Act, but finds its insurer to be insolvent and unable to pay?

The Applicant will not be penalized for the failure of the insurer. FEMA will fund all eligible costs. However, the Applicant will be expected to take appropriate measures to recover payments owed by the insurer.

11. What if the Applicant removes debris from private property and the property owner has insurance?

The Public Assistance Program may fund disaster related debris removal from private property if it is pre-approved by FEMA. The debris must be considered a public health and safety hazard to the general public. If the private property owner's insurance policy provides coverage for some or all of the debris removal, then the property owner must recover funds from their insurance provider and forward them to the Applicant. FEMA may reasonably anticipate these recoveries from the private property owner and deduct anticipated proceeds from the overall project to avoid a duplication of benefits, which is prohibited under the Stafford Act (Section 312).

12. If a building has eligible flood damages which are greater than the maximum NFIP policy amount, is there a requirement to purchase insurance beyond the NFIP maximum?

Yes. Regardless of the NFIP maximum policy amount (currently \$500,000), insurance is required at least up to the amount of eligible damage. Commercial flood insurance policies are readily available for this excess coverage.

ADDITIONAL INFORMATION

Public Assistance Program information is available on our website at www.FEMA.gov/r-n-r/pa. Detailed information on the insurance implications of the Public Assistance Program can be found in the following publications:

- Stafford Act (Sections 311, 312, 406(d))
- 44 CFR Part 206, Subpart I - Insurance Requirements
- Public Assistance Guide (FEMA 322, October 1999); pages 94 – 98
- Public Assistance Policy Digest (FEMA 321, October 1998); pages 31, 48 & 64
- Public Assistance Applicant Handbook (FEMA 323, September 1999); pages 58-60

9580.3 (Fact Sheet) – Insurance Considerations for Applicants (2008)

TITLE: Insurance Considerations for Applicants

DATE: May 29, 2008 (Rescinded on February 8, 2013)

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.

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)).

FREQUENTLY ASKED QUESTIONS:

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.

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)).

10. Can the insurance requirements be waived?

Yes. If the State Insurance Commissioner certifies that the type and extent of insurance required is not reasonably available, the Regional Administrator may waive the requirement in conformity with the certification. The certification will be effective until the next major disaster. An insurance waiver should:

- a) Be based on a type or class of facility or on a facility-by- facility basis prior to project approval;
- b) Include the Applicant's request for exemption, stating the reasons insurance is not reasonable;
- c) Provide information concerning the commercial availability of insurance based on types of risks, classification of facilities, extent of coverage limits, and related premium costs;
- d) Provide justification for certifying that the type and/or extent of insurance is not reasonable for the facility or facilities and hazard in question.

11. What are the consequences of not maintaining insurance on a facility as required by the Stafford Act?

The facility will be ineligible for Federal disaster assistance under the PA Program in future disasters.

12. If an Applicant's insurer is insolvent and is unable to make a full settlement of claims, will the Applicant's eligible damage still be funded by FEMA?

Yes. FEMA will fund all eligible costs minus actual or anticipated insurance recoveries. You are expected to take appropriate measures to recover payments owed by the insurer. If the insurer is determined to be legally insolvent, FEMA will consider this when determining PA funding.

13. Is there a requirement to purchase insurance beyond the NFIP maximum?

Yes. Regardless of the NFIP maximum policy amount (currently \$500,000), insurance is required at least up to the amount of eligible damage. Commercial flood insurance policies are readily available for this excess coverage.

____//Signed//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9580.4 (Fact Sheet) – Debris Operations, Clarification of Emergency Contracting vs. Emergency Work (2001)

TITLE:

Debris Operations – Clarification of Emergency Contracting vs. Emergency Work

DATE: January 19, 2001 (Superseded on October 23, 2008)

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.

9580.4 (Fact Sheet) – Emergency Work Contracting (2008)

TITLE: Emergency Work Contracting

DATE: October 23, 2008 (Superseded by 9580.212 on October 28, 2012)

OVERVIEW

Debris removal and emergency protective measures, Category A and B, respectively, are considered "emergency work" in the Federal Emergency Management Agency's (FEMA) Public Assistance Program. In general, contracting for emergency work requires competitive bidding. Applicants must comply with applicable Federal, State, and local laws and regulations; provided that the procurement conforms to the Federal law and standards set forth in 44 CFR Part 13 that non-competitive contracting may be acceptable ONLY in rare circumstances where specific criteria are met (See 44 CFR §13.36(c) and (d)).

EMERGENCY WORK VS. EMERGENCY CONTRACTING

- Performing emergency work (Categories A and B) does not relieve the applicant from the requirements of competitive bidding. Not all emergency work is time sensitive to the point where competitive bidding is infeasible. In some situations, awarding a short-term non-competitive contract for site-specific work may be warranted; however, if the contract is for a long-term operation lasting weeks or months, the contract should be competitively bid as soon as possible. Contracts that are based on cost plus a percentage of the cost shall not be used for either competitive or non-competitive procurement (See 44 CFR §13.36 (f)(4)).
- In order to be reimbursed for work performed under a contract that was not competitively bid, the procurement of that work must not have been feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances may apply:
 - The item is available only from a single source;
 - There is a public exigency or emergency for the requirement that will not permit delay from competitive solicitation;
 - The awarding agency authorizes noncompetitive proposals; or
 - Solicitation from a number of sources has been attempted, and competition is determined to be inadequate (See 44 CFR §13.36(d)(4)(i)).
- When using competitive solicitations, applicants can use an expedited process for obtaining competitive bids. However, applicants must also comply with applicable State and local procurement requirements, which may be more stringent than Federal requirements (See 44 CFR §13.36(b)).
- Whether utilizing competitive or non-competitive procurement procedures, all costs must be determined reasonable by FEMA to be eligible for reimbursement (See 44 CFR §13.36(d)(4)(ii)). In cases where non-competitive procurement procedures are used, the applicant may be required to submit the proposed procurement to the awarding agency (FEMA) for review (See 44 CFR §13.36(d)(4)(iii)).

- Applicants should be advised that no contractor has the authority to make eligibility determinations, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Eligibility determinations are made solely by FEMA.

____//Signed//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

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9580.6 (Fact Sheet) – Electric Utility Repair, Public and Private Nonprofit (2009)

TITLE: Electric Utility Repair (Public and Private Nonprofit)

DATE: September 22, 2009 (Superseded on January 1, 2016)

OVERVIEW

The purpose of this fact sheet is to establish criteria to determine eligibility for repair or replacement of disaster-damaged electric distribution and transmission systems under the authority of rural electric cooperatives (RECs), municipal electric utilities, public power districts, and other public entities following a major disaster or emergency declaration by the President. This fact sheet addresses appropriate contracting procedures, categories of work (that is, Category B or F), criteria for replacing conductors, hazard mitigation, Rural Utility Service (RUS) Bulletins, and collateral damage. The Federal Emergency Management Agency (FEMA) must inspect and validate all projects for which the owners are requesting replacement of conductors. The utility owners are responsible for the safety and reliability of their distribution and transmission systems.

CONTRACTING

To be eligible for Federal funding, applicants must comply with federal procurement standards as outlined in the Title 44 Code of Federal Regulations (CFR), Part 13.36, **Procurement**. Essential elements of the procurement process include: competition; a clear and definitive scope of work, if possible; qualified bidders (documented by licenses, financial records, proof of insurance, and bonding as applicable); a price analysis to demonstrate price reasonableness; compliance with all relevant local, State, and Federal requirements, laws and policies; and, clear documentation of the process/rationale followed in making procurement decisions. There is no requirement to negotiate profit separately when applicants follow competitive procurement procedures . Profit is considered to be a component of the unit price.

Unacceptable Contracts: Cost Plus Percentage of Cost

Acceptable Contracts:

1. **Lump Sum**
2. **Unit Price**
3. **Cost Plus Fixed Fee**
4. Sole Source for Materials -in limited situations. RECs, municipal utilities, and public power districts may use noncompetitive procurements to procure materials, provided they meet the requirements of 44 CFR §13.36(d)(4), *Methods of procurement to be followed*, Procurement by *noncompetitive proposals* .
5. Time and Material (T&M) - applicants may use T&M contracts only when it has been determined that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk (44 CFR §13.36(b)(10), *Procurement standards*). Since RECs, municipal utilities, and public power districts generally provide the materials used in repairing their systems, these contracts are referred to as "time and equipment" (T&E)

contracts. Due to the critical nature of restoring power to the electrical grid following a disaster and because exigent circumstances do not permit delays related to fully assessing the damages before repair work begins, RECs, municipal utilities, and public power districts commonly use T&E contracts for making disaster-related repairs

The use of T&E contracts to repair disaster-related damages to electrical transmission and distribution systems may be eligible for Public Assistance (PA) funding provided the utility owner:

- a) Documents the exigent circumstances that exist and explains why other types of contracts were not suitable;
- b) Documents why a detailed scope of work could not be developed for the repairs;
- c) Ensures that all T&E contracts contain a "ceiling price" that the contractor exceeds at its own risk, a "not to exceed" clause, or are otherwise limited by an applicant-issued task order;
- d) Performs and documents a price analysis to demonstrate that the hourly rates are reasonable and justifiable under the disaster conditions;
- e) Documents the terms of the contract (including mutual aid contracts); and
- f) Monitors contractors and keeps good records of work performed.

CATEGORY OF WORK

FEMA characterizes work authorized under sections 403, Essential Assistance, and 407, Debris Removal, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) as emergency work (Categories B and A, respectively) and under section 406, Repair, Restoration, and Replacement of Damaged Facilities, as permanent work (Categories C-G). Category F refers to the permanent repair of utility systems. RECs, municipal utilities, and public power districts work to restore power to customers as soon as possible following disasters. Most repairs are permanent in nature.

FEMA categorizes electric utility restoration work as follows:

1. FEMA will characterize all temporary work that RECs, municipal utilities, and public power districts perform to restore power to all facilities capable of receiving it, as Category B emergency work. In these situations, the RECs, municipal utilities, and public power districts make permanent repairs later to bring the damaged components into compliance with appropriate codes and standards.
2. FEMA will characterize work that RECs, municipal utilities, and public power districts perform to restore the damaged facilities to pre-disaster condition in accordance with applicable codes and standards as Category F, permanent work. RECs, municipal utilities, and public power districts can complete permanent repairs immediately after the disaster occurs or after temporary repairs are completed (see item 1 above).

REPLACING CONDUCTORS

44 CFR §206.226, **Restoration of damaged facilities**, authorizes reimbursement for "... work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster ..." in accordance with adopted codes and standards. FEMA recognizes local, state, and national codes (for example, the National Electrical Safety Code and RUS standards and specifications for materials, equipment, and construction, which are applicable regardless of

funding source) as appropriate when determining eligible cost to repair or replace damaged electrical facilities.

Establishing Pre-Disaster Condition

Applicants should provide the following information to establish pre-disaster condition of their facilities:

1. Certification of the pre-disaster condition and capacity of the conductor from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system. Records providing satisfactory evidence of the condition and capacity of the conductor as it existed prior to the disaster. The certification may be supplemented by a professional engineering evaluation.
2. If available, copies of construction work plans demonstrating the utility's past practices and current/future projects.
3. If required by RUS, a copy of any corrective action plans submitted to RUS in compliance with 7 CFR §1730.25, **Corrective action** (RUS borrowers only).

Criteria for Conductor Replacement

Determining the disaster-related damages to some components (for example, poles, guys, and cross- arms) of an electrical transmission or distribution system can usually be accomplished by visual inspection. However, determining the full extent of disaster-related damages to conductors, and the appropriate method to repair the damages, is more challenging, particularly with older systems. FEMA considers a conductor eligible for replacement when it is stretched beyond the point where it can be effectively repaired and re-sagged through predictable modeling to meet appropriate clearances, sag and tension, and to meet pre-disaster reliability . A conductor is beyond the point where it can be effectively repaired when one or more of the following criteria exist within a line section:

1. 25% or more of the conductor spans are damaged. Damage is defined as broken conductors, broken strands, the existence of new (disaster-related) splices, and/or if the conductor is severely pitted, burned, kinked, or damaged in other ways.
2. 30% or more of the line spans are visibly out of sag or do not meet clearances (for example, the conductor does not meet clearance requirements for conductor-to-conductor or conductor-to- ground).
3. 40% or more of the poles were replaced or need to be replaced or plumbed (straightened) due to the disaster.
4. 40% or more of the supporting structures have a disaster-related damaged component (for example, x-arms, braces, pin, ties, insulators, guys/anchors, or poles).
5. The sum of the percentages of the above criteria is 65% or more.
6. Other additional compelling information provided by a licensed professional engineer.

Replacement Conductor

FEMA will fund eligible work in accordance with 44 CFR §206.226, **Restoration of damaged facilities**. The use of #2 Aluminum Conductor Steel Reinforced (ACSR),however, is considered the lower cost equivalent to replace conductor with equal or lesser amperage capacity, such as copper weld conductor (CWC), hard and soft drawn copper wire, smaller ACSR, and Amerductor. When such conductor is replaced with #2 ACSR, FEMA will fund adjustments of span lengths and pole heights to meet appropriate design requirements.

If FEMA determines that the conductor is eligible for replacement, FEMA will fund the use of #2 ACSR as the lower cost equivalent replacement of conductor with equal or lesser amp capacity (for example, copper weld conductor (CWC), hard and soft drawn copper wire, and smaller ACSR, and Amerductor). If the existing spacing of poles exceeds the spacing required for the new conductor, FEMA will fund the installation of additional poles and components as required to meet appropriate design requirements.

If disaster damaged conductor does not qualify for replacement, the damaged line section is eligible for repair only.

HAZARD MITIGATION

FEMA provides hazard mitigation funding under Section 404, **Hazard Mitigation**, and Section 406, **Repair, Restoration, and Replacement of Damaged Facilities**, of the Stafford Act. The State manages the Section 404 Hazard Mitigation Grant Program and establishes the funding priorities for the program.

FEMA will evaluate and fund Section 406 hazard mitigation projects to protect disaster-damaged components of facilities. FEMA supports funding cost-effective hazard mitigation measures for electrical transmission and distribution facilities. In order to be eligible, hazard mitigation measures under Section 406 of the Stafford Act:

1. Must be appropriate to the disaster damage and must prevent future damage similar to that caused by the declared event.
2. Must be applied only to the damaged element(s) of a facility. This criterion is particularly important when conducting repairs to a portion of a system.
3. Cannot increase risks or cause adverse effects to the facility or to other property.
4. Must consist of work that is above and beyond the eligible work required to return the damaged facility to its pre-disaster design. Upgrades required to meet current codes and standards, however, are not considered hazard mitigation measures for purposes of the PA Program and have different eligibility criteria.

FEMA staff must review and approve hazard mitigation measures prior to implementation to ensure eligibility, technical feasibility, environmental and historic preservation compliance, and cost effectiveness. FEMA may fund the use of "wind-motion resistant conductor" as effective hazard mitigation, when conductor segments qualify for replacement.

Code or standard upgrades that FEMA determines do not meet the five criteria listed in 44 CFR§206.226(d), **Restoration of damaged facilities, Standards**, but which will enhance a facility's ability to resist similar damage in a future disaster, may be eligible for funding under Section 406 hazard mitigation (see FEMA Disaster Assistance Policy DAP9526.1, *Hazard Mitigation Funding under Section 406 of the Stafford Act*). For example, increasing the size or changing the type of conductor for hazard mitigation purposes may be eligible for FEMA reimbursement provided it is both viable and cost- effective.

Cost-effectiveness is defined as:

1. Up to 15% of the total eligible cost of eligible repairs; or
2. Up to 100% of eligible repair costs for measures listed in Appendix A of DAP9526.1; or

3. A benefit-cost ratio of 1 or greater.

A non-exhaustive list of typical hazard mitigation measures for electrical systems includes the following:

Sample Mitigation Measure	Justification
Installing additional poles to support transformers	100%, listed in Appendix A of 9526.1
Installing guy-wires	100%, listed in Appendix A of 9526.1
Providing looped distribution service or other redundancies to critical facilities	100%, listed in Appendix A of 9526.1
Elevating pad-mounted transformers above BFE (or ABFE where applicable)	100%, listed in Appendix A of 9526.1
Replacing damaged poles with higher-rated poles of the same or different material	100%, listed in Appendix A of 9526.1
Cross bracing on H Frame Poles	100%, listed in Appendix A of 9526.1
Removing large diameter communication lines	100%, listed in Appendix A of 9526.1
Upgrade conductor to Wind-Motion Resistant Conductor (e.g., T2 ACSR)	15% of the total eligible cost of eligible repairs
Mid span poles (not specified by code)	15% of the total eligible cost of eligible repairs

RURAL UTILITY SERVICE (RUS) BULLETINS

In order for the costs of Federal, State, and local repair or replacement standards which change the pre-disaster construction of a facility to be eligible, 44 CFR §206.226(d), **Restoration of damaged facilities, Standards**, requires that the standards must:

1. Apply to the type of repair or restoration required;
2. Be appropriate to the pre-disaster use of the facility;
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.

Under the authority of the Rural Electrification Act of 1936, the United States Department of Agriculture RUS, Electric Programs Division, makes direct loans and guarantees loans to electric utilities to serve customers in rural areas. Rural electric cooperatives use the loans and loan guarantees to finance construction of electric distribution, transmission, and generation facilities. Through these loans, the Federal government is the majority note-holder for approximately 700 electric systems in 46 states. In accordance with 7 CFR 1724.1(b), Electrical Engineering, Architectural Services and Design Policies and Procedures, all borrowers, regardless of funding sources, are required to comply with RUS requirements for new construction design standards, and the use of RUS accepted material on electric systems.

On July 1, 2005, RUS published Bulletin 1742D-106, *Considerations for Replacing Storm-Damaged Conductors*. The bulletin provides guidelines to assist rural electric cooperatives in making expedient decisions on whether to repair or replace damaged conductors after disasters. FEMA has reviewed this bulletin and determined that it does not meet the definition of a code or standard as described in 44 CFR §206.226(d). Therefore, FEMA will not accept RUS Bulletin 1742D-106 as a basis for replacing damaged conductors.

To date, rural cooperatives have not cited other RUS Bulletins to support their requests for the replacement of conductors. FEMA will evaluate other RUS Bulletins on a case-by-case basis.

REPAIR OF COLLATERAL DAMAGE

The repair of damage to eligible facilities caused during the performance of eligible work is reimbursable under the Public Assistance Program. If rural electric cooperatives, municipal utilities, or public power districts damage their own or other public property while performing emergency repairs to their facilities, the cost to repair the damage may be eligible (see 9525.8, *Damage to Applicant-Owned Equipment*). Rural electric cooperatives often obtain easements from private landowners to access and maintain their transmission and distribution facilities. If private property easements are damaged while making repairs to the disaster-damaged facilities (for example, ruts on the property), the repair of the damage to the private property is eligible for FEMA Public Assistance reimbursement. Applicants shall demonstrate legal responsibility for the repair in the form of a written or statutory easement with an express legal responsibility to repair the damage.

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Elizabeth Zimmerman
Associate Administrator
Office of Response and Recovery

CONDUCTOR REPLACEMENT CRITERIA – FREQUENTLY ASKED QUESTIONS

1. What is a span?

A span is the distance between two poles.

2. What is a line section?

A line section is a group of contiguous spans selected for evaluation. The applicant has flexibility in defining a line section. A line section could be a single span, all the spans between two dead-end structures, all the spans on a feeder, all the spans on a tap or any other group of contiguous spans that are evaluated together.

