Table of Contents[1]

9500 Infrastructure

Table of Contents
Index

9510 Public Assistance Program Administration and Appeals

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

9520 Public Assistance Eligibility

9521 Applicant Eligibility

9521.1 Community Center Eligibility (8/11/98)
9521.2 Private Nonprofit Museum Eligibility (8/17/99)
9521.3 Private Nonprofit Facility (PNP) Eligibility (5/23/03)
9521.4 Administering American Indian and Alaska Native Tribal Government Funding (12/28/99)

9522 General Work Eligibility

9523 Emergency Work

9523.1 Snow Assistance Policy (12/28/99)
9523.2 Eligibility of Building Inspections in a Post-Disaster Environment (6/23/98)
9523.3 Provision of Temporary Relocation Facilities (7/16/98)
9523.4 Demolition of Private and Public Facilities (11/9/99)
9523.6 Mutual Aid Agreements for Public Assistance (8/17/99)
9523.7 Public Housing Authorities (PHAs) (4/14/03)
9523.8 Mission Assignments for ESF #10 (6/4/01)

9524 Restoration of Damaged Facilities

9524.1 Welded Steel Moment Frame Policy (10/17/03)
9524.2 Landslide Policy Relating to Public Facilities (8/17/99)
9524.3 Policy for Rehabilitation Assistance for Levees and Other Flood Control Works (8/17/99)
9524.4 Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) (The 50% Rule) (9/24/98)
9524.5 Trees, Shrubs and Other Plantings Associated with Facilities (9/24/98)
9524.6 Collections and Individual Objects (8/17/99)
9524.7 Interim Welded Steel Moment Frame Policy for the Nisqually Earthquake Disaster (6/8/01)

[1] The 9500 series was assigned by FEMA to Infrastructure for PA Program documentation. This outline is based on the organization of the CFR.

9525 Allowable Costs
9525.1 Post Disaster Property Tax Assessment (11/30/98)
9525.2 Donated Resources (8/17/99)
9525.3 Duplication of Benefits (10/30/00)
9525.4 Medical Care and Evacuations (8/17/99)
9525.5 Americans with Disabilities Act (ADA) Access Requirements (10/26/00)
9525.6 Project Supervision and Management Costs of Subgrantees (4/22/01)
9525.7 Labor Costs - Emergency Work (7/20/00)
9525.8 Damage to Applicant Owned Equipment (8/17/99)
9525.11 Payment of Contractors for Grant Management Tasks (4/22/01)
9525.12 Disposition of Equipment, Supplies and Salvaged Materials (8/29/00)
9525.13 Alternate Projects (7/31/01)
9525.15 Disaster Recovery