3. What is Criterion 1 and how is it applied?

This criterion relates to visible damage to the conductor in a line section. A conductor span with damage such as broken strands, splices or sleeves (installed as a result of the disaster), bird caging, severe pitting, burns, kinks or other visible conductor damage is counted in this criterion. The number of conductor spans is calculated by multiplying the number of conductors per span by the number of spans. For example a three phase line section with three spans has 12 conductor spans (4 conductors x 3spans = 12). If a single conductor span has damage in more than one location it still only counts as one damaged conductor span. If 25% or more of the total conductor spans in a line section have visible damage as a direct result of the disaster, then the conductors of that line section are considered eligible for replacement.

4. What is Criterion 2 and how is it applied?

This criterion relates to conductor elongation or stretch in a line section. Any conductors in a span that are out of sag or do not meet clearance requirements as a direct result of the disaster are counted in this criterion. If more than one conductor in a span is out of sag or does not meet clearance requirements it still counts as just one span. This evaluation does not require precise measurement of the conductor temperature or actual sag or clearances. This determination is to be made using the good judgment of a qualified electrical inspector. If 30% or more of the total spans in a line section are visibly out of sag or do not meet clearance requirements as a direct result of the disaster, then the conductors of that line section are considered eligible for replacement.

5. What is Criterion 3 and how is it applied?

This criterion is related to damage to the poles supporting the conductor in a line section. If a pole was replaced, is in need of replacement or is in need of plumbing (straightening) as a direct result of the disaster, then it counts in this criterion. A pole is considered to be in need of straightening if it is leaning such that it is unsafe to climb. If 40% or more of the total poles in a line section meet this criterion then the conductors in that line section are considered eligible for replacement.

6. What is Criterion 4 and how is it applied?

This criterion relates to damage to the supporting structure other than the poles. If the supporting structure has damage such as a broken cross arm, broken support brace, bent pin, broken tie, broken insulator, broken guy or pulled anchor as a direct result of the disaster then

that support structure is counted in this criterion. If more than one element of the support structure is damaged it still only counts as one damaged support structure. If a pole is counted under criterion 3 then the supporting structure should not be counted under criterion 4. If 40% or more of the total number of support structures in a line section are damaged as a direct result of the storm then the conductors of that line section are considered eligible for replacement.

7. What is Criterion 5 and how is it applied?

This criterion relates to the total damage to a line section. If the sum of the percentages calculated for criteria 1through 4 is 65% or more then the conductors of that line section are considered eligible for replacement. It is possible that the sum of the percentages for criteria 1through 4 could be more than 100%.

8. What is Criterion 6 and how is it applied?

This criterion is included to account for other methods of demonstrating that the conductor in a line section is damaged beyond repair. If this criterion is applied then supporting evidence must be documented to clearly describe the basis for the conclusion that the conductor in this line section was damaged as a direct result of the disaster and is not suitable for continued service. FEMA will make the final determination on a case-by-case basis.

9580.7 (Fact Sheet) – Host-State Evacuation and Sheltering (2010)

TITLE: Host-State Evacuation and Sheltering Frequent Asked Questions (FAQs)

DATE: July 23, 2010 (Superseded on January 1, 2016)

OVERVIEW

FEMA Recovery Policy DAP9523.18, Host-State Evacuation and Sheltering Reimbursement, establishes the procedures for reimbursing host-States for the cost of evacuation and/or sheltering support provided to impact-States when the impact-State or FEMA request such support. A State, or Indian Tribal Government, that, by agreement with an impact-State or FEMA provides evacuation and/or sheltering support to evacuees from another State (“impact-State”) that has received a Presidential emergency or major disaster declaration may seek reimbursement for eligible sheltering and evacuation costs through:

- Existing mutual agreements (including Emergency Management Assistance Compact [EMAC] agreements) with the impact-State; and/or
- Direct reimbursement from FEMA when an impact-State has requested assistance from FEMA in accordance with 44 CFR §206.208, Direct Federal assistance, to address evacuation and sheltering needs of disaster survivors that are beyond its ability to address in-state and a host-State agrees to a request to provide such assistance.

These Frequently Asked Questions (FAQs) clarify eligible host-State evacuation and sheltering costs.

SHELTERING ELIGIBILITY QUESTIONS

1. Are the regular-or straight-time salaries and benefits of a host-State's permanent employees who perform eligible host-State sheltering activities under a mutual aid agreement eligible for reimbursement?

Yes. These costs are eligible when the host-State performs eligible sheltering activities in accordance with a mutual aid agreement between the host-and impact-States. See Disaster Assistance Policy DAP9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*, dated August 13, 2007.

2. Are the regular-or straight-time salaries and benefits of a host-State's permanent employees who perform eligible host-State sheltering activities eligible when the host-State seeks direct reimbursement from FEMA?

Yes. FEMA will reimburse directly the host-State for straight-time salaries and benefits for permanent employees who perform eligible sheltering activities. See 44 CFR §206.202 (f)(1)(ii).

3. Are the regular-or straight-time salaries and benefits of non-State entities' employees (i.e., local governments or private nonprofit organizations [PNPs]) that provide eligible assistance under a mutual aid agreement or a contract with the host-State eligible?

Yes.

4. Are National Guard costs eligible?

The costs of National Guard personnel who are in State Active Duty (SAD) status and perform eligible disaster work are eligible. Fuel and oil not covered by other Federal Sources are also eligible. The costs of National Guard personnel who are activated under Title 10 or Title 32 are not eligible for reimbursement because these costs are funded by the Department of Defense.

5. Are costs that the host-States pay to the American Red Cross (ARC) or other Non-Governmental Organizations (NGOs) to operate shelters eligible?

Yes, provided the host-State has an agreement with ARC and/or the NGO to operate the shelters and the operation of the shelters is not part of these organizations' regular missions, which may support agreements with State emergency management to assist citizens in the event of a disaster. Reimbursable costs may include food, snacks, water and similar items; blankets, pillows, cots, hygiene kits, towels and other hygiene products; fuel and other expenses related to the provision of services; damaged or destroyed equipment; costs to rent facilities, equipment or other contracted services. Costs that ARC or other NGOs incur under their own authorities (i.e., independent of any Federal, State or local request) are not eligible for reimbursement.

6. Are there costs to staff the congregate shelters with medical practitioners to provide assistance to evacuees eligible?

Yes. Costs to provide emergency medical care are eligible in accordance with Disaster Assistance Policy DAP9523.15, Eligible Costs Related to Evacuations and Sheltering, dated April 6, 2007.

7. Are the costs for nursing home or assisted living-related services for special needs evacuees eligible?

Yes. These costs are eligible when required by medical personnel.

8. Will FEMA reduce a host-State's claims for medical services provided to an evacuee that are covered by private insurance, Medicare, Medicaid or a pre-existing private payment agreement?

Yes. FEMA will reduce a host-state's claims for medical services provided to an evacuee that are already covered by private insurance, Medicare, Medicaid or a pre-existing private payment agreement.

9. Are hospitalization costs for evacuees eligible?

Yes. Only emergency medical treatment in accordance with Disaster Assistance Policy DAP9523.15, Eligible Costs Related to Evacuations and Sheltering, dated April 6, 2007, and Disaster Assistance Policy DAP9525.4, Emergency Medical Care and Medical Evacuations, dated July 16, 2008, is eligible. Long-term treatments and medical care costs incurred once a disaster evacuee is admitted to a medical care facility on an inpatient basis are not eligible. Definitive care may be covered by the Department of Health and Human Services (HHS), through private insurance, or through a combination of Medicare, Medicaid, private insurance and private pay methods.

10. Can a host-State claim costs for providing shelter to self-evacuees?

Yes. Congregate sheltering costs incurred to support self-evacuees are eligible for reimbursement through a direct reimbursement grant agreement with FEMA or through a mutual aid agreement with the impact-State.

11. Are costs the host-State incurs to purchase and distribute gas cards, cash vouchers, debit cards, food vouchers and similar items of value to evacuees eligible?

No. FEMA will reimburse host-States under the Public Assistance program for gas cards, bus passes, cash vouchers, debit cards, food vouchers or direct payments of any kind provided to individual evacuees for general purposes.

12. Are fees that the host-State waives for the use of State parks by self-evacuees with recreational vehicles (RVs) eligible?

No.

13. Are the reasonable costs that the host-State incurs to provide the requested shelter capacity eligible, even if the shelter was underused or not used at all?

Yes. Reasonable costs to set up underused or unused congregate shelters, as defined in DAP9523.15, Eligible Costs Related to Evacuations and Sheltering, dated April 6, 2007, may include facility costs, supplies and commodities, pay for regular employees, emergency medical services, transportation, shelter safety and security, and costs to clean and restore the facility to pre-congregate shelter condition.

14. Are the costs that host-States incur for hotel rooms for evacuees who are unable to return to the impact-State via the organized mass re-entry effort due to the evacuees' hospitalization eligible while they await air/rail/bus transport home?

Yes. FEMA will reimburse the host-State for up to five nights of hotel lodging for evacuees who are discharged from a hospital after all congregate shelters have been closed and transportation cannot be arranged for departure on the same day as discharged. Otherwise, hotel costs are not eligible for DAP9523.15, Eligible Costs Related to Evacuations and Sheltering, dated April 6, 2007.

15. Are the costs that the host-State claims for paying a hotel/motel for damage that evacuees caused to the rooms eligible for reimbursement?

Yes, if the host-State was legally responsible for the damage via a lease agreement and/or a contract with the hotel/motel.

16. What costs incurred by the host-State for the arrest and incarceration of evacuees who commit unlawful acts in a host-State congregate shelter are eligible for reimbursement?

The reasonable costs incurred by on-duty law enforcement officers to detain, take into custody, or make an arrest of a person or persons for unlawful acts committed in a host-state congregate shelter are eligible. These costs may include the law enforcement officer's response costs and transport of the person or persons to a police station, jail or other booking facility. The costs of chemical tests, processing, charging, booking and holding such a person or persons are not eligible.

For evacuees that are not charged subsequent to being taken into custody, the reasonable costs incurred for the return transport of the evacuee to a congregate shelter or to the evacuee's home-of-record in the impact-State are eligible.

- 17. What costs are eligible for reimbursement when patients in hospitals in the impact-State are evacuated, transported and admitted into hospitals in the host-State, through mission assignment with HHS? (Some patients are treated and discharged but cannot be transported back to the impact-State because evacuation orders are still in place or due to logistical delays. Some of these patients require follow-on care and shelters are not available.)**

The reasonable costs incurred by a host-State's hospital for a hotel room(s) during a patient's follow-on care, if necessary, until the patient can be transported back to the impact-State are eligible, provided Medicare, Medicaid or private insurance does not cover these costs.

- 18. Is lost revenue related to using a facility as a shelter eligible for reimbursement?**

No.

TRANSPORTATION ELIGIBILITY COSTS

- 19. Are the transportation costs that a host-State incurs to return evacuees to the impact-State eligible?**

Yes. FEMA will reimburse host-States for reasonable costs of return transportation by commercial or mass transportation (i.e., air, rail or bus) from the host-State congregate shelter to the impact-State. Also, necessary associated costs, such as security and food for the trip, are eligible. However, FEMA will not reimburse host-States under the Public Assistance program for gas cards, bus passes, cash vouchers, debit cards, food vouchers or direct payments of any kind provided to individual evacuees.

- 20. What types of organized transportation costs may be eligible?**

The cost to evacuate disaster survivors by air, rail or bus may be eligible.

- 21. Are self-evacuee transportation costs eligible?**

No. Reimbursement of self-evacuees transportation costs, whether directly or indirectly, is ineligible.

- 22. Who determines the return mode of transportation for evacuees?**

When the impact-State determines that it is safe for re-entry, FEMA will return those Federally-assisted evacuees from host-States via the same mode of transportation used to evacuate or another mode of organized transportation agreed upon by the impact-State, host-State and FEMA.

- 23. Will FEMA reimburse a host-State for the return of evacuees if the impact-State does not provide adequate means to return evacuees to the impact-State?**

This should be decided on a case-by-case basis. The host-State may make reasonable arrangements for the return of affected evacuees and be reimbursed for those incurred costs if FEMA or the impact-State cannot affect the timely return of evacuees. However, when the

host-State proposes such action, the host-State should coordinate the proposed activity with FEMA and the impact-State.

24. Are costs that the host-State incurs for bus/shuttle transport to pick up evacuees at the airport/train station/bus terminal eligible when the expected plane/train/bus is re-routed, cancelled or rescheduled?

Yes.

25. Are the transportation and related costs of transporting deceased evacuees back to the impact-State eligible?

Yes. FEMA may reimburse a host-State for reasonable costs to transport deceased evacuees and, if necessary, accompanying family members to the impact-State. The costs of State-mandated embalming and/or cremation of the body prior to return transport are also eligible. FEMA may not reimburse individuals directly. FEMA may reimburse a State agency from the impact-State for the reasonable transportation costs incurred by family members to bring their deceased back to the impact-State.

26. Are the costs associated with returning household pets to host-State evacuees eligible for reimbursement?

Yes. Reasonable transportation costs to return evacuee household pets are eligible costs. See Section 403(a)(3)(J) of the Stafford Act.

27. Are the costs the host-State incurs to transport evacuees from a congregate shelter to an assisted living facility eligible for reimbursement?

Yes.

28. Are the ambulance costs to transport an evacuee from a host-State shelter to a hospital eligible?

Yes. The costs of transporting an evacuee to a hospital or other medical facility may be eligible. See DAP 9523.15, *Eligible Costs Related to Evacuations and Sheltering*, dated April 6, 2007.

29. Are the ambulance costs for a hospital-to-hospital transfer eligible?

Yes. Reasonable costs to transfer an evacuee from one hospital to another hospital may be eligible provided it is a within host-State transfer.

30. Are the return transportation costs for family members of an impact-State evacuee admitted to a hospital after the congregate shelter closes eligible?

Yes.

31. Are costs of ambulances used in support of shelter operations or on-site at shelter locations eligible?

Yes.

32. Does FEMA deduct ambulance services used in support of sheltering operations charged to patients from the host-State's eligible amounts?

Yes. An eligible applicant may not seek reimbursement from FEMA for any ambulance service costs that are covered by a patient's private insurance, Medicare, Medicaid or a pre-existing private payment agreement. FEMA requires the host-State to determine whether duplications of benefits occurred and to offset such duplications at final reconciliation of the Project Worksheet (PW).

PROCEDURAL QUESTIONS

33. Can a host-State seek to recover all eligible costs through a mutual aid agreement with the impact-State and/or through direct reimbursement from FEMA?

Yes. A host-State may request direct FEMA reimbursement for eligible sheltering costs and seek reimbursement for sheltering activities performed in accordance with a mutual aid agreement. However, a host-State may not receive funding from direct FEMA reimbursement and through a mutual aid agreement for the same item of work. See Disaster Assistance Policy DAP9525.3, *Duplication of Benefits – Non-Government Funds*, dated July 24, 2007.

34. Can FEMA prepare more than one PW for the host-State to document eligible host-State sheltering costs?

Yes. The FEMA Region for the host-State may prepared a single PW to capture all of the eligible sheltering and evacuation costs or may prepare multiple PWs to document eligible costs.

35. Who will prepared the PWs for host-State evacuation and sheltering costs?

FEMA and host-State staff will prepare the PWs.

36. Will FEMA amend the scope of work and cost estimate of a PW to reflect updated information?

Yes.

37. Will FEMA process PWs for host-States evacuation and sheltering support in the National Emergency Management Information System (NEMIS) or Emergency Management Mission Integrated Environment (EMMIE)?

No. FEMA will not process PWs for host-State evacuation and sheltering costs in NEMIS or EMMIE. Until these procedures are automated in EMMIE, FEMA has developed a separate procedure to process these PWs.

38. Who will process direct payment PWs?

The FEMA Region for the host-State will send the PWs to the FEMA Region for the impact-State for processing.

39. Are impact-States required to approve PWs before FEMA will authorize payment for direct reimbursement?

The FEMA Region for the impact-State will review the PWs with the impact-State to ensure that claimed costs are directly related to sheltering evacuees from the impact-State before FEMA processes the grant award.

40. What is the payment process?

The payment procedures set forth under 44 CFR §206.205, **Payment of Claims**, and 44 CFR §13.21, **Payment**, that States normally follow for a Public Assistance grant.

41. How will host-States receive their reimbursements?

FEMA will deposit funds directly into host-States' SMARTLINK accounts. Upon processing, FEMA will send the host-States an Award Letter indicating the funds' availability.

42. Will PWs over \$1 million require congressional notification?

The FEMA Region for the host-State will prepare a narrative summary of the project and send it with the PW to the FEMA Region for the impact-State, which will coordinate the notification with FEMA Headquarters.

43. Who will coordinate the \$1 million PW congressional notification?

The FEMA Region for the host-State will prepare a narrative summary of the project and send it with the PW to the FEMA Region for the impact-State, which will coordinate the notification with FEMA Headquarters.

44. What level of supporting cost documentation is required for a complete/final PW?

It is sufficient for the host-State to document the actual costs, such as a summary of documentation, for the expenses incurred in the performance of eligible work, and for Public Assistance staff to review a sampling of the source documentation. The PW should, at a minimum, contain the summary and the sample.

45. How should the host-State document costs for prescription drugs that are eligible under Disaster Assistance Policy DAP9523.15?

The host-States should submit to FEMA a certification from the State's public health agency of the number of prescripts filled and the costs. The host-State should not provide any personal identifiable medical information, Privacy Act data, or Health Insurance Portability and Accountability Act (HIPPA) information.

46. Are host-States eligible for Section 324 State Management Costs?

Yes. If FEMA provides direct Federal reimbursement to the host-State for evacuation and sheltering support, the host-State may apply for Section 324 costs of 3.90 percent of the Federal share for financial assistance received (emergency declaration) and 3.34 percent for major disasters. Reference Disaster Assistance Policy DAP9525.9, Section 324 Management Costs and Direct Administrative Costs, dated March 12, 2008.

47. Can host-States claim Direct Administrative Costs?

Yes. If FEMA provides direct Federal reimbursement to the host-State for evacuation and sheltering support, the host-State may claim Direct Administrative Costs in accordance with Disaster Assistance Policy DAP9525.9.

48. Are host-States required to complete a FEMA/Host-State Agreement as a condition of receiving direct reimbursement from FEMA for evacuation and sheltering costs?

Yes. The FEMA Region for the host-State(s) will draft the FEMA/Host-State Agreement and forward it to each host-State for signature by the respective Governor to establish the host-State as a grantee.

49. Are host-States required to amend their State Administrative Plans for the Public Assistance Program as an administrative requirement of receiving assistance?

Yes. 44 CFR §206.207 requires that a host-State update its State Administrative Plan to include any amendments required to meet current policy guidance. The FEMA Region for the host-State may provide technical assistance upon request in preparation of such amendment. If FEMA provides direct reimbursement and the host-State requests Section 324 State management costs, the host-State must also comply with 44 CFR §207.4(b)(3).

50. Under a mutual aid agreement between a host-State and the impact-State, will the host-State receive the entire 100 percent reimbursement at one time?

It depends on the terms of the mutual aid agreement negotiated between the host-State and the impact-State.

51. Can a host-State allow volunteer labor to pass to the impact-State to offset the impact-State's non-Federal share?

No. One State cannot transfer its volunteer labor to another State for use to offset the non-Federal cost share.

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Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9580.8 (Fact Sheet) – Eligible Sand Replacement on Public Beaches (2009)

TITLE: Eligible Sand Replacement on Public Beaches

DATE: October 1, 2009 (Superseded on January 1, 2016)

OVERVIEW

A beach is an area of unprotected, unconfined sand along a body of water subject to winds, tides, currents, and/or waves. When conducting evaluations of sand losses due to storm-induced erosion, the entire beach profile must be considered. The beach profile includes a dune or elevated back beach, a backshore consisting of a relatively flat berm(s) above high tide or high water and a sloped foreshore that is subject to variations in water levels, and a sub-aqueous nearshore zone that is influenced by the tides, currents and wave action (USACE,2003). The beach profile is very dynamic, constantly changing with changes in the tides, currents and wave actions that affect it. Sand moves from the dune and/or berm to the foreshore and sub-aqueous nearshore zone and back again. This movement or redistribution of sand within the beach profile is a natural process that does not constitute beach damage.

Occasionally a storm causes such dramatic changes in the tides, currents and wave actions that affect a beach, that sand is moved outside of the beach profile. It is moved too far on-shore, off-shore or along-shore such that it is not recoverable by natural processes. In these cases, the beach is considered damaged by the storm.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended, Sections 403 and 406; and 44 Code of Federal Regulations (CFR) §§206.225, Emergency work, and 206.226, Restoration of damaged facilities, authorize FEMA's Public Assistance (PA) Program to fund replacement of sand on damaged public beaches under certain conditions.

Eligibility is divided into two areas: emergency work and permanent work (restoration of damaged facilities). This Fact Sheet addresses eligibility requirements for each area.

FEMA will review proposed sand replacement projects for compliance with the Endangered Species Act, Coastal Barrier Resources Act and the National Historic Preservation Act. In addition, the applicant is responsible for obtaining all permits as required by applicable Federal, State, Tribal, or local regulatory agencies including, but not limited to, permits under Section 404 of the Clean Water Act and Coastal Zone Management Act.

- Emergency work, in accordance with 44 CFR §206.225(a)(3), is eligible for PA funding when it is necessary to:
 - Eliminate or lessen immediate threats to life, public health, or safety; or
 - Eliminate or lessen immediate threats of significant additional damage to improved property.

- Immediate threat means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years (see 44 CFR §206.225(a)(3)(ii)).
 - Emergency work to eliminate or lessen immediate threats of additional damage to improved property must be cost effective (see 44 CFR §206.225(a)(3)(ii)).
- If a beach has eroded to a point where a five-year storm or flood event will damage improved property, cost-effective emergency work on the beach may be eligible. Improved property is defined as a “structure, facility or item of equipment which was built, constructed or manufactured” according to 44 CFR §206.221(d), Definitions.
- Emergency work on beaches typically includes the construction of a temporary sand berm to protect against additional damage from a five-year storm. These sand berms are not intended to be permanent, only to provide protection from immediate threats.
- FEMA determined the five-year flood protection criterion for emergency work from a frequency average dune erosion relationship that the National Flood Insurance Program developed for application on a nationwide basis (FEMA, 1988). For a five-year event, the average expected erosion above the five-year stillwater elevation (the maximum storm-induced water-surface elevation, primarily a combination of the normal tide and the storm surge) is 6 cubic yards per linear foot (CY/LF) of shoreline.
- Emergency berms can be constructed with sand recovered from low-tide beach (foreclosure and nearshore zone) and/or over-wash areas. If insufficient quantities are available to be recovered, and/or if state and/or local regulations prohibit these actions, sand can be imported to construct the emergency berms, if the applicant demonstrates that it is cost-effective. The source of imported sand must meet all applicable environmental protection regulations in order to be eligible for FEMA funding. These berms should have no more than 6 CY/LF of sand above the five-year stillwater elevation. In some cases, it may be necessary to place sand below the five-year elevation to provide a base for the berm. The placement of that sand is also eligible as part of the emergency protection. If 6 CY/LF of sand did not exist above stillwater elevation before the event, the emergency berm and total amount of sand replaced is limited to the amount of sand eroded by the disaster event.
- The following items are NOT eligible emergency protective measures:
 - Sand placement in isolated areas of severe erosion as it does not protect improved property;
 - Protection of improved property that will not be damaged by an event with a 20 percent chance of occurrence each year; or
 - Protection of unimproved property.

PERMANENT WORK

- FEMA provides grants for the repair, restoration, reconstruction or replacement of public facilities on the basis of their design as they existed immediately prior to the disaster (see 44 CFR §206.226). In accordance with 44 CFR §206.226(j)(2), a beach may be considered an eligible facility when:
 - The beach was constructed by the placement of imported sand (of proper grain size) to a designed elevation, width and slope;
 - A maintenance program involving periodic re-nourishment with imported sand has been established and adhered to by the applicant; and
 - The maintenance program preserves the original design.

- To document eligibility of the beach as a designed and maintained facility, the applicant should provide the following information to FEMA:
 - All design studies, plans, construction documents and as-builts for the original nourishment;
 - All studies, plans, construction documents and as-builts for every re-nourishment;
 - Documentation and details of the maintenance plan, including how the need for re-nourishment is determined and funded; and
 - Pre-and post-storm profiles that extend at least to the seaward edge of the sub-aqueous nearshore zone (closure depth, usually 15 to 20 feet).
- The amount of sand eligible for replacement with permanent work funding is limited to the amount lost as a result of the disaster event. The pre and post-storm profiles are used to determine the eligible volume of sand. If pre-storm profiles are not available, the estimated erosion from the design study and re-nourishment history can be used to determine a pre-storm condition.
- The cost to replace sand that eroded prior to the disaster is not eligible for FEMA funding. However, the applicant is encouraged to re-nourish the project to the design.
- Not all beach nourishments are eligible for PA funding as a designed and maintained facility. The following are typically not eligible:
 - Emergency or “one-time” nourishments, even if to a design, are not eligible projects because they do not have an established and adhered to maintenance program.
 - Emergency or “as-needed” re-nourishments when the beach has eroded to a critical condition (all of the original nourishment gone), are not eligible maintenance programs. A portion of the improved beach must be maintained through scheduled re-nourishments.
 - Re-nourishments must be to the project design; partial re-nourishments or “hot-spot” nourishments are not considered maintenance of the improved project.
 - Sand placed on a beach from a channel maintenance project is not an eligible beach nourishment project. The sand placed on the beach (dredge spoils) is not selected to meet compatibility design criteria, and the amount placed is dependent on the amount dredged, not a design. If removal of sand from the maintained channel is eligible for PA funding, disposal of the sand spoils on the beach may be eligible as part of that project.
- Work to restore or replace sand on an unimproved natural beach is not eligible for FEMA assistance as natural beaches are not constructed and maintained to a design (see 44 CFR§206.226(j)).

REFERENCES

- Federal Emergency Management Agency, *Basis of Erosion Assessment Procedures for Coastal Flood Insurance Studies*, Washington, DC, November 1988.
- U.S. Army Corps of Engineers, *Coastal Engineering Manual*, EM 1110-2-1100, Change 1, Washington, DC, July 2003.

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Elizabeth A. Zimmerman
Assistant Administrator
Disaster Assistance Directorate

9580.100 (Fact Sheet) – Mold Remediation (2006)

TITLE: Mold Remediation

DATE: November 7, 2006 (Superseded on January 1, 2016)

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.
- 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.

SIZING THE SCOPE OF WORK¹

The extent of contamination will dictate the containment and personal protection equipment (PPE) used by the Applicant or contractor during remediation work. The following parameters may be used as a general guideline.

Small (< 10 sq. ft.)

- PPE: Minimum (RN-95 respirator, gloves, and goggles)
- Containment: None required
- Remediator: Force Account

Medium (10 – 100 sq. ft.)

- PPE: Limited or full OSHA requirements
- Containment: Limited (containment of the contaminated area using sheeting)
- Remediator: Force Account or Contractor (depending on contaminated materials)

Large (> 100 sq. ft.)

- PPE: Full OSHA requirements
- Containment: Full containment
- Remediator: Remediation Contractor

¹ Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings;" www.epa.gov/mold/table2.html

MOLD REMEDIATION METHODS²

Wet Vacuum:

- 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:

- Wipe or scrub non-porous (hard) surfaces with water and detergent
- Follow instructions listed on the product label

High Efficiency Particulate (HEPA) Vacuum:

- 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:

- 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

APPLICATION OF REMEDIATION METHODS³

The following list outlines actions typically used to remediate mold. The methods are described above.

Books and Paper:

- 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:

- Wet vacuum
- Reduce ambient humidity levels with dehumidifier
- Accelerate drying process with fans

Ceiling Tiles:

- Discard and replace

² Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings;" www.epa.gov/mold/mold_remediation.html

³ Summarized from Indoor Environments Division (IED) of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings;" www.epa.gov/mold/table1.html

Cellulose Insulation:

- Discard and replace

Concrete or Cinder Block Surfaces:

- Wet vacuum
- Accelerate drying process with dehumidifiers, fans and/or heaters

Fiberglass Insulation:

- Discard and replace

Hard Surfaces/Porous Flooring (e.g., linoleum, ceramic tile, vinyl):

- Vacuum or damp wipe with water and mild detergent
- Scrubbing may be necessary
- Allow to dry

Upholstered Furniture:

- Wet vacuum
- Accelerate drying process with dehumidifiers, fans and/or heaters

Wallboard (drywall and gypsum board):

- 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:

- Launder or clean according to manufacturer's instructions

Wood Surfaces:

- 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

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 remediaters lack expertise in contaminated water situations

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

9580.101 (Fact Sheet) – 2006 Special Community Disaster Loan Program (2006)

TITLE: Frequently Asked Questions – 2006 Special Community Disaster Loan Program

DATE: August 21, 2006 (Archived on September 30, 2006 – 2006 CDLP Deadline)

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 AND ANSWERS

- 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.
- 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 inpatient 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.

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.

9580.102 (Fact Sheet) – Permanent Relocation (2006)

TITLE: Permanent Relocation

DATE: November 2, 2006 (Superseded on April 14, 2010)

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 AND ANSWERS

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 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.

5. Are potential proceeds from the sale of the land considered in Cost Benefit Analysis to determine if the relocated project is cost effective?

No. The value of the land is not a component of the Cost Benefit Analysis.

6. If the land for the new location of the damaged facility is owned by the applicant, or donated by a third-party, will FEMA reduce its grant if the applicant sells the land on which the damaged facility was originally located?

Yes. Costs associated with the construction of ancillary facilities (roads, utilities, etc.) necessary to make the relocated facility operational (not including construction costs of the actual facility itself) would be reduced by the proceeds of the sale up to the full cost of the ancillary facilities.

For example, if FEMA provides a total of \$100,000 in funding to construct ancillary facilities on the donated property to make the relocated facility operational and the applicant sells the land on which the damaged facility was originally located for \$750,000, a total of \$100,000

would be deducted from the eligible cost of the permanent relocation. The applicant would be able to keep the difference between the proceeds of the sale and the funding expended by FEMA to construct the ancillary facilities, in this case, \$650,000. As noted above in Question 4, the sale of the property will not impact the funding of the reconstruction of the actual damaged facility at the new site, it will only impact the costs associated with land acquisition and the construction of ancillary facilities.

- 7. If the Regional Director does not require the damaged facility to be relocated, but the applicant chooses to construct a new facility at a different location, is the acquisition of new land and construction of ancillary facilities still eligible for reimbursement?**
No. Relocation of a facility must be required by the Regional Director. The applicant can request an improved project (44 CFR 206.223(d)(1)) for the facility to be built at a different location but the grant will not cover any cost for land acquisition, ancillary facilities or demolition and removal of the old facility.

____//Signed//____
John R. D'Araujo, Jr.
Director of Recovery

9580.102 (Fact Sheet) – Permanent Relocation, Clarification Memo (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

DATE: May 29, 2007 (Superseded on April 14, 2010)

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.

9580.102 (Fact Sheet) – Permanent Relocation (2010)

TITLE: Permanent Relocation Fact Sheet

DATE: April 14, 2010 (Superseded on January 1, 2016)

OVERVIEW

The 44 CFR §206.226(g) authorizes the Regional Administrator to, “approve funding for and require restoration of a damaged or 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 Administrator, 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. Demolition and removal of the old facility may also be an eligible cost if deemed necessary. When the Regional Administrator approves the permanent relocation of a damaged or destroyed facility, FEMA will not provide future funding for repair or replacement of a facility at the original site, unless the facility facilitates an open space in use in accordance with 44 CFR Part 9.

QUESTIONS AND ANSWERS

1. When FEMA approves the permanent relocation of a damaged or destroyed facility, can the applicant sell the land on which the damaged or destroyed 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 funding for the land acquisition to the amount necessary to make the relocated facility and its associated components operational, and cost-effective. For example, if the facility being permanently re-located was located on 10 acres of land at the time of the disaster, FEMA may provide less than 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. The new site should be in proximity to necessary water, sewer, or electrical services to make the facility operational. The cost of the new land plus ancillary cost should be minimized to the extent practicable. For example, the cost of running off-site utility hookup will be compared to providing on-site wells or sewer treatment facilities and the lowest cost solution will be

provided. Any off-site ancillary cost will be limited to utilities that serve the applicant exclusively. The cost of utilities that serve the general public is not eligible. Similar to limitations placed on land acquisition, FEMA will limit funding for construction of the relocated facility and ancillary facilities to the amount necessary to make it operational.

- 3. If the applicant owns the facility, 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 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. The cost to purchase the land or build ancillary facilities is not eligible.
- 4. Will FEMA reduce the amount of funding for the relocated facility if the applicant sells the original property?**
Yes. While the subgrant is open, FEMA will reduce the grant for the relocated facility by the net proceeds from the disposition of property. While the applicant's proceeds derived from the sale of the buildings, ancillary structures, or land on which the damaged or destroyed facility was originally located will not impact the funding of the reconstruction of the actual damaged or destroyed 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 monetary value, which is included in the sale price of the damaged or destroyed facility's property.

For example, if FEMA provides \$400,000 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 or destroyed facility was originally located for \$750,000, FEMA will deduct \$400,000 from the final project cost.

The sale of the property must be reasonable. Selling 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. If the applicant leases the original property, FEMA will reduce the grant by the amount of rent the Applicant collects up to the purchase price of the acquired land during the time the project is open.

- 5. Does FEMA consider the potential proceeds from the sale of the land in the benefit-cost analysis to determine if the relocated project is cost effective?**
No. FEMA does not use the value of the land at the original site to determine if the relocated facility is cost-effective.
- 6. If the land for the new location of the damaged or destroyed facility is owned by the applicant or donated by a third-party, will FEMA reduce its grant if the applicant sells the land on which the damaged or destroyed facility was originally located?**
Yes. Costs associated with the construction of ancillary facilities (roads, utilities, etc.) necessary to make the relocated facility operational (not including construction costs of the

actual facility itself) would be reduced by the proceeds of the sale up to the full cost of the ancillary facilities.

For example, if FEMA provides \$100,000 to construct ancillary facilities on the donated property to make the relocated facility operational and the applicant sells the land on which the damaged or destroyed facility was originally located for \$750,000, FEMA will deduct \$100,000 from the eligible cost of the relocated property. As noted above in Question 4, the sale of the property will not affect the funding of the reconstruction of the actual damaged or destroyed facility at the new site; it will only affect the costs associated with land acquisition and the construction of ancillary facilities.

7. If the Regional Administrator does not require the damaged or destroyed facility to be relocated, but the applicant chooses to construct a new facility at a different location, is the acquisition of the new land and construction of ancillary facilities eligible for reimbursement?

No. Relocation of a facility must be required by the Regional Administrator. The applicant can request an improved project (44 CFR §206.223(d)(1)) for the facility to be built at a different location, but the grant will not cover the cost for land acquisition, ancillary facilities or demolition and removal of the old facility.

8. If the applicant decides for historical or other reasons to make substantial improvements to a damaged or destroyed facility that is located in a special flood hazard zone, will FEMA funding for the repairs?

Yes. The applicant must comply with the community's floodplain management ordinance. The cost to comply with the floodplain management ordinance is eligible for reimbursement up to the replacement cost of the facility.

9. How does FEMA determine the cost effectiveness of a relocated project?

When the cost to relocate a facility is greater than the cost to repair the facility in its original location, cost effectiveness is determined by comparing the increased cost of relocation to the benefits derived from relocating the facility. This comparison can be accomplished using the FEMA-approved Benefit Cost Analysis (BCA) methodology and tool. The Regional Administrator may approve an alternative methodology on a case-by-case basis.

//Signed//
Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9580.103 (Fact Sheet) – GSA Disaster Recovery Purchasing Program (2008)

TITLE: General Services Administration Disaster Recovery Purchasing Program

DATE: July 7, 2008 (Superseded on January 1, 2016)

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 Assistance eligibility requirements for costs incurred from a Presidential-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).

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).

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>.

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Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

9580.104 (Fact Sheet) – Public Assistance for Ambulance Services (2009)

TITLE: Public Assistance for Ambulance Services

DATE: January 2, 2009 (Superseded on January 1, 2016)

OVERVIEW

This fact sheet identifies ambulance services that are eligible for reimbursement under the Category B, Emergency Protective Measures provisions of the Federal Emergency Management Agency's (FEMA) Public Assistance Program. FEMA will reimburse eligible applicants reasonable costs associated with eligible work, such as evacuation and rescue operations, during federally declared major disasters and emergencies. See 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 44 CFR Part 206.

PUBLIC ASSISTANCE ELIGIBILITY

- Eligible applicants:
 - Eligible applicants may include State, local and tribal governments and private nonprofit organizations or institutions which provide ambulance services (44 CFR §§206.221 and 206.222). State, local and tribal governments may provide ambulance services directly or may contract with other ambulance service providers for such services, including mutual aid agreements and emergency memoranda of understanding.
 - Private non-profit ambulance providers are not eligible for direct reimbursement from FEMA. The state, local or tribal government that contracted with the private ambulance providers may submit a claim for reimbursement to FEMA. Reimbursement will be subject to cost sharing requirements. See 44 CFR §206.203(b).
- If required as a result of an emergency or major disaster declaration, eligible ambulance service provider costs include, but are not limited to, the following:
 - The costs of activating ambulance contracts and staging of ambulances (contract or publicly owned) prior to the impact of an incident, such as landfall of a hurricane, typhoon or tropical storm. Contracts for staging ambulance services must be part of the state or regional evacuation plan. The costs of staging ambulances are eligible even if the incident does not directly impact the staging area, provided the president declares an emergency or major disaster.
 - The reasonable costs incurred in advance of or as the result of an emergency or major disaster declaration for transporting disaster victims to a hospital or other medical facility.
 - The reasonable costs for ambulance services used to transport a congregate shelter evacuee/shelteree to the nearest hospital equipped to adequately treat the medical emergency.
 - Ambulances used for distributing immunizations, staffing shelters and emergency departments, setting up mobile units and responding to hazards.

- The costs to staff congregate shelters with medical practitioners to provide assistance to evacuees.
 - Costs of ambulances used in support of shelter operations or onsite at shelter locations.
 - Symptom surveillance and reporting, and transporting and redistribution to make necessary hospital bed space available.
 - Equipment costs incurred by the ambulance provider, including fuel and medical supplies capable of providing basic and advanced life support. The costs for using applicant-owned equipment while conducting eligible work are reimbursed in accordance with 44 CFR §206.288.
 - Eligible costs will be limited to a period of up to 30 days from the date of the emergency or major disaster declaration, as determined by the Federal Coordinating Officer.
 - The ambulance transportation service provided should be customary and appropriate for the work required. Emergency air and ground ambulance services may be required to transport disaster victims and/or evacuees requiring emergency medical care to medical facilities. Para-transit transportation services (such as vans, minibuses and buses) may be required as an alternative transportation mode for individuals including senior citizens, individuals with disabilities, individuals in nursing homes and assisted living facilities and for homebound individuals impacted by a disaster.
 - An eligible applicant may not seek reimbursement from FEMA for any ambulance service costs that are covered by private insurance, Medicare, Medicaid or a pre-existing private payment agreement. States must use due diligence in determining whether a prohibited duplication of benefits has occurred and return those funds to FEMA at a projects final inspection and closeout.
 - FEMA reimbursement for activating, staging and using ambulance services will end when:
 - FEMA and State determine that the incident did not impact the ambulance staging areas; or
 - Evacuation and repatriation of medical and special needs patients is complete; or
 - The immediate threat caused by the incident has been eliminated and the demand for services has returned to normal operation levels.
- Eligible labor costs include, but are not limited to, the following:
 - Overtime pay for regular full-time employees performing eligible work.
 - Regular time and overtime pay 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.)
 - If volunteer Emergency Medical Technicians perform eligible work essential to meeting immediate threats to life and property resulting from a major disaster or emergency, FEMA will credit the donated labor toward the non-Federal share of the grant costs under the Public Assistance Program (See Disaster Assistance Policy DAP9525.2, Donated Resources, dated April 9, 2007, for eligible resources criteria).

MORE INFORMATION

More information on the Public Assistance eligibility can be found in the FEMA Public Assistance Guide (FEMA 322), dated June 2007; the FEMA Disaster Assistance Policy

DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*, dated April 6, 2007; Disaster Assistance Policy DAP9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*, dated August 13, 2007; Disaster Assistance Policy DAP9525.2, *Donated Resources*, dated April 9, 2007; and FEMA Recovery Policy RP9525.7, *Labor Costs-Emergency Work*, dated November 16, 2006.

____//Signed//____

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

ARCHIVED

9580.107 (Fact Sheet) – Public Assistance for Childcare Services (2010)

TITLE: Public Assistance for Childcare Services

DATE: March 5, 2010 (Superseded on March 20, 2010)

OVERVIEW

This fact sheet identifies child care services that are eligible for reimbursement under the Category B, Emergency Protective Measures provision of the Federal Emergency Management Agency's (FEMA) Public Assistance Program. FEMA will reimburse eligible applicants' reasonable costs associated with the provision of child care services during federally declared major disasters and emergencies. See Sections 403(a)(3) and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance, 42 U.S.C. §5121-5207 (Stafford Act) and implementing regulations 44 CFR Part 206.

PUBLIC ASSISTANCE ELIGIBILITY

- **Eligible applicants.** State, local and tribal governments and private nonprofits (PNP) organizations which provide child care services (44 CFR §206.221 Definitions and 206.222 Applicant eligibility). State, local and tribal governments may provide child care services directly or may contract (including through mutual aid agreements and memoranda of understanding) with other child care service providers for such services.
- **Emergency Sheltering.** If a state, local or tribal government provides child care services to families that are in congregate shelters, the cost to provide child care services is considered part of the sheltering operation and the cost for both the facility and its operation are eligible. FEMA may also reimburse a state and local government the cost to establish and operate standalone child care centers as emergency shelters. The state may use its own resources or contract with other providers for the emergency sheltering operations.

Reimbursement for the costs of providing child care services will terminate when Section 403 emergency sheltering operations end.

- **Eligible Sheltering Costs.** If required as a result of an emergency or major disaster, eligible child care sheltering costs may include, but are not limited to, the following:
 1. **Labor Costs.** If the regular employees of an eligible applicant perform duties in direct support of child care 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, specifically hired to provide additional support required as a result of the disaster or emergency are also eligible for reimbursement. (See FEMA Recovery Policy RP9525.7, Labor Costs – Emergency work, for information related to eligible labor costs while performing emergency work).

2. Facility Costs.
 - Minor modifications to a building used for child care sheltering, if necessary to make the facility habitable and functional
 - Shelter safety and security
 - Shelter management
 - Cleaning and restoration
 3. Supplies and Commodities
 - Food and beverages
 - Cots/linens/blankets/pillows
- **Temporary Relocation Facilities.** Section 403(a)(3)(D) of the Stafford Act authorizes the provision of temporary facilities for schools and other essential community services. FEMA has determined that the provision of child care services is an essential community service and will provide assistance for the lease, purchase or construction of temporary facilities to allow the applicant to reestablish child care services it provided prior to the disaster. (See FEMA Recovery Policy RP9523.3, Provision of Temporary Relocation Facilities, for information related to eligible temporary relocation costs).
 - **Repair, Restoration or Replacement of Public and Private Nonprofit Facilities.** Section 406 of the Stafford Act authorizes funding to repair, restore or replace damaged public and PNP facilities. Disaster Assistance Policy DAP9521.3, Private Nonprofit (PNP) Facility Eligibility classifies day care centers for children as facilities that provide essential governmental services. In order to receive reimbursement for permanent work, the PNP applicant must apply for a disaster loan from the SBA. (See FEMA Disaster Assistance Policy DAP9521.3, Private Nonprofit (PNP) Facility Eligibility).

MORE INFORMATION:

More information on Public Assistance eligibility is available in the FEMA Public Assistance Guide (FEMA 322), dated June 2007; FEMA Disaster Assistance Policy DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*, dated April 6, 2007; FEMA Disaster Assistance Policy DAP9521.3, *Private Nonprofit (PNP) Facility Eligibility*, dated July 18, 2007; Recovery Policy RP9523.3, *Provision of Temporary Relocation Facilities*, dated July 16, 1998; and FEMA Recovery Policy RP9525.7, *Labor Costs – Emergency Work*, dated November 16, 2006.

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Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9580.107 (Fact Sheet) – Public Assistance for Childcare Services (2012)

TITLE: Public Assistance for Childcare Services

DATE: March 20, 2012 (Superseded on January 1, 2016)

OVERVIEW

This fact sheet identifies certain child care services that are eligible for reimbursement as Category B, Emergency Protective Measures under the Federal Emergency Management Agency's (FEMA) Public Assistance Program. For eligible State, local, and Tribal governments, FEMA may reimburse reasonable costs associated with the provision of child care services during Presidentially declared major disasters and emergencies, in accordance with Sections 403(a)(3) and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5170b and 5192 (Stafford Act) and implementing regulations in 44 CFR Part 206.

PUBLIC ASSISTANCE ELIGIBILITY

Child Care Services for Sheltered Populations.

If a State, local, or Tribal government provides child care services to support sheltered populations, the cost to provide such child care services may be eligible under the Public Assistance Program. Sheltered populations are disaster survivors that are located in congregate or non-congregate (transitional) shelters.

Child care services are generally provided to children from newborn to age 12, and may include temporary respite care, day care for children, and similar services. These services may be provided within the congregate or non-congregate shelter facility, or in a separate facility, as appropriate.

State, local, or Tribal governments may provide child care services directly, or may contract (including through mutual aid agreements and memoranda of understanding) with child care service providers and/or facilities for such services.

Eligible Costs related to Child Care Services for Sheltered Populations.

If required as a result of a declared major disaster or emergency, eligible costs related to child care services to support sheltered populations include, but are not limited to, the following:

- *Labor Costs –* For regular employees of an eligible applicant who perform work in direct support of child care services for sheltered populations, labor costs are reimbursed consistent with applicable statute and regulation. Regular-time and overtime pay for contract labor (including through mutual aid agreements and memoranda of understanding) or temporary hires needed to accomplish the emergency work is also eligible for reimbursement. (See FEMA Recovery Policy RP9525.7, *Labor Costs – Emergency Work* and 44 CFR 206.228(a)(2), for information related to eligible labor costs while performing emergency work.)

- *Facility Costs –*
If a State, local, or Tribal government provides services within a congregate or non-congregate shelter facility or establishes and operates child care services for shelter residents in a separate facility:
 - Minor modifications to a facility if necessary to make it functional as a childcare facility
 - Facility lease or rent (at the market rate)
 - Utilities, such as power, water, and telephone.
 - Facility safety and security
 - Cleaning (regular facility and linen cleaning) and restoration (to return the facility to its condition prior to use as a child care facility)
- *Supplies and Commodities –*
 - Food and beverages
 - Cots/cribs/linens/blankets/pillows/tables/chairs
 - Toys and books
 - Refrigerators, microwaves, and crock pots (e.g., for heating bottles)

All costs must be reasonable and necessary to accomplish the eligible work; compliant with Federal, State, and local requirements for competitive procurement (including 44 CFR Part 13); and reduced by all applicable credits and salvage values.

Reimbursement for costs related to the provision of child care services for sheltered populations are subject to the Category B cost share established for the declared event and will end when Section 403 emergency sheltering operations (including congregate and non-congregate) end. FEMA may reimburse eligible applicants for the cost to provide child care services to other disaster survivors, not just those who are located in congregate or non-congregate (transitional) shelters. In order to do so, in accordance with 44 CFR 206.225, the Regional Administrator may require certification that temporary child care services are a necessary measure to meet an immediate threat to life, public health and safety, or property following a declared event. As such, the applicant's emergency actions should be independent of any expectation of FEMA reimbursement. If an eligible applicant requests reimbursement for these temporary child care services, FEMA would make an eligibility determination as we would for any other emergency protective measure and the applicant would have to meet all eligibility requirements, including providing documentation to show that it has the legal responsibility to perform the work. This assistance is provided pursuant to Section 403(a)(3)(D) of the Stafford Act, which authorizes the provision of temporary facilities for schools and other essential community services, including child care facilities, essential to meeting immediate threats to life and property resulting from a major disaster.

TEMPORARY RELOCATION FACILITIES AND PERMANENT REPAIRS

For eligible State, local, and Tribal governments and private nonprofit (PNP) owners and operators of child care facilities damaged or destroyed as a result of a major disaster, FEMA may provide assistance under Sections 403 and 406 of the Stafford Act (See 44 CFR §206.221 *Definitions*, and §206.222 *Applicant eligibility*).

Temporary Relocation Facilities.

Section 403(a)(3)(D) of the Stafford Act authorizes the provision of temporary facilities for schools and other essential community services, including child care facilities. FEMA may provide assistance for the lease, purchase, or construction of temporary facilities to allow an eligible applicant to reestablish child care services it provided prior to the disaster. (See FEMA Recovery Policy RP9523.3, *Provision of Temporary Relocation Facilities*, for information related to eligible temporary relocation costs.)

Repair, Restoration, or Replacement of Public and Private Nonprofit Facilities.

Section 406 of the Stafford Act authorizes the permanent repair, restoration, or replacement of public and PNP facilities, including daycare centers for children. Before a PNP applicant may receive reimbursement from FEMA for permanent work, the PNP applicant must first apply for a disaster loan from the U.S. Small Business Administration (See 44 CFR 206.226(c) and FEMA Disaster Assistance Policy DAP9521.3, *Private Nonprofit (PNP) Facility Eligibility*).

MORE INFORMATION

More information on Public Assistance eligibility is available in the FEMA Public Assistance Guide (FEMA 322) and in Recovery Policies RP9523.3, *Provision of Temporary Relocation Facilities*; DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*; DAP9521.3, *Private Nonprofit (PNP) Facility Eligibility*; and RP9525.7, *Labor Costs – Emergency Work*.

____//Signed//____

Deborah Ingram
Assistant Administrator
Recovery Directorate

9580.109 (Fact Sheet) – Eligible Emergency Assistance for Polling Places (2012)

TITLE: Eligible Emergency Assistance for Polling Places

DATE: November 2, 2012 (Superseded on January 1, 2016)

OVERVIEW

Elections are an essential government function carried out at the state and local levels of government. State and local governments determine the location of polling places and also must define the need, if any, for supplemental Federal assistance required by impacts from a declared event. As a result of a declared event, local polling stations may have been destroyed, damaged or are unavailable or inoperable due to lack of power. Polling stations typically are located in schools, community centers, churches and other public facilities designated by a local election board, and these facilities may be damaged or destroyed by a declared event, or may be in use for other purposes, such as shelters. In addition, a declared event may damage or destroy voting machines and ballots. FEMA may provide some types of assistance, as outlined below, in order to meet needs identified by state and local officials. All FEMA assistance is subject to applicable cost share requirements for the applicable declaration.

EMERGENCY ASSISTANCE

FEMA reimbursement and direct Federal assistance is limited to those activities that save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. These activities include those that provide for essential needs and the provision of temporary facilities for essential community services. (Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b).

- **Generators:** If a polling location lacks power due to the declared event, FEMA may provide assistance to obtain a generator.
- **Alternate Polling Place Locations:** In the event a polling place is destroyed, damaged, or otherwise unavailable because of the declared event, FEMA may provide assistance to obtain an alternate polling location pursuant to its authority to provide temporary facilities for essential community services. Polling places, even in churches, provide a governmental function.
 - **Rental of Voting Machines:** As part of establishing an alternate polling location, FEMA may reimburse for the rental of temporary voting machines to provide a balloting mechanism if voting machines are damaged.
 - **Paper Ballots:** As a part of establishing an alternate polling location, FEMA may reimburse for replacement of destroyed paper ballots or for ballots required to replace the use of damaged or destroyed voting machines.
 - **Public Outreach Costs:** FEMA may reimburse for public outreach and messaging costs necessary to advertise to the public that a polling place has changed location due to the impact of the declared event.

(Signed by Deborah Ingram, Assistant Administrator, Recovery Directorate)

9580.201 (Fact Sheet) – Debris Removal, Applicant's Contracting Checklist (2006)

TITLE: Debris Removal – Applicant's Contracting Checklist

DATE: August 30, 2006 (Superseded on September 27, 2010)

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.

NOTE: FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.

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.
- 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).

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.

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9580.201 (Fact Sheet) – Debris Contracting Guidance (2010)

TITLE: Debris Contracting Guidance

DATE: September 27, 2010 (Superseded on January 1, 2016)

OVERVIEW

Debris removal and monitoring contracts must meet rules for Federal grants, as provided for in Title 44 Code of Federal Regulations (CFR) §13.36, Procurement in order to be eligible for reimbursement under the Public Assistance Program. This fact sheet assists Public Assistance applicants with meeting procurement requirements established in 44 CFR Part 13, as well as other Public Assistance Program eligibility requirements, when procuring debris removal and monitoring contracts. 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.

CONTRACT PROCUREMENT

To be eligible for federal funding, applicants must comply with federal procurement standards as outlined in 44 CFR, §13.36, Procurement. Essential elements of the procurement process for debris removal and monitoring contracts include: competition; a clear and definitive scope of work; qualified bidders (documented by licenses, financial records, proof of insurance, and bonding, as applicable); a cost analysis to demonstrate cost reasonableness; compliance with all relevant local, State, and Federal requirements, laws and policies; and, clear documentation of the process/rationale followed in making procurement decisions. Federal regulations require applicants for Public Assistance grants to take the necessary steps to ensure there are opportunities to award contracts to minority, women-owned, and Labor Surplus Area businesses and firms whenever possible. This includes contracts with local organizations, firms, and individuals that support response and recovery activities in a declared major disaster or emergency area. Applicants' legal representatives should review their procurement process and any contract to be awarded to ensure they are in compliance with all Federal, State, and local requirements. Procurement policies must include procedures to handle protests and disputes related to contracts awarded. ***FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.***

In order to ensure that debris removal and monitoring contracting costs are eligible, applicants should:

- Use competitive bidding procedures to meet procurement requirements for Federal grants, as established in 44 CFR § 13.36, *Procurement*.
- Only use abbreviated emergency procurement procedures that include an expedited competitive bid process if time does not allow for more stringent procedures and if they are allowed under State or local laws, codes, or ordinances.
- Provide a clear and definitive scope of work in the request for proposals/bids.
- Require bidders to provide copies of references, licenses, financial records, and proof of insurance and bonding.

- Ensure that debris removal or monitoring contract costs are reasonable and necessary as defined and required by OMB Circular A-87 and 44 CFR Part 13. *Competitively bid contracts that comply with Federal, State, and local procurement regulations and procedures will establish reasonable costs for the work.*
- 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). See Attachment 1, *Debris Removal Contract Cost Analysis*, for guidance on completing a cost analysis.

COST ANALYSIS

Pursuant to 44 CFR §13.36, **Procurement**, Public Assistance applicants must complete a cost analysis for *any contract or contract modification where price competition is lacking*. Failure to complete a cost analysis may jeopardize FEMA Public Assistance grant funding. Applicants are encouraged to complete a cost analysis using the attached *Debris Removal Contract Cost Analysis*. Applicants are also encouraged to file documentation supporting the cost analysis with all associated contract documents.

Upon request, FEMA will provide guidance as necessary in the cost analysis process. Such a review does not constitute approval when determining the eligibility of costs for reimbursement under FEMA's Public Assistance Program.

PRE-DISASTER AND STANDBY CONTRACTS

Applicants are encouraged to pre-qualify debris removal contractors prior to an event and solicit bid prices from this list of contractors once an event has occurred to ensure competitive bidding and obtain reasonable market prices at the time of work performed. The solicitation for pre-qualifying contractors should adequately define in the proposed scope of work all potential debris types, anticipated haul distances, and size of events for which a contract may be activated.

DEBRIS REMOVAL CONTRACT PROVISIONS

All debris removal contracts must contain the following provisions:

- All payment provisions must be based on unit prices (volume or weight).
- Payments based on time and material costs are limited to work performed during the first 70 hours of actual work following a disaster event. *Note: FEMA will typically only reimburse applicants for a time and materials contract for eligible debris clearance during the first 70 hours following a declared disaster. After 70 hours of work, the applicant should have sufficient information on the scope of work necessary to complete debris collection and disposal, and a basis for estimating a reasonable cost for the contract work to effectively solicit a lump sum or unit price contract. For some types of debris work time and materials contracts may be the most cost-effective and best suited to the type of work. Applicants should work closely with the State and FEMA when awarding such contracts to ensure eligibility requirements are met.*
- Payment will be made only for debris that FEMA determines eligible. (This is an optional provision to protect the applicant.)
- Contractors must 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 time 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 a list of subcontractors the contractor plans to use.
- A requirement that the contractor use mechanical equipment to load and reasonably compact debris into the trucks and trailers.
- A requirement that the contractor provide a safe working environment.
- A requirement that all contract amendments and modifications will be in writing.
- A requirement that contractors must obtain adequate payment and performance bonds and insurance coverage.

DEBRIS MONITORING CONTRACTS

Applicants must monitor all debris removal operations. Applicants must document all eligible debris removal expenses as a condition of receiving Public Assistance funding. Applicants may use contractors to monitor their debris removal operations. In addition to the guidance provided above, applicants should consider the following when procuring debris monitoring contracts:

- Debris monitoring contracts must be competitively procured as required by 44 CFR §13.36, Procurement.
- Debris monitors should not be employed by or affiliated with the debris removal contractor.
- Debris monitoring contracts are typically time and materials contracts and must contain a "not-to-exceed" clause, pursuant to 44 CFR §13.36, Procurement.
- The contract should include a requirement that the contractor provide a safe working environment, including properly constructed monitoring towers.
- Use of a load ticket system to record with specificity (e.g., street address, GPS coordinates) where debris is collected and the amount picked up, hauled, reduced, and disposed of .
- Debris monitors should be trained and possess skills adequate to fulfill the duties of the job. Labor rates should be commensurate with the skill level required by the job function. Professional engineers and qualifications are not required to perform monitoring duties.
- The contractor should demonstrate that its staff is familiar with FEMA debris removal eligibility criteria.

AVOIDANCE CHECKLIST

- DO NOT: Award a debris removal or debris monitoring contract on a sole-source basis.
- DO NOT: Sign a contract (including one provided by a contractor) until your legal representative has thoroughly reviewed it.
- DO NOT: Allow any contractor to make eligibility determinations; only FEMA has authority to make final eligibility determinations.
- 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 management sites, unless the debris sites are part of your approved debris management plan or you contact the State or FEMA for technical assistance concerning the need for such an operation. 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; you should treat these stumps 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 because these contracts do not meet requirements for competition established in 44 CFR §13.36. Unless an applicant requests reimbursement for costs it incurred from a piggyback contract, FEMA will determine the reasonable cost for the performance of eligible work.

- 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.
- DO NOT: Allow for markups due to errors in volume calculations.
- DO NOT: Allow for miscellaneous items, or for contract contingencies of any kind, including "unknowns."

See Attachment 2 for additional guidance on debris contracts.

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Deborah Ingram
Acting Assistant Administrator
Recovery Directorate

ATTACHMENT 1: DEBRIS REMOVAL CONTRACT COST ANALYSIS

This guidance is intended to assist Public Assistance applicants in complying with the requirements of 44 CFR Part 13.36, **Procurement**, for debris operation contracts or contract modifications where adequate price competition is lacking.

WHEN TO CONDUCT A COST ANALYSIS

Applicants should complete a cost analysis when one of the following conditions applies:

- The applicant has not received two or more priced bids from responsible bidders after soliciting a number of sources;
- Services can only be provided by a single source;
- The awarding agency authorizes non-competitive proposals;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- The procurement is a contract modification or change order.

GENERAL CONTRACT REVIEW

In order to conduct a cost analysis, applicants should request cost documentation from their debris contractors. This documentation should contain a detailed breakdown of costs for each item of work activity and information on how the contractor arrived at its costs, including, but not limited to:

- Number of labor hours,
- Labor rates,
- Materials (types, quantities, and costs),
- Equipment hours,
- Equipment rates, or
- Unit costs

Applicants are encouraged to verify the mathematical accuracy of the cost documentation by recalculating the contractor's cost figures. Applicants should also review the proposed contract's scope of work for cost reasonableness to ensure that the proposed scope does not fall under an existing contract.

Applicants should ensure that the contract does not use prohibitive contracting methods per 44 CFR §13.36(f)(4), including:

1. Cost plus a percentage of cost -this is a contract that provides a specified percentage profit over and above the actual costs of construction; and
2. Percentage of construction cost.

LABOR RATE ANALYSIS

Applicants may determine the reasonableness of labor rates by:

1. Comparing the proposed labor category rates with the labor rates in another contract that was competitively *bid*;
2. Matching rates for each labor category to an acceptable source (e.g. RS Means);
3. Verifying that the classification of each worker and skill level proposed in the contract are reasonable and necessary for the scope of work. For example, a contractor should not propose using an experienced supervisor rate or worker with professional qualifications for

work that can be done by a low skilled laborer (e.g., using a professional engineer for debris monitoring). In this case, the supervisor labor classification is unreasonable and should be adjusted to the appropriate labor classification that is more commensurate with the type of work being performed; and

4. Verifying that the proposed number of labor hours are reasonable for the scope of work.

EQUIPMENT RATE ANALYSIS

Applicants may determine the reasonableness of equipment rates by:

1. Comparing the proposed equipment rates with the equipment rates in another contract that was competitively bid (if a change order, compared rates to the original contract);
2. Comparing the proposed equipment rates to FEMA's Schedule of Equipment Rates, available at www.fema.gov;
3. Matching equipment rates for each piece of equipment to an acceptable source (e.g., Equipment Watch);
4. Verifying that the type of equipment proposed is reasonable and necessary for the scope of work;
5. Verifying that the number of units (normally hours) of equipment usage necessary to complete the work is reasonable considering the specific scope of work; and
6. Verifying that there are no contract provisions for the following items with regard to the proposed equipment costs:
 - Mobilization costs
 - Standby costs

UNIT RATE ANALYSIS

Applicants may determine the reasonableness of unit rates by:

1. Verifying that the unit of measurement (i.e. cubic yard, weight, each, etc.) is appropriate for the scope of work (if the contractor quoted a unit rate price); and
2. Comparing the proposed unit rates with similar rates in another contract that was competitively bid (if a change order, comparing rates to the original contract).

MATERIALS AND SUPPLIES ANALYSIS

Applicants should review the materials and supplies included in the contract proposal and ensure that all costs are reasonable.

(SCOPE OF WORK) VOLUME ESTIMATES

In some circumstances, a contractor will include debris volume estimates in support of its proposed costs. Contractors develop these estimates using aerial and ground assessments, forecasting and estimating models (e.g., USACE hurricane debris models and photographs), side scan sonar and other methodologies.

Applicants should request hard copies of volume estimates and all supporting documentation in order to determine if the methodology that the contractor used to estimate debris was an acceptable and reasonable methodology. Applicants should also verify that the volume estimates are reasonable and accurate.

PRICE ANALYSIS FOR COMPETITIVELY BID CONTRACTS

Applicants are required by 44 CFR Part 13.36(f)(1) to perform a price analysis in all other instances (i.e., for competitively bid contracts when price competition is adequate), to determine the reasonableness of the proposed contract price. Price analyses may incorporate an evaluation of: historic documentation for similar work; average costs for similar work in the area; published unit costs from the national cost estimating databases; and FEMA cost codes, equipment rates, and engineering and design service curves. Upon request, FEMA will assist applicants in the review of these contracts and provide guidance as necessary.

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ATTACHMENT 2: DEBRIS OPERATIONS CONTRACT BID SHEET

OVERVIEW

Public Assistance applicants may use the following debris operations bid sheet as a template when issuing requests for proposals and soliciting contract bids for debris removal work. Use of a standard bid sheet will help Public Assistance applicants to compare and analyze bids, resulting in a more effective procurement process. **The bid sheet serves only as a guide for soliciting requests for debris removal services; use of the bid sheet is not a requirement for Public Assistance funding.** Please refer to the *Debris Operations Contracting and Cost Analysis* (Attachment 1) for guidance on complying with procurement requirements established in 44 CFR Part 13, Procurement.

DEBRIS OPERATIONS BID SHEET

The debris operations bid sheet is presented on the next three pages. The remainder of this section is intentionally left blank.

ATTACHMENT 2 – SAMPLE DEBRIS BID SHEET

NOTE: This sample bid sheet is intended for informational purposes only; it should not be submitted to FEMA.

SAMPLE Debris Bid Sheet					
SAMPLE Category	SAMPLE Field Name and Description	SAMPLE Unit	Cost per Unit	Estimated Total Units	Total
Vegetative Collect and Haul	0-15 Miles Veg from Right of Way (ROW) to Debris Management Site (DMS) <i>Vegetative collect and removal for a haul distance up to 15 miles</i>	CY	999999	999999	99,999,999.00
	16-30 Miles Veg from ROW to DMS <i>Vegetative collect and removal for a haul distance up between 16 and 30 miles</i>	CY	999999	999999	99,999,999.00
	31-60 Miles Veg from ROW to DMS <i>Vegetative collect and removal for a haul distance between 31 and 60 miles</i>	CY	999999	999999	99,999,999.00
	60+ Miles Veg from ROW to DMS <i>Vegetative collect and removal for a haul distance greater than 60 miles</i>	CY	999999	999999	99,999,999.00
	Single Price Veg from ROW to DMS <i>A single price vegetative collect and removal for any haul distance</i>	CY	999999	999999	99,999,999.00
Management and Reduction	Grinding <i>Grinding/chipping vegetative debris</i>	CY	999999	999999	99,999,999.00
	Air Curtain Burning <i>Air Curtain Burning vegetative debris</i>	CY	999999	999999	99,999,999.00
	Open Burning <i>Open Burning vegetative debris</i>	CY	999999	999999	99,999,999.00
	Compacting <i>Compacting vegetative debris</i>	CY	999999	999999	99,999,999.00
	Debris Management Site Management <i>Preparation, management, and segregating at debris management site</i>	CY	999999	999999	99,999,999.00
C & D Collect and Haul	0-15 Miles C&D from ROW to DMS <i>C&D collect and removal for a haul distance up to 15 miles</i>	CY	999999	999999	99,999,999.00
	16-30 Miles C&D from ROW to DMS <i>C&D collect and removal for a haul distance between 16 and 30 miles</i>	CY	999999	999999	99,999,999.00
	31-60 Miles C&D from ROW to DMS <i>C&D collect and removal for a haul distance between 31 and 60 miles</i>	CY	999999	999999	99,999,999.00
	60+ Miles C&D from ROW to DMS <i>C&D collect and removal for a haul distance greater than 60 miles</i>	CY	999999	999999	99,999,999.00
	Single Price C&D from ROW to DMS <i>A single price C&D collect and removal for any haul distance</i>	CY	999999	999999	99,999,999.00



ATTACHMENT 2 – SAMPLE DEBRIS BID SHEET (continued from previous page)

NOTE: This sample bid sheet is intended for informational purposes only; it should not be submitted to FEMA.

Final Disposal	0-15 Miles from DMS to Final Disposal <i>Transport processed debris from DMS to final disposal 0-15 Miles</i>	CY	999999	999999	99,999,999.00
	16-30 Miles from DMS to Final Disposal <i>Transport processed debris from DMS to final disposal 16-30 Miles</i>	CY	999999	999999	99,999,999.00
	31-60 Miles from DMS to Final Disposal <i>Transport processed debris from DMS to final disposal 31-60 Miles</i>	CY	999999	999999	99,999,999.00
	60+ Miles from DMS to Final Disposal <i>Transport processed debris from DMS to final disposal 60+ Miles</i>	CY	999999	999999	99,999,999.00
	Single Price from DMS to Final Disposal <i>A single price transport of processed debris from DMS to final disposal</i>	CY	999999	999999	99,999,999.00
	Tipping Fees (Vegetative) <i>Fee includes negotiated contract price or pass through amount for vegetative</i>	CY	999999	999999	99,999,999.00
	Tipping Fees (Mix) <i>Fee includes negotiated contract price or pass through amount for Mix</i>	CY	999999	999999	99,999,999.00
	Tipping Fees (C&D) <i>Fee includes negotiated contract price or pass through amount for C&D</i>	CY	999999	999999	99,999,999.00
Tree Operations	Hazardous Trees 6"-12" <i>Hazardous tree removal for a 6-12 inch trunk diameter</i>	Tree	999999	999999	99,999,999.00
	Hazardous Trees 13"-24" <i>Hazardous tree removal for a 13-24 inch trunk diameter</i>	Tree	999999	999999	99,999,999.00
	Hazardous Trees 25"-36" <i>Hazardous tree removal for a 25-36 inch trunk diameter</i>	Tree	999999	999999	99,999,999.00
	Hazardous Trees 37"-48" <i>Hazardous tree removal for a 37-48 inch trunk diameter</i>	Tree	999999	999999	99,999,999.00
	Hazardous Trees 49"+ <i>Hazardous tree removal for a 49+ inch trunk diameter</i>	Tree	999999	999999	99,999,999.00
	Trees with Hazardous Limbs >2" <i>Hazardous hanging limb removal</i>	Tree	999999	999999	99,999,999.00
	Hazardous Sumps >24"-36" <i>Hazardous stump removal for a 24-36 inch stump diameter</i>	Stump	999999	999999	99,999,999.00
	Hazardous Sumps >37"-48" <i>Hazardous stump removal 37-48 inch stump diameter</i>	Stump	999999	999999	99,999,999.00
	Hazardous Sumps >49"+ <i>Hazardous stump removal 49+ inch stump diameter</i>	Stump	999999	999999	99,999,999.00
	Stump Fill Dirt <i>Fill dirt for stump holes after removal</i>	CY	999999	999999	99,999,999.00



ATTACHMENT 2 – SAMPLE DEBRIS BID SHEET (continued from previous page)

NOTE: This sample bid sheet is intended for informational purposes only; it should not be submitted to FEMA.

Specialty Removal	Waterway Debris Removal <i>Debris Removal from canals, rivers, creeks, streams, and ditches</i>	CY	999999	999999	99,999,999.00
	Sand Collection and Screening <i>Pick up, screen, and return debris laden sand/mud/dirt/rock</i>	CY	999999	999999	99,999,999.00
	Vehicle Removal <i>Removal of eligible vehicle</i>	Unit	999999	999999	99,999,999.00
	Vessel Removal (Land) <i>Removal of eligible vessel</i>	LF	999999	999999	99,999,999.00
	Vessel Removal (Marine) <i>Removal of eligible vessel from waterway</i>	LF	999999	999999	99,999,999.00
	Carcass Removal <i>Removal of debris that will decompose (animals and organic fleshy matter)</i>	Pound	999999	999999	99,999,999.00
	ROW White Goods Removal <i>Pick up and haul of white goods to disposal site</i>	Unit	999999	999999	99,999,999.00
	Freon Management <i>Freon management and recycling</i>	Unit	999999	999999	99,999,999.00
	Demolition of Private Structure	CY	999999	999999	99,999,999.00
	Electronic Waste <i>Removal of electronic debris that contain hazardous materials, such as cathode ray tubes. Includes computers monitors and televisions.</i>	Unit	999999	999999	99,999,999.00
	Silt Removal		999999	999999	99,999,999.00
	Putrescent Removal <i>Removal of debris that will decompose or rot (animals and organic fleshy matter)</i>		999999	999999	99,999,999.00
Restoration	Biohazard Removal <i>Removal of waste capable of causing infection to humans (animal waste, human blood, pathological waste)</i>	Pound	999999	999999	99,999,999.00
	Household Hazardous Waste (HHW) <i>HHW removal and disposal</i>	Pound	999999	999999	99,999,999.00
Monitoring	Beach/Lake Restoration <i>Berm/Beach Construction</i>	CY	999999	999999	99,999,999.00
	Canal Shoreline Restoration	LF	999999	999999	99,999,999.00
	Debris Management Site Debris Monitors	Hour	999999	999999	99,999,999.00
	Debris Collection Site Debris Monitors (Field Monitors)	Hour	999999	999999	99,999,999.00
	Sr. Technician/Field Supervisor	Hour	999999	999999	99,999,999.00
Clerical Staff		Hour	999999	999999	99,999,999.00
Clerical Supervisor		Hour	999999	999999	99,999,999.00

Total	9,999,999.00
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9580.202 (Fact Sheet) – Debris Removal: Authorities of Federal Agencies (2007)

TITLE: Debris Removal: Authorities of Federal Agencies

DATE: January 27, 2007 (Superseded on January 1, 2016)

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

A. Federal Emergency Management Agency:

- 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 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.

B. United States Coast Guard:

- 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.

DEPARTMENT OF DEFENSE

A. 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, DC 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.

UNITED STATES DEPARTMENT OF AGRICULTURE

A. 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.

B. Farm Service Agency:

- 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.
- 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).

C. 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'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.
- 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

A. 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.
- 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

A. 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

Federal Emergency Management Agency

9580.203 (Fact Sheet) – Debris Monitoring (2007)

TITLE: Debris Monitoring

DATE: May 2, 2007 (Superseded on January 1, 2016)

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.

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.

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.

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
Lump Sum	Defined debris quantities and reasonable costs. Estimate is basis for contract costs.	<ul style="list-style-type: none"> ▪ Load Site ▪ Disposal Sites 	Quantities are still required to determine reasonable costs.
Unit Price - CY	Based on eligible debris listed on load tickets	<ul style="list-style-type: none"> ▪ Crew Efficiency ▪ Load Site ▪ DMSs ▪ Disposal Sites ▪ Fraud 	
Unit Price - Ton	Based on actual weight measurements of eligible debris listed on load tickets.	<ul style="list-style-type: none"> ▪ Load Site ▪ Disposal Sites ▪ Fraud 	
Time and Materials	Based on labor, equipment and materials records. Reasonable costs evaluated by determining costs per unit.	<ul style="list-style-type: none"> ▪ Crew Efficiency ▪ Load Site ▪ Disposal Sites ▪ Fraud 	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.

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

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*. 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 by David Garratt, Acting Assistant Administrator, Disaster Assistance Directorate)

9580.204 (Fact Sheet) – Documenting and Validating Hazardous Trees, Limbs, and Stumps (2009)

TITLE: Documenting and Validating Hazardous Trees, Limbs and Stumps

DATE: August 2, 2009 (Superseded on January 1, 2016)

OVERVIEW

Removal of hazardous trees, limbs, and stumps that present immediate threats to lives, public health and safety, or improved property and meet other eligibility criteria specified in the Debris Management Guide, FEMA 325, may be eligible for Public Assistance grant funding. The regulations governing FEMA's Public Assistance Program (Code of Federal Regulations, Title 44: Emergency Management and Assistance, Part 206, Subparts G (Public Assistance Project Administration) and H (Public Assistance Eligibility)) require States and local government applicants to provide documentation of costs and work performed to support requests for reimbursement from FEMA (44 CFR §206.202(b)(4), Application procedures, *Grantee*). The regulations also require States to monitor grant and subgrant supported activities such as debris removal and disposal operations. 44 CFR §206.205(b)(1), Payment of claim, *Large projects*, states: "The Grantee shall make an accounting to the RD [Regional Director, now Regional Administrator] of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work... [and] that the approved work was completed." Additionally, 44 CFR §206.205(b)(2) states: "The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information."

This Fact Sheet provides guidance on the documentation applicants should provide in their requests for Public Assistance funding for removing hazardous trees, limbs, and stumps. It also describes the process FEMA will use in coordination with States and local government applicants to validate that eligible work was completed when a discrepancy between reported costs and eligible funding arises.

DOCUMENTING HAZARDOUS TREES, LIMBS AND STUMPS

General

Applicants should provide documentation that directly supports their requests for Public Assistance funding and certification that they performed the work in accordance with FEMA eligibility criteria. The documentation may include photographs, maps, and other documents that show the location of the work on public rights-of-way, evidence of the immediate threat, and details of the work performed to remove the threat. If applicants perform the work, they should submit documentation of labor and equipment charges required to do the work, such as payroll records, applicant-owned equipment usage records, and equipment rental invoices. If applicants hire contractors to perform the work, the applicants should submit the contract and invoices to FEMA.

Applicants should separate costs for the removal of hazardous trees, limbs, and stumps from debris removal paid on a cubic yard or ton basis to avoid double payment, unless they can clearly show that costs for cutting are separate from costs to remove and dispose of the debris.

Specific eligibility criteria and documentation requirements for each item of work are provided below. Failure to provide sufficient documentation may jeopardize the applicant's request for Public Assistance funding.

Hazardous Trees

- Eligibility Criteria: Trees that are leaning such that they are in an imminent state of falling over and trees with broken canopies may pose an immediate threat to life, public health, safety, and improved property. Trees should be six inches or larger in diameter, measured 4.5 feet above ground level.
- Documentation: Applicants should submit a spreadsheet showing the number of trees cut and the size and location of each tree. The location should include the street/road name and GPS coordinates of each tree removed along public rights-of-way, and the property address and GPS coordinates of each tree removed from private property. Applicants may also provide photographs of the flush-cut trees and certify that the trees were six inches or larger in diameter, measured 4.5 feet above the ground.

Hazardous Limbs

- Eligibility Criteria: Broken limbs two inches or larger in diameter measured at the point of break that pose an immediate threat to life, public health, or safety, or pose an immediate threat of significant damage to improved property, are eligible for removal.
- Documentation: Applicants should submit a spreadsheet containing the location of the trees, the number of limbs cut on each tree, and a certification that the limbs were two inches or larger in diameter. The location should include the name of the street/road and GPS coordinates for each tree or cluster of trees along public rights-of-way, and the street address or parcel number for hazardous limbs cut on private property. Applicants may also submit photographs to document the number of hazardous limbs cut. If the applicants contracted for the removal of hazardous limbs on a per-tree basis, the number of limbs cut per tree is not necessary.

Hazardous Stumps

- Eligibility Criteria: Stumps that are 24 inches or larger in diameter measured 24 inches above the ground and have 50 percent or more of their root ball exposed are eligible for removal on a per-stump basis. Reimbursement for the removal of stumps measuring less than 24 inches in diameter will be based on the reasonable cubic yard prices for vegetative debris. Please see Disaster Assistance Policy DAP9523.11, *Hazardous Stump Extraction and Removal Eligibility* for additional information on the estimated volume of various size stumps.
- Documentation: Applicants should complete a *Hazardous Stump Worksheet*, found in Disaster Assistance Policy DAP9523.11. The Worksheet captures information on the number of hazardous stumps removed, hazardous stump location and size, and the quantity of fill material required to fill the resultant hole. Applicants that request reimbursement for force account labor and equipment should provide all of the above information except the sizes of the stumps removed.

The documentation requirements stated above only apply when applicants are collecting, hauling, and disposing of the debris. They do not apply during the emergency debris clearance phase when crews clear roads to provide emergency access to critical facilities.

Additional information on the eligibility of hazardous trees, limbs, and stumps can be found in Part I of FEMA's Debris Management Guide, FEMA 325, and in Disaster Assistance Policies DAP9523.11, *Hazardous Stump Extraction and Removal Eligibility*, and DAP9523.13, *Debris Removal from Private Property*.

VALIDATING ELIGIBLE WORK

FEMA, in coordination with the State and the applicant, may select a small sample of hazardous trees, limbs, and/or stumps to validate eligible scopes of work and eligible project funding if a discrepancy between documentation, work performed, and eligible funding exists. The validation process will include field visits to verify that the applicant performed work in accordance with FEMA eligibility criteria. FEMA will use the results of the validation process to determine eligible project funding.

FEMA, State, and Applicant Validation Team

The validation of work to remove hazardous trees, limbs, and stumps should be a coordinated and collective effort between FEMA, the State, and the applicant. Validation teams performing physical inspections should be comprised of representatives from FEMA, the State, and the applicant who are familiar with debris removal operations, FEMA policy and debris removal eligibility, and debris monitoring documentation practices. The validation teams should meet prior to conducting validations to identify expectations and objectives, and hold meetings as necessary to resolve issues. The validation teams should work to achieve consensus on validation determinations.

Validation Samples

FEMA, the State, and the applicant should select a sample of at least 500 work items to validate the applicant's request(s) for reimbursement. Separate validations should be conducted for hazardous trees, limbs, and stumps and for work performed on public and private property. Only one validation should be conducted for each scope of work selected for validation.

Interim Validations

FEMA may conduct interim validations before the completion of the debris removal operation as a quality control measure and to establish Public Assistance grant amounts for the applicable scope of work. The decision on whether or not to conduct an interim validation should be a joint decision between FEMA, the State, and the applicant. Interim validations should include a sample of at least 500 work items completed up to the date of validation. The results from any validation should apply exclusively to the scope of work that the applicant completed before FEMA conducted the validation.

For example, an interim validation may occur 30 days after the applicant initiates a debris removal operation and focus on work performed during the first 30 days. FEMA may conduct a final validation for the remainder of the work after the applicant completes the debris removal operation. The final validation should include a sample of at least 500 work items completed

after the date of the interim validation. The results from the first validation will be used to determine the eligible scope of work for work and costs claimed during the first 30 days, and the final validation results will be applied to determine the eligible scope of work for the remaining work and associated costs claimed.

Documentation Requirements

The documentation for the validation process should include:

- Names and affiliations of validation team members;
- Date and locations of inspections;
- The number of hazardous trees, limbs, and stumps selected for validation;
- The debris removal load tickets or invoices for the hazardous trees, limbs, and stumps selected for validation;
- The validation results;
- Name of the debris removal contractor that performed the work (if applicable);
- Name of the applicant's debris monitor that provided oversight for the work claimed (if Applicable); and
- Rights of entries and indemnification agreements when the applicant performed work on private property.

Applying Validation Percentages to Determine Eligibility

FEMA will apply the percentage of the debris removal work that it validated to the applicant's total claim for reimbursement. However, FEMA will approve 100percent funding for the applicable scope of work if it validates at least 80 percent of the sample of work items. Eligible funding for scopes of work validated at less than 80 percent will be based on the actual percentage of validated work.

Timeframe

FEMA should validate the removal of hazardous trees, limbs, and stumps within 45 days of project completion.

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Elizabeth A. Zimmerman
Assistant Administrator
Disaster Assistance Directorate

9580.205 (Fact Sheet) – Public Assistance Funding for Public Housing Facilities (2010)

TITLE: Public Assistance Funding for Public Housing Facilities

DATE: May 19, 2010 (Superseded on January 1, 2016)

OVERVIEW

FEMA may provide funding to public housing authorities (PHAs) under the Public Assistance Program for emergency work costs and for the repair, replacement or restoration of disaster damaged public housing facilities. Previously, Section 9(k) of the Housing Act of 1937, as amended (Housing Act), authorized the Department of Housing and Urban Development (HUD) to provide disaster assistance to repair disaster-damaged PHA facilities. Therefore, FEMA could not provide disaster assistance for the permanent repair of PHA facilities eligible for funding under Section 9(k) of the Housing Act. FEMA could only reimburse for the eligible emergency work costs of such facilities. Congress repealed Section 9(k) of the Housing Act as part of the Housing and Economic Recovery Act of 2008, which the President signed into law on July 30, 2008 (now Public Law 110-289). FEMA now has authority to fund both the emergency costs and permanent repair of all PHA facilities for major disasters and emergencies declared on or after October 1, 2008.

ELIGIBLE WORK

Emergency Work: FEMA may provide essential assistance under Section 403 of the Stafford Act to PHAs and American Indian and Alaskan Native designated public housing entities. 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.

Permanent Work: FEMA may provide assistance to repair, replace or reconstruct disaster-damaged PHA facilities unless Congress appropriates funds to HUD for emergency capital needs to repair, restore, or replace certain PHA facilities damaged in Presidential-declared major disasters. American Indian and Alaskan Native designated public housing entities may apply directly to FEMA for disaster assistance.

____//Signed//____
Elizabeth A. Zimmerman
Assistant Administrator
Recovery Directorate

9580.206 (Fact Sheet) – Public Assistance for Animal Carcass Removal and Disposal (2014)

TITLE: Public Assistance for Animal Carcass Removal and Disposal

DATE: September 25, 2014 (Superseded on January 1, 2016)

OVERVIEW

Generally, FEMA will provide assistance for the removal and disposal, which may include open burning, incineration, or rendering, of animal carcasses resulting from a Presidential declared major disaster, Fire Management Assistance Grant (FMAG) declared fire, or emergency declaration when animal carcass removal and disposal is necessary to reduce or eliminate an immediate threat to life, protect public health and safety, and/or to protect improved property. This assistance is authorized under Sections 403, 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Other Federal agencies may also provide assistance.

Local, state, territorial, and tribal governments are encouraged to prepare for animal carcass removal and disposal by developing Animal Carcass Management Plans as addenda or annexes to their Debris Management Plans if animal carcasses are not already included in their debris management plan. Animal carcasses do not have to be collected separately from other disaster-generated debris to be eligible for removal and disposal.

ELIGIBLE FEMA ASSISTANCE

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.

In Stafford Act declared emergencies, major disasters, or FMAG declarations that authorize Public Assistance Category A (debris removal) and/or Category B (emergency protective measures), eligible applicants may be reimbursed for certain carcass removal and disposal activities. In order to be eligible for reimbursement, carcass removal and disposal activities must be:

- Required as a direct result of a declared major disaster or emergency;
- Located within the designated area of the declaration; and
- The legal responsibility of an eligible applicant at the time of the declared event.

Additionally, carcass removal and disposal activities must be necessary to reduce or eliminate an immediate threat to life, protect public health and safety, and/or to protect improved property. Removal and disposal activities must be compliant with all Federal, state and local laws, including the Resource Conservation and Recovery Act, Endangered Species Act, National Historic Preservation Act, Clean Air Act, Clean Water Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, and Bald and Golden Eagle Protection Act. FEMA will conduct an Environmental and Historic Preservation (EHP) review in coordination with other Federal agencies as appropriate before funding is obligated to ensure that carcass disposal is carried out in compliance with these laws and regulations.

Eligible applicants may be reimbursed for costs directly tied to the performance of eligible work. Such costs must be:

- Reasonable and necessary to accomplish the work;
- Compliant with all Federal, state and local requirements for competitive procurement; and
- Reduced by all applicable credits, such as insurance proceeds or salvage values.

DIRECT FEDERAL ASSISTANCE – STAFFORD ACT

FEMA may provide direct Federal assistance (DFA) through a mission assignment to another Federal agency to perform carcass removal and disposal work or to provide technical assistance regarding proper carcass management for major disasters and emergency declarations only. DFA is not available for FMAG declarations. The grantee must request the direct Federal assistance and certify that it lacks the capability to perform or contract for the requested work. If another federal agency has authority to perform the work requested, FEMA will not mission assign the work.

OTHER FEDERAL AGENCY ASSISTANCE

Generally, FEMA will not provide funding when another Federal agency has the authority to provide assistance for debris or carcass removal and disposal under its own authorities:

A. Department of Agriculture (USDA):

- In some instances, USDA may provide for partial reimbursement to individual landowners under existing programs; these programs are developed with local authorities as the need arises.
 - The USDA Natural Resources Conservation Service (NRCS) may be able to provide local assistance for the removal and disposal of dead animals under the Emergency Watershed Protection Program (EWPP), if it meets the eligibility requirements as debris.
 - The USDA Farm Service Agency (FSA) may provide assistance for farmland debris cleanup in order to return the land to its productive agricultural capacity through the Emergency Conservation Program. Agricultural producers with farmland impacted by debris should contact their local FSA office for further information on potential assistance programs.
- NRCS may provide applicants with technical assistance. Private landowners with animal carcass issues, following a natural disaster, should contact their NRCS State Office to inquire about potential technical assistance.
- If there is evidence that an animal was exposed to a pest or disease of livestock, USDA may exercise authority under the Animal Health Protection Act to destroy and dispose of the animal carcass.

B. U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG):

- EPA and USCG have the authority to respond to animal carcasses that are contaminated with oil, hazardous substances, pollutants, or contaminants under the Clean Water Act/Oil Pollution Act of 1990 (CWA/OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as specified in those laws.
- Response actions may include but are not limited to providing:
 - Federal carcass removal and disposal;

- Technical assistance; and/or
- Oversight of carcass removal and disposal by potentially responsible parties or state, tribal, or local governments.
- FEMA Public Assistance Policy 9523.8 describes how FEMA will fund ESF #10 Mission Assignments when there is a major disaster or emergency declaration.
 - Under that policy, EPA and USCG will fund and respond to animal carcasses contaminated with oil, hazardous substances, pollutants, or contaminants that are related to pre-existing CWA/OPA removal actions and pre-existing CERCLA (also known as Superfund) sites, in accordance with those authorities.

FREQUENTLY ASKED QUESTIONS

1. Would all animals be covered for carcass removal and disposal, or would it be limited to small animals, large animals, domestic animals, etc.? Would wildlife carcasses be included?

Carcass removal and disposal must be performed to reduce or eliminate an immediate threat *to* life, protect public health and safety, and/or to protect improved property as a result of the declared event. FEMA may require certification from the state or local health department or the USDA that a health threat exists to make the determination that an immediate threat exists. When few in number, smaller animal carcasses (such as rodents, skunks, opossums, etc.) typically do not pose a threat to public health and safety and, therefore, would not be eligible for removal and disposal.

Federal laws protecting wildlife such as eagles and other migratory birds, endangered and threatened species, and marine mammals limit possession of these species. Check with your State wildlife agency, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service for information.

2. Is carcass removal and disposal on private property eligible?

Removal and disposal of carcasses on private property is generally not eligible work. If the carcasses are determined to present an immediate threat to life, public health and safety, then removal and disposal may be eligible as an emergency protective measure. FEMA may require certification from the state or local health department or the USDA that a health threat exists to make the determination that an immediate threat exists to warrant FEMA funding for removal from private property.

The removal of carcasses from private property, is subject to the same FEMA eligibility criteria and conditions as those for all private property debris removal must be met, including hold harmless agreements. Private landowners with animal carcass issues following natural disasters should contact their NRCS State Office to receive information on technical assistance and other assistance that may be available.

3. Is there a certain number of animal carcasses that will trigger Public Assistance for carcass removal and disposal?

No. Regardless of the number of animal carcasses involved, the carcasses must pose a threat to lives, public health and safety in order for their removal and disposal to be eligible for Public Assistance.

4. If temporary carcass burial, mounding, composting, or preprocessing is required, will FEMA cover both the interim activity and the final disposal costs?

FEMA will provide assistance for both interim activity and final disposal costs, which may include rendering ad incineration, when the applicant, cost, and work are eligible for assistance.

5. What procedures can be implemented to assure prompt management of animal carcasses in a safe and timely manner?

Jurisdictions are encouraged to develop Animal Carcass Management Plans as addendums or Annexes to their Debris Management Plans. Some procedures for the disposal of animal carcasses are rendering, disposal in landfills and off-site and onsite incineration, with burial in unlined pits being the least preferred method. Animal carcasses may need to be separated from typical storm debris (as are other items such as propane tanks, refrigerators, etc.), but generally can be collected and properly disposed of by debris contractors. This would also apply to animal owners (e.g., livestock producers) who maintain large numbers of animals.

6. What are all of the currently available technologies for pretreatment or disposal? What approval guidelines can be developed to allow expedited evaluation and implementation of new technologies?

There are numerous publications regarding the subject and most are available on the Internet free of charge. Most state environmental agencies also provide free literature as does the federal government at the following websites:

- Links for Debris/Carcass Disposal Decision Support: <http://soils.usda.gov/survey/geography/hurricane/index.html>
- EPA's debris disposal decision support tool suite: <http://www2.ergweb.com/bdrtool/login.asp>
- Farm disaster assistance: <http://www.fsa.usda.gov/>

7. Is there a limit on distance of transport for animal carcasses that would be covered under Public Assistance?

No. Transportation costs may be eligible for Public Assistance, so long as the applicant, work and cost are eligible for assistance. Costs must be reasonable and necessary for the type of work performed. In order to receive Public Assistance, the work must be completed in a manner consistent with Federal, state and local regulations and guidelines, including applicable state and local transportation regulations.

8. Are there specific requirements for mode and location of carcass disposal?

In order to receive reimbursement from FEMA, the carcass removal and disposal must comply with all Federal, state and local requirements for competitive procurement and environmental considerations. Most states have administrative codes, regulations, and/or laws that outline the requirements for mass disposal of animal carcasses. Potential FEMA Public Assistance (PA) applicants should become familiar with these requirements and incorporate them into their plans to address animal carcasses.

When planning and conducting carcass disposal operations, applicants should identify potential sites for temporary storage or staging and final disposal that consider environmental

resources. These staging and disposal sites should avoid floodplains, wetlands, as well as ecologically and archeologically-sensitive environments. Any disposal or staging sites should be a safe distance from property boundaries, surface water, wetlands, and wells and should consider potentially negative impacts to schools, residences, nursing homes, hospitals, or other facilities housing people, animals, or food. Operations should also consider environmental factors, such as prevailing winds, odors, and operating hours of disposal and transportation. Upon completion of carcass removal, staging, and/or disposal areas may require some degree of site remediation.

NRCS provides an initial land evaluation suitability screening tool for disposal of dead animal carcasses through Web Soil Survey (<http://websoilsurvey.nrcs.usda.gov>). Soil-based interpretations for large animal disposal, by both pit and trench methods, are available for a selected area of interest. Numerical ratings for detailed soil map unit components indicate levels of limitations based on flooding, wetness, seepage, slope, excavation stability and other soil map parameters. Further on-site assistance for appropriate burial site location can be obtained through local and state NRCS offices.

9. Can animal owners and agriculture producers receive compensation for animal losses after Stafford Act declared disasters? What about animals that are not immediately killed by the event but cannot be maintained, moved, or marketed due to logistics, public opinion, or unknown safety issues?

USDA has certain programs, which if funded, may pay claims to owners when livestock are lost due to natural disasters such as tornadoes, floods, hurricanes, etc. Agriculture producers who have livestock mortalities resulting from natural disasters should contact their local FSA office for further information on potential reimbursement programs. Insurance through private companies is also available.

FEMA has disaster assistance policies (DAPs) that are authorized by the Stafford Act to provide for reimbursement of allowable expenses related to household pets and service animals (OAP 9523.19); animals in zoos (which may include aquariums and wildlife parks), museums, and rehabilitation facilities (DAP 9524.9); and research animals (DAP 9525. 16).

10. Is there an approval process for contractors providing carcass removal and disposal services?

Eligible applicants should follow their normal Federal, state and local government contracting and competitive bidding requirements. Transporters and landfill locations will need to be permitted in accordance with all applicable environmental regulations and transportation regulations.

9580.210 (Fact Sheet) – Personal Assistance Services in Shelters (2012)

TITLE: Personal Assistance Services in Shelters

DATE: November 16, 2012 (Superseded on January 1, 2016)

OVERVIEW

This fact sheet clarifies the eligibility of personal assistance services in congregate and transitional shelters under the Category B, Emergency Protective Measures provision of the Federal Emergency Management Agency's (FEMA) Public Assistance and Fire Management Assistance Grant Programs. FEMA will reimburse eligible applicants' reasonable costs associated with the provision of personal assistance services for persons with disabilities in general population congregate and non-congregate (e.g., Transitional Sheltering Assistance) shelters.

The Public Assistance Program, Fire Management Assistance Grant Program, and Applicants for Public Assistance grants must abide by all applicable authorities, including: the Rehabilitation Act of 1973, as amended; Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*; 28 CFR Part 35 (Title II, Department of Justice); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121, *et seq.*; and 44 CFR Parts 204 and 206. Applicants should also consult the FEMA *Public Assistance Guide* (FEMA 322), dated June 2007; FEMA Disaster Assistance Policy DAP9523.15, *Eligible Costs Related to Evacuations and Sheltering*, dated April 6, 2007; FEMA Disaster Assistance Policy DAP9521.3, *Private Nonprofit (PNP) Facilities Eligibility*, dated July 18, 2007; and FEMA Recovery Policy RP9525.7, *Labor Costs-Emergency Work* dated November 16, 2006, to determine eligibility requirements.

FEMA has established an Office on Disability Integration and Coordination and a Disability Integration Specialist position in every Region. They can be contacted at the following email address: Fema-Disability-Integration-Coordination@dhs.gov.

PUBLIC ASSISTANCE ELIGIBILITY

Eligible applicants include State, local, and tribal governments which provide personal assistance services in general population shelters (44 CFR §206.221 *Definitions*, §206.222 *Applicant Eligibility*, and 44 CFR §204.41 *Applicant Eligibility*). State, local, and tribal governments may provide personal assistance services directly, or may contract (including through mutual aid agreements and memoranda of understanding) with other personal assistance service providers for such services.

Personal Assistance Services are formal and informal services usually provided by paid personnel, friends, family members, and volunteers that enable children and adults to maintain their independence outside of an institutional setting. In a congregate or transitional shelter, **when the person that normally provides assistance is not available**, personal assistance services are still required in order to maintain the usual level of independence. These services

may include: care for oneself such as grooming, eating, bathing, toileting, dressing and undressing, walking, transferring (movement between cot and wheel chair); maintaining health and safety; and assistance taking medications, communicating, or accessing programs and services.

Personal Assistance Services do not include the provision of: wheel chairs, prescription eyeglasses, hearing aids, or readers for personal use or study.

EMERGENCY SHELTERS

If a State, local, or tribal government provides personal assistance services to individuals with disabilities in a congregate or transitional shelter, the cost to provide personal assistance services is considered an eligible component of the sheltering operation and is therefore eligible for funding. Reimbursement of the costs of providing personal assistance services will terminate when Section 403 emergency sheltering operations end.

ELIGIBLE SHELTERING COSTS

If the regular employees of an eligible applicant perform duties in direct support of personal assistance services, 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, specifically hired to provide additional support required as a result of the disaster or emergency may be eligible for reimbursement. (See 44 CFR §206.228(a)(2), 44 CFR §204.42(c)(1)(2) and FEMA Recovery Policy RP9525.7, *Labor Costs-Emergency Work*, for information related to eligible labor costs while performing emergency work).

____//Signed//____

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9580.212 (Fact Sheet) – Public Assistance Grant Contracting Frequently Asked Questions (2012)

TITLE: Public Assistance Grant Contracting Frequently Asked Questions (FAQs)

DATE: October 28, 2012 (Superseded on January 1, 2016)

OVERVIEW

The Federal Emergency Management Agency (FEMA) provides State, local and Tribal governments, as well as certain private non-profit organizations (collectively referred to as "applicants"), grant assistance for the cost of responding to and recovering from major disasters. This assistance includes reimbursement for the cost of eligible work completed through contracts procured by the applicant. In order to be reimbursed for these costs, contracts must be in compliance with the procurement requirements in 44 Code of Federal Regulations (CFR) part 13, 2 CFR parts 215, 220, 225, and 230, and applicable state and local procurement laws (collectively referred to as the "procurement rules"). Compliance with the procurement rules is a condition of receiving grant funding. *Non-compliance with Federal contracting requirements puts an applicant's grant funding at risk.*

These FAQs identify and clarify the procurement rules, alert applicants to pitfalls and highlight best practices.

FREQUENTLY ASKED QUESTIONS

1. What are the procurement requirements that must be followed by grantees and subgrantees?

Applicants must use their own procurement procedures which reflect applicable State and local laws and regulations. They must also, however, meet the minimum Federal procurement standards¹ where those standards are more onerous (including but not limited to those discussed in this Fact Sheet}, or the contract will be deemed in violation of the procurement rules, and the request for reimbursement could be subject to the enforcement provisions discussed later in this Fact Sheet.

2. What are the procurement actions required for reimbursement by FEMA?

Full and Open Competition. The procurement rules require full and open competition, with limited exceptions.

Cost or price analysis. The specific facts of the procurement will dictate the method and degree of analysis, but at a minimum, applicants must always make an independent estimate before receiving bids or proposals. A price analysis will be used to determine the reasonableness of the proposed contract price. Further, a cost or price analysis should be completed to evaluate the bids or proposals received.

¹ See e.g. 44 CFR §§13.36(a) and (b).

Contractor ownership preferences.² Full and open competition also involves the adherence to procurement rules covering contractor ownership preferences. The applicant must take positive actions to involve and use "small and minority firms, women's business enterprise and labor surplus area firms."³ The applicant's process should give potential contractors in these categories a full and open opportunity to compete.⁴ FEMA will reimburse the applicant if, after a full and open competition, the applicant selects a contractor who provides the lowest price but does not meet one of these categories. When the applicant hires a prime contractor, the applicant must also require the prime contractor to utilize the same approach towards these categories when hiring sub-contractors.

System for managing procurement. Applicants must employ a system that governs contracts and purchase orders. This system must include a means of enforcing agreements, written procedures governing procurement actions, and a written code of standards for contract and purchase order administration. This code of standards must provide ethical rules and the penalties for violating these rules.⁵ The system must also include a process to handle protests involving contracts and purchase order awards.⁶

Required provisions in procurement actions. The applicant must include certain provisions in its procurement actions. These provisions vary depending on the type and dollar amount of the contract, and are provided in 44 CFR part 13 or 2 CFR part 215, 220, 225, or 230, as applicable. Note that the Uniform Administrative Requirements for Federal Grants and Assistance require applicant contracts to contain a provision requiring compliance with the Davis-Bacon Act when required by grant program legislation. The Stafford Act requires preparedness grantees to comply with Davis-Bacon provisions.⁷ The Stafford Act does not require compliance with Davis-Bacon for any other grants. Therefore, applicant contracts to execute eligible work under the Public Assistance program are not required to contain a Davis-Bacon provision.

Guarantees and bonds. For construction contracts and facility improvements above the simplified acquisition thresholds⁸, the applicant must require a bid guarantee from each bidder equivalent to 5 percent of the bid price, a performance bond on the part of the contractor for 100 percent of the contract price, and a payment bond on the part of the contractor for 100% of the contract. In lieu of these requirements, if FEMA (with respect to a grant) or the state (with respect to a subgrant), has made a determination that FEMA or the

² Applicants should not establish mandatory set-aside programs, which have been found to violate the 14th Amendment of the U.S. Constitution unless they are used as narrowly tailored remedies for identified discrimination. See City of Richmond vs. J.A. Croson Co. 488 U.S. 469 (1989).

³ Title VJ of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq. and 44 CFR Part 7.

⁴ This includes putting these contractors on solicitation lists; dividing the task into smaller pieces if economically feasible; working with the Small Business Administration (SBA) and the appropriate Department of Commerce/Minority Business Development Agency.

⁵ The penalties must adhere to State and local laws and regulations. *See e.g.* 44 CFR §I 3.36(b)(3).

⁶ FEMA will generally not get involved in these protests. *See e.g.* 44 CFR § I 3.36(b)(12) (limiting Federal agency protest reviews to violations "of Federal law or regulations and the standards of this section" and "of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.").

⁷ Stafford Act §611U)(9), 42 U.S.G. §5196(j)(9).

⁸ The simplified acquisition threshold is managed by the Federal Acquisition Council and is subject to change. As of October 1, 2010, the rate is \$150,000. 75 FR 53129.

state's interest is adequately protected through other means, they may accept the bonding policy and requirements of the applicant.

3. What do applicants have to do to provide full and open competition?

Full and open competition means a contract action in which responsible sources are permitted to compete. Fair and open competition occurs when a complete, adequate and realistic specification or purchase description is publicly solicited and multiple responsible bidders are allowed to compete effectively for the business.⁹

When procuring goods or services at or below the simplified acquisition amount, the applicant must consider an adequate number of qualified sources. FEMA considers three to be the minimum adequate number of qualified sources.

This Fact Sheet as well as 44 CFR 13.36, 2 CFR Parts 215, 220, 225, and 230, as appropriate, provide the necessary requirements and processes to follow in order to ensure that an applicant satisfies the full and open competition requirements.

4. Is there a time when full and open competition is not required?

A procurement action that does not meet the requirement for full and open competition, such as a sole source contracts, constitutes a violation of regulation and is unauthorized unless the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals AND one of the following circumstances applies:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- FEMA authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.

If an applicant takes a noncompetitive procurement action, the applicant must complete a cost analysis and may be required to submit the proposed procurement to FEMA for pre-award review.¹⁰

5. Are there any other recommendations FEMA has for procurement actions?

Use sealed bids. For construction contracts, FEMA prefers sealed bids. After a public invitation and solicitation to bid, the applicant should award a firm-fixed-price contract, in writing, to the lowest responsible offeror. Applicants may also use the sealed bid method for non-construction contracts if appropriate.

When the sealed bid method is not appropriate, the applicant may use competitive proposals to award a fixed-price contract or a cost-reimbursement contract. With competitive proposals, awards are made in accordance with evaluation and award criteria set forth in the solicitation. The solicitation must set out all evaluation factors and their relative importance; solicit proposals from an adequate number of qualified sources; and have a method to conduct technical evaluations and select awardees. The competitive proposals method allows

⁹ See FAR Subpart 6.1. *See e.g.* 44 CFR §§13.36(d)(2) and (d)(3).

¹⁰ *See e.g.* 44 CFR §13.36(d)(4).

applicants to make their decision on more factors than price alone. When an applicant procures professional architecture or engineering services, this method permits eliminating price as a selection factor entirely.¹¹

Keep detailed records. Keep detailed records of any decision points in the procurement process, and document the rationale for the decision. A contemporary accounting of the decision will help the applicant in the event of an appeal or challenge at a later time.

Team up. To foster greater economy and efficiency, applicants are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

Lease vs. purchase. Applicants should compare the costs associated with leasing and those associated with purchasing over an applicable time frame to determine which option provides the greatest cost savings.

Use value engineering. Put value engineering clauses in sizeable construction contracts. Value engineering systematically reviews contract items and tasks to ensure that the "essential function is provided at the overall lower cost."¹²

6. Are there any procurement actions that are discouraged by FEMA?

Time and materials contracts. Applicants should avoid using time and materials contracts in their procurement actions. This contract type creates the risk that costs could go beyond what the parties anticipated, so applicants should only use it when no other contract type is suitable. In light of this risk, time and materials contracts must include a ceiling amount on the price of the contract.¹³ Including a ceiling shifts the risk to the contractor for any overages. For Public Assistance, such contracts should be limited for work that is necessary immediately after a disaster and should not exceed 70 hours.¹⁴

"Piggyback" contracts. "Piggybacking" occurs when an applicant has disaster-related work performed by another jurisdiction's contractor.¹⁵ Because the competitive process for the existing contract could not have included the full scope of the new work, the new work has not been competitively bid. The resulting costs may therefore be higher than if the work had been bid out separately. FEMA therefore discourages such contracts and will use the reasonableness of eligible work as a basis to determine reimbursable costs.¹⁶

¹¹ See e.g. 44 CFR §13.36(d)(3)(v). Note that the compensation must be "fair and reasonable." *Id.* This exception strictly *limits* applicants to eliminate price as a factor for the professional architecture or engineering services themselves and not for other services performed by those firms. *Id.*

¹² See e.g. 44 CFR §13.36(b)(7).

¹³ See e.g. *Id.* at §I 3.36(d)(10)(ii).

¹⁴ See FEMA 321, Public Assistance Policy Digest (January 2008), p. 23.

¹⁵ See FEMA 325, Public Assistance Debris Management Guide (July 2007), p. 19.

¹⁶ *Id.*

7. Are there any procurement actions that are prohibited by FEMA?

Noncompetitive contracts. Given the Federal contracting requirements for full and open competition, applicants must avoid awarding noncompetitive contracts unless the exceptions in FAQ #4 above apply.

Cost plus percentage of cost contracts. Cost plus percentage of cost contracts are strictly prohibited. Such contracts have four elements:

- Payment is based on a pre-determined percentage rate;
- Percentage rate is applied to actual performance costs;
- Contractor entitlement is uncertain at the time of contracting, and;
- Contractor entitlement increases commensurately with increased performance costs.¹⁷

Debarred or suspended contractors. Applicants must not employ disbarred or suspended contractors. In addition, applicants must report contractors who demonstrate a lack of integrity, ethical lapses, or perform inadequately. Applicants should check against the General Services Administration list of debarred and suspended contractors at: <https://www.epls.gov/>.

Conflicts of interest. The procurement regulations forbid awarding contracts "if a conflict of interest, real or apparent, would be involved."¹⁸ Conflicts of interest arise when an applicant's employee, officer, or agent (or their immediate families or partners) has a financial or other interest in who receives the contract award. FEMA will also find a conflict of interest when an organization that employs (or is about to employ) any of the above parties has a financial or other interest in the award.

Duplicative costs. The Stafford Act and its implementing regulations forbid FEMA from reimbursing duplicative costs.

Contingency clauses. When procuring property and services under a grant, an applicant must follow the same policies and procedures it uses for procurements from its non-Federal funds. Therefore, while it is acceptable if the contract scope of work indicates that activities will be carried out consistent with FEMA laws, regulations, and eligibility guidelines, *contracts may not be contingent upon the issuance of a Presidential declaration or FEMA's approval or obligation of funds.*

Excessive Costs. To be eligible for reimbursement, costs incurred must be *reasonable*, allocable, and allowable.¹⁹ Further, applicants must perform a cost or price analysis in connection with every procurement action including contract modifications.

¹⁷ U.S. GAO Opinion B-252378 (September 21, 1993). (In this case, the GAO determined that a 54 percent overhead rate applied to a cost reimbursement (no fee) contract constituted a prohibited cost plus percentage of cost method of contracting. No ceiling was applied to indirect cost reimbursements. GAO further opined that "...the use of a predetermined overhead rate w be applied to some element of direct cost which is undetermined at the time the rate is set, with no provision for retroactive adjustment to the actual cost, violates the express statutory prohibition against cost-plus-percentage-of-cost system of contracting")

¹⁸ See e.g. 44 CFR §13.36 (b)(3)

¹⁹ 2 CFR pt. 225, Appendix A, § C. Note: OMB Circular A-87 is codified as 2 CFR pt. 225.

Grantee or subgrantee profit. It is acceptable for applicants to pay reasonable fees or profit to cost-type contractors. However, no applicant can ever be in a position to receive a profit or fee itself for work procured pursuant to a Federal grant. FEMA will not fund any fee or profit to the applicant.

8. What happens when an applicant has hired a debris contractor without full and open competition because of the emergency circumstances from a declared disaster?

There are circumstances where public health and safety demand that initial debris clearance and removal be commenced before a standard competitive process can be completed.

Generally, however, such circumstances do not exist for more than 70 hours following a disaster event. If an applicant has hired a debris removal contractor without competition, the applicant should immediately solicit a new contract for the remaining work using a competitive process. The work already completed should provide helpful information on the scope of work necessary to complete debris collection and disposal, and a basis for estimating a reasonable cost for the remaining work to effectively solicit a reasonable lump sum or unit price (cubic yard or ton) contract.

In addition, for the work completed with a contract not competitively bid, the applicant should complete and document a cost analysis to demonstrate price reasonableness, and complete and document why the public exigency or emergency did not permit full and open competition.

9. Is it appropriate for an applicant to use a pre-qualified list of debris contractors from another jurisdiction?

Applicants are encouraged, but not required, to develop their own lists of pre-qualified contractors. This allows the applicant to have more control over the qualifications of its pool of potential bidders. In addition, State and local governments may use the GSA schedule of contractors to compete their work. These contractors are pre-qualified and their costs have been vetted as reasonable.²⁰

For more information on Debris Removal Contract Provisions, see Recovery Fact Sheet 9580.201 *Debris Contracting Guidance*.

10. Will FEMA review my solicitation and/or contract to guarantee it will be eligible for reimbursement?

While FEMA may elect to review a contract or solicitation, this does not equate to FEMA's approval of the solicitation/contract.

11. Will FEMA testify for me or help me enforce a contract?

FEMA will not get involved in contract disputes between an applicant and its contractors. A protestor must exhaust all administrative remedies with the applicant before pursuing a protest with FEMA. Further, the testimony of FEMA employees, or the disclosure of information in private litigation, is generally prohibited.²¹

²⁰ For more information, see FEMA fact Sheet 9580.103, GSA Disaster Recovery Purchasing Program.

²¹ 44 CFR 5.87 and 6 CFR 5.44

12. What happens if an applicant doesn't follow the procurement rules?

If an applicant fails to comply with any term of an award (including the contracting requirements discussed in this Fact Sheet), whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, FEMA may:

- Temporarily withhold payment, or take more severe enforcement action;
- Disallow all or part of the cost of the activity or action not in compliance;
- Wholly or partly suspend or terminate the applicant's current award;
- Withhold further awards; or
- Take other remedies that may be legally available.

AUTHORITY

- Sections 102, 403, 406, 407 and 502 of the Stafford Act. *N*
- Title 44 Code of Federal Regulations (CFR) Part 206 ("Federal Disaster Assistance"), Subparts G ("Public Assistance Project Administration ") and H ("Public Assistance Eligibility")
- 44 CFR Part 13("Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments")
- Office of Management and Budget (OMB) Circulars and Guidance, 2 CFR Parts 215 ("Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations"), 220 ("Cost principles for educational institutions"), 225 ("Cost principles for state, local, and Indian tribal governments"), and 230 ("Cost principles for non-profit organizations").
- 5 CFR Part 2635 "Standards of Ethical Conduct for Employees of the Executive Branch" (providing the ethical framework for Federal employees).

____ //Signed// ____
Deborah Ingram
Assistant Administrator
Recovery Directorate

9580.213 (Fact Sheet) – Residential Electrical Meter Repair (2012)

TITLE: Residential Electrical Meter Repair

DATE: November 10, 2012 (Superseded on January 1, 2016)

OVERVIEW

Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and implementing regulations¹, the Federal Emergency Management Agency (FEMA) may direct or reimburse activities to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. Under that authority, FEMA may fund the repair of residential electrical meters damaged in a major disaster or emergency as an emergency protective measure (Public Assistance Category B). Residential Electrical Meter Repair is intended to reduce the number of displaced disaster survivors needing shelter and allow for a faster recovery.

FEMA may provide this assistance to State, Tribal and local governments under the Public Assistance (PA) Program in the areas designated by a major disaster or emergency declaration. Reimbursement will be at the Federal cost share rate established in the Presidential declaration, which is generally 75 percent.

Funding for the repair of residential electrical meters is based on a reasonable cost for such work, but is limited to \$800 per meter. The work should be completed within 30 days from the date of issuance of the disaster declaration unless extended by the Federal Coordinating Officer (FCO).

FREQUENTLY ASKED QUESTIONS

1. Who can participate in Residential Electrical Meter Repair?

- Only State, Tribal or local governments are eligible applicants for reimbursement.
- The State, Tribal or local government must issue a finding of an immediate threat to safety due to loss of power caused by damaged meters/weather heads.
- The program must be requested by an eligible applicant and approved by the FCO.
- Only residences in a declared county are eligible.

2. How will Residential Electrical Meter Repair be implemented?

Once approved by the FCO, the process is as follows:

- a) The State, Tribal or local governments will determine the locations to be included in Residential Electrical Meter Repair.
- b) The State, Tribal or local governments will obtain a signed right-of-entry (ROE) agreement from each residential property owner, or use a signed ROE obtained by FEMA for other assistance if it covers the residence and the type of work to be performed.

¹ Section 403, 42 U.S.C. 5170b (a)(3)(B) and (I), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; and 44 CFR part 206, subpart C.

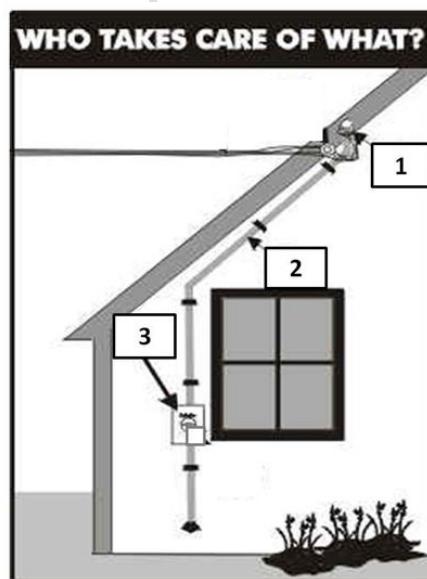
- c) The State, Tribal or local government will take reasonable measures to document any known insurance proceeds to prevent duplication of benefits in accordance with Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- d) The State, Tribal or local government will contract with licensed electricians to perform the repair of the electrical meters. Applicants must comply with the Federal procurement standards in 44 CFR 13.36.
- e) The State, Tribal or local government will coordinate the work with the owner, the power company, and electricians.
- f) The State, Tribal or local government is responsible for payment of the non-federal cost share, which is generally 25 percent.
- g) The applicant will submit its claim for reimbursement in the form of a Project Worksheet through the Grantee to the FEMA Public Assistance Program.

3. What equipment is eligible for repair under Residential Electrical Meter Repair?

Residential Electrical Meter Repair is intended to address the damage to items that are usually installed and maintained by the homeowner's electrician. The following items are eligible for repair:

- a) The weather head (**item 1** in the figure below) attaches to the service cable and prevents water damage to the wiring. This is installed and maintained by the homeowner's electrician.
- b) The service cable (**item 2** in the figure below) runs from the weather head to the meter box and from there to the panel box inside the house. The service cable is installed and maintained by the homeowner's electrician.
- c) The meter socket (**item 3** in the figure below) is installed and maintained by the homeowner's electrician.

The diagram below identifies the eligible elements of an exterior electrical system:



- 4. Can individual homeowners apply for this assistance?**
No. Only the State, Tribal, or local government can be an eligible applicant for reimbursement.
- 5. Are electrical meters for commercial properties eligible for Residential Electrical Meter Repair?**
No. Residential Electrical Meter Repair is for residential properties only. Apartment complexes are considered commercial property.
- 6. Are there time limitations for the performance of the repair work?**
Yes. The work should be completed within 30 days from the date of issuance of the disaster declaration unless extended by the FCO.
- 7. Is there a maximum amount that is reimbursable?**
Yes. Reimbursement will be based on reasonable cost for the work; however the maximum allowance is \$800 per meter per residential dwelling or unit. This includes equipment, materials, labor and any associated inspection fees to restore the meter to current local codes. The work is performed on a per meter/weather head for repair. Repair costs will not be reimbursed if it is not safe for the residence to have power restored, such as those that have been flooded or have major structural damage that may require electrical repairs other than to the meter/weather head. Removal of debris to allow access to the damaged meter/weather head is not covered under Residential Electrical Meter Repair (See DAP9523.13, *Debris Removal from Private Property* for information on debris removal from private property.) Other residential repairs are not covered as part of Residential Electrical Meter Repair.
- 8. Is standby time eligible?**
No. Standby time for electricians is not eligible.

____//Signed//____
Deborah Ingram
Assistant Administrator
Recovery Directorate

9580.214 (Fact Sheet) – Debris Removal on Federal Aid Highways (2012)

TITLE: Debris Removal on Federal-Aid Highways

DATE: October 28, 2012 (Superseded on January 1, 2016)

OVERVIEW

This fact sheet explains a change in the eligibility of debris removal on Federal-aid highways under the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program. Until recently, the Federal Highway Administration (FHWA) had the primary authority to remove debris on Federal-aid highways under its Emergency Relief (ER) Program, including in the event of major disasters and emergencies declared by the President under Sections 401 and 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, (42 U.S.C. 5121et seq.) ("Stafford Act"). FEMA was able to assist with additional debris removal that was not covered by the ER Program and was otherwise eligible for PA Program funding.

The Moving Ahead for Progress in the 21st Century Act ("MAP-21") was signed into law July 6, 2012, (Public Law 112-141) and amended the statutory authorization for the FHWA-ER Program. Section 125(d)(3) of Title 23 of the United States Code, Highways, states in part:

- "(3) DEBRIS REMOVAL. -The costs of debris removal shall be an eligible expense under this section only for-
- (A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121et seq.); or
 - (B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192)."

This change went into effect October 1, 2012. For major disasters and emergencies declared under the Stafford Act on or after this date, the FHWA ER Program will not provide assistance for debris removal on Federal-aid highways in jurisdictions designated for FEMA PA. Debris removal on Federal-aid highways in these areas will be eligible for FEMA PA Program funding, pursuant to established eligibility requirements (See 44 CFR Part 206).

This change applies to debris removal and does not affect any other categories of PA work. Permanent work on Federal-aid highways is not eligible for PA funding (See 44 CFR 206.226(a)). Debris removal funded by FEMA must meet the eligibility, procurement and documentation requirements established in the Stafford Act, regulations for FEMA's PA program found in 44 CFR Parts 206 and 13, and guidance.

FREQUENTLY ASKED QUESTIONS

- 1. The Governor declares the event to be an emergency, but there is no Presidential declaration under the Stafford Act. What is FEMA's authority to fund debris removal under its PA program?**

Without a Stafford Act declaration from the President, debris removal activities are not eligible for PA funding. If the Secretary of Transportation concurs with the Governor's emergency declaration, ER funds may be applied to debris removal from Federal-aid highways in the same manner as before the MAP-21 changes. ER funds will only be available in those counties included in the Governor's emergency declaration and any amendments for the same event.

- 2. The President has declared a major disaster or emergency under the Stafford Act and authorized debris removal assistance in designated areas. Can FEMA fund debris removal from Federal-aid highways?**

Debris removal from Federal-aid highways in the areas designated by a Presidential declaration may be eligible for Public Assistance funding, subject to FEMA applicant and work eligibility requirements, as well as specific debris removal criteria under 44 C.F.R. §206.222, §206.223(a) and (c) and §206.224, respectively.

- 3. What if the Governor's emergency declaration designates areas, such as counties, independent cities, and tribal lands not included in the Presidential declaration?**

Areas not designated in the Presidential declaration are not eligible for Public Assistance funding. Federal-aid highways outside the designated areas are treated as if there was no Stafford Act declaration (see #1 above).

- 4. If the event is declared a major disaster or emergency by the President, but Public Assistance funding for debris removal has not been authorized, or FEMA has determined that the debris removal is ineligible for Public Assistance funding, is debris removal from Federal-aid highways still eligible for assistance?**

If the President has declared a major disaster or emergency, but debris removal has not been authorized or FEMA determined that debris removal costs submitted by the applicant are ineligible, then ER funds may be available for debris removal activities on Federal-aid highways through the FHWA ER Program. If requested by FHWA, FEMA will provide documentation of FEMA's determination(s) of ineligibility. Any costs submitted to FHWA will be subject to FHWA's ER eligibility requirements.

- 5. Which program rules should local jurisdictions follow if debris needs to be removed from a Federal-aid highway after an event, and no declaration has yet been made authorizing either the FHWA Emergency Relief program or the FEMA Public Assistance program?**

There is no guarantee that either program will be authorized after an incident. To be eligible for FEMA funding, local jurisdictions need to adhere to the eligibility requirements and administrative procedures of the Public Assistance Program. If a jurisdiction has questions regarding eligibility under the FHWA ER Program, they should contact FHWA personnel in their respective states.

9510.1; 9521.5; 9523.7; 9523.17; 9524.7; 9525.6; 9525.11; 9525.15; 9560.1; 9560.3; 9570.2; 9570.4; 9570.5; and 9570.7 – Rescission Memo (2013)

MEMORANDUM FOR: FEMA Regional Administrators
FEMA Regions I – X

ATTENTION: Recovery Division Directors

FROM: Deborah Ingram
Assistant Administrator
Recovery Directorate

SUBJECT: Rescission of Public Assistance Policies

DATE: January 23, 2013

At the direction of the Administrator, the Agency undertook a comprehensive review of all doctrine, policies and directives over the last year to ensure that all documents are aligned with the Agency's strategic focus. Documents that did not align with the strategic focus of the Agency were identified to be updated or rescinded. As part of the review, the Recovery Directorate identified a number of Public Assistance policies and other documents that are out of date, no longer needed, or superseded by other guidance. This includes the policies identified for rescission by the policy review undertaken by the Public Assistance Division in 2010 in coordination with the Public Assistance Steering Committee. The following policies are being rescinded. They will not be effective for major disasters or emergencies declared on or after the date of this memo. These policies still remain in effect for major disasters and emergencies declared during the effective dates of the policies.

- 1. Response and Recovery Policy 9510.1** *Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation* – Section 325 of the Stafford Act requires FEMA to provide public notice, comment and consultation prior to issuance of new or modified policies that could result in a significant reduction of assistance under the Public Assistance Program. The policy 9510.1 outlines the process by which FEMA will comply with this requirement for public notice, comment and consultation. The policy was issued on January 9, 2001, and has not been updated since. This policy is being rescinded because it is out of date with regard to nomenclature, organizational references, and Agency guidance on policy procedures. Additionally, the document outlines a process for consultation on certain policies, and does not constitute a programmatic policy itself. FEMA's requirements under Section 325 of the Stafford Act remain in force and FEMA will provide for public notice and comment in accordance with the law before adopting any new or modified policy that could result in a significant reduction of assistance under the Public Assistance Program. Any further guidance on the coordination process will be issued as a process document, as opposed to a policy.

2. **Recovery Policy (Interim) 9521.5 Eligibility of Charter Schools** – Charter schools are defined in the Elementary and Secondary Education Act as public schools authorized by State or local educational agencies. As such, they meet the definition of a local governmental entity in the Stafford Act. This policy is being rescinded because charter schools are defined in statute, and this policy is not necessary to establish charter schools as eligible local government applicants.
3. **Disaster Assistance Policy 9523.7 Public Assistance Funding/or Public Housing Facilities** – This policy was issued to indicate that facilities owned and operated by Public Housing Authorities (PHAs) are eligible for permanent restoration assistance under Section 406 of the Stafford Act. Previously, Section 9(k) of the Housing Act of 1937, as amended, provided authority to the U.S. Department of Housing and Urban Development (HUD) to fund the repair and restoration of PHA facilities after disasters. Consequently, FEMA did not fund such facilities given that HUD had the authority to fund such work. In 2008, Congress passed the Housing and Economic Recovery Act, which the President signed into law on July 30, 2008. This Act contained a provision that repealed Section 9(k) of the Housing Act, thus eliminating the authority of HUD to fund PHA facility repairs after disasters. Additionally, Congress had included special provisions in HUD annual appropriations legislation to provide separate funding for PHA facility repairs after disasters. The last of those special provisions expired on September 30, 2008. Consequently, as of October 1, 2008, FEMA has considered PHA facilities eligible for permanent repair assistance under the Public Assistance Program. Given the change in the law, the policy 9523.7 is not necessary to establish this eligibility. FEMA issued Recovery Fact Sheet 9580.205 *Public Assistance Funding for Public Housing Facilities* on May 10, 2010, which states that PHA facilities are eligible for FEMA repair assistance under the law. The policy 9523.7 is being rescinded as it is not necessary and has been superseded by Recovery Fact Sheet 9580.205.
4. **Disaster Assistance Policy 9523.17 Emergency Assistance/or Human Influenza Pandemic** – This policy outlines eligible emergency protective measures during a Federal response to a human influenza pandemic, as well as FEMA's anticipated recommendation to the President for an emergency declaration for such an incident. The emergency protective measures listed in the policy are otherwise described as eligible activities in other Public Assistance guidance and policy. Additionally, the policy has been superseded by Disaster Assistance Fact Sheet 9580.106 *Pandemic Influenza*. Additional information is also available in Disaster Assistance Fact Sheet 9580.105 *H1N1 influenza Frequently Asked Questions (FAQs)*. The policy 9523.17 is therefore being rescinded.
5. **Response and Recovery Policy 9524.7 Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster** – This policy was issued specifically for the Nisqually Earthquake major disaster (FEMA-1 361-DR-W A). As it applies only to this incident, it is disaster specific guidance. It is therefore being rescinded as a national-level program policy. It remains in effect for FEMA-1361-DR-WA.
6. **Response and Recovery Policy 9525.6 Project Supervision and Management Costs of Subgrantees** – This policy was issued to clarify eligibility of project supervision and

management activities. The policy was issued on April 22, 2001, and has not been updated. Since that time, FEMA has issued guidance specifically on management and direct administrative costs, pursuant to Section 324 of the Stafford Act. Costs incurred by subgrantees that are project costs remain eligible. The guidance issued on management and direct administrative costs supersedes portions of the policy (9525.6). As the policy is out of date and/or describes costs that are otherwise considered eligible, the policy is being rescinded.

7. **Response and Recovery Policy 9525.11 Payment of Contractors for Grant Management Tasks** – This policy provides guidance on the eligibility of contractor costs for Public Assistance grant management activities. Pursuant to Section 324 of the Stafford Act, FEMA issued regulations on October 11, 2007, to establish new procedures for management costs. FEMA also issued a policy on March 12, 2008, on Section 324 Management Costs and Direct Administrative Costs (DAP9525.9) to provide guidance on management costs for the Public Assistance Program. The regulation and guidance supersede previous regulations and guidance on management and administrative costs for major disasters and emergencies declared after the effective date of the new regulation. Applicants may still use contractors to perform grant management functions, as stated in the memo of September 8, 2009, from the Assistant Administrator of the Disaster Assistance Directorate to Regional Administrators. This policy is being rescinded because it has been superseded by subsequent guidance and is not necessary for the continued reimbursement of contractor costs for grant management work.
8. **Response and Recovery Directorate Policy 9525.15 Telecommunications Support Lines for States** – This policy provides guidance on the costs associated with the installation of T-1 lines in Joint Field Offices, particularly in providing States access to NEMIS for the administration of individual assistance, infrastructure and mitigation programs. The policy was issued on July 11, 2000, and has not been updated since that time. It is being rescinded because it is out of date and no longer needed.
9. **Response and Recovery Policy 9560.1 Environmental Policy Memoranda** – This policy was issued on August 17, 1999. It compiles environmental policy memos issued by FEMA and was issued to make these memos available for guidance in the Public Assistance Program. The policy has not been updated since its issuance, and does not reflect any updates to environmental memos or policies that may have been made since that time. Additionally, the policy does not establish any specific policy on its own, but rather lists environmental policy memos issued separately. This purpose is not appropriate to a separate policy document. The policy is being rescinded because it is out of date and does not constitute a policy on its own. Current versions of FEMA's Environmental Policy Memoranda and other environmental requirements for the Public Assistance Program remain in effect and are not affected by the rescission of this policy.
10. **Readiness, Response and Recovery Directorate Policy 9560.3 Programmatic Agreement-Historic Review** – This policy was issued on May 29, 2002, to make available a sample executed Programmatic Agreement to accomplish FEMA's Section 106 requirements under the National Historic Preservation Act of 1966. This policy has not been updated since it was

issued. Additionally, the policy is not necessary, as the requirements of the National Historic Preservation Act of 1966 apply to the Public Assistance Program irrespective of this policy. The policy is therefore being rescinded. The requirements of the National Historic Preservation Act continue to apply to Public Assistance Program project funding.

Again, these policies remain applicable in the major disasters and emergencies declared while the policies were in effect. The policy documents will be listed on the Public Assistance Archived Policies site for continued access. The link to the Archived Policies page is: <http://www.fema.gov/public-assistance-archived-policies>.

Additionally, the following Public Assistance Standard Operating Procedures (SOPs) are also being rescinded. These SOPs were issued in 1999. The SOPs are out of date, have been superseded by subsequent guidance, and/or are no longer in use. These documents will also be posted on the Archived Policies page.

1. ***9570.2 Public Assistance Coordinator SOP***
2. ***9570.4 Kickoff Meeting SOP***
3. ***9570.5 Project Formulation SOP***
4. ***9570.7 Immediate Needs Funding SOP***

The Recovery Directorate will continue to review and update Public Assistance and other program policies. This will likely include consolidation and rescission of additional policies. We will continue to work with the Regions as we do so. If you have any questions or need additional information, please contact Bill Roche, Director of the Public Assistance Division, at (202) 646-3834.

9580.3 – Insurance Considerations for Applicants, Rescission Memo (2013)

MEMORANDUM FOR: FEMA Regional Administrators
Regions I - X

ATTENTION: Recovery Division Directors

FROM: Deborah Ingram
Assistant Administrator
Recovery Directorate

SUBJECT: Disaster Assistance Fact Sheet DAP9580.3, *Insurance Considerations for Applicants*

DATE: February 8, 2013

As a result of issues raised in ongoing disaster events, as well as second appeal considerations, the Recovery Directorate has recently reviewed and evaluated its guidance related to insurance considerations for Public Assistance applicants. Based on this review and evaluation, I am rescinding Disaster Assistance Fact Sheet 9580.3, *Insurance Considerations for Applicants*, dated May 5, 2008 (DAP9580.3). Until a new policy related to insurance requirements is issued, please continue to refer to relevant provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended (particularly 42 U.S.C. 5154, 5155, and 5172), and 44 Code of Federal Regulations (CFR) (particularly part 206, subparts G, H, and I), as well as guidance found in the *Public Assistance Guide* (FEMA 322/June 2007). The three key provisions related to insurance considerations for Public Assistance applicants are:

1. Duplication of Benefits. FEMA will not provide assistance for damage or losses covered by insurance. Actual and anticipated insurance proceeds must be subtracted from otherwise eligible costs in order to avoid a duplication of financial assistance. If Public Assistance funds are obligated for work that is subsequently determined to be covered by insurance, FEMA must de-obligate the funds (Stafford Act, Section 312, 44 CFR §§206.250(c), 206.252(c), 206.253(a)).
2. Obtain and Maintain. As a condition of receiving assistance under Section 406 of the Stafford Act, an applicant must obtain and maintain the types and extent (amounts) of insurance as may be reasonably available, adequate and necessary, to protect against future loss. This insurance is required as a condition of the grant. In a subsequent major disaster, no assistance under Section 406 will be provided for any facility for which the applicant has previously received FEMA assistance unless all insurance required as a condition for the previous assistance has been both obtained and maintained (Stafford Act, Section 311, 44 CFR §§206.2S2(d), 206.253(b), 206.253(t)).
3. Reduction of Assistance in Special Flood Hazard Area (SFHA). FEMA will reduce the amount of eligible assistance under Section 406 for flood losses in the SFHA. 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 Public Assistance 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. If the facility owner fails to obtain and maintain flood insurance as a condition of the grant, and the facility is damaged by a subsequent flood event, it is not eligible for Federal disaster relief assistance (Stafford Act, Sections 311 and 406(d), 44 CFR §§206.250(d), 206.252(a)).

In addition, please note that in DAP9580.3, "Frequently Asked Questions," question 4 asks, "Does the PA Program fund deductibles?" The answer states, in part, "... a deductible, up to and including the amount of eligible damage incurred in a previous disaster, is not eligible for the same facility in a subsequent disaster of the same type." This answer provides a policy statement that is no longer applicable. Consistent with the key provisions related to insurance, including Section 312(a) of the Stafford Act, FEMA deducts the total insurance proceeds received or anticipated from the total eligible cost of the project. FEMA will not further reduce eligible costs by an insurance deductible.

DAP9580.3, *Insurance Considerations for Applicants*, dated May 5, 2008, is no longer in effect for major disasters and emergencies declared on or after the date of this memorandum. In addition, effective immediately, FEMA will not reduce eligible costs by an insurance deductible. This applies to any open projects or for determinations that the applicant has the opportunity to appeal in accordance with 44 CFR §206.206(c). Projects that do not fall into one of these categories will not be re-examined or otherwise adjusted based on the rescission of DAP9580.3.

If you have questions about this guidance, please contact me or have your staff contact William Roche (William.Roche@fema.dhs.gov) at 202-646-3683.

9523.9 – 100% Funding for Direct Federal Assistance and Grant Assistance, Rescission Memo (2015)

MEMORANDUM FOR: David Bibo
Acting Associate Administrator
Office of Policy and Program Analysis

FROM: Elizabeth A. Zimmerman
Associate Administrator
Office of Response and Recovery

SUBJECT: Office of Response and Recovery Policy Rescissions

DATE: October 6, 2015

Upon a review of the Office of Response and Recovery policies, we have identified the following three policies for rescission:

1. **Disaster Assistance Policy 1004 Procedures/or Processing Requests/or Emergency or Expedited Major Disaster Declarations** (May 15, 2007): This was an interim policy that has not been updated since FEMA established new processes and procedures for processing a gubernatorial request to the President for an Emergency or expedited Major Disaster declaration. The policy no longer reflects FEMA's practice relating to processing these declaration requests.
2. **FP 010-4 Pre-Disaster Emergency Declaration Requests** (May 18, 2012): FEMA no longer uses the criteria established in this policy to evaluate a State's request to declare an emergency in advance of the impact of an incident. The policy does not address FEMA's current practice relating to recommendations for pre-disaster emergency declaration requests.
3. **RP9523.9 100% Funding for Direct Federal Assistance and Grant Assistance** (June 9, 2006): FEMA no longer recommends cost share adjustments as described by the policy, and the policy does not address FEMA's current practice relating to recommendations for cost share adjustments. This policy remains in effect for disasters declared between June 9, 2006 and the date reflected on this memo.

These policies will be archived on the FEMA website. All information regarding the declarations process is now included in the comprehensive declarations fact sheet, located at <http://www.fcma.gov/declaration-process-fact-sheet>, which reiterates existing statutory and regulatory requirements, and states FEMA's current practice. We will communicate the rescission of these policies and provide the comprehensive fact sheet to our Regional and State partners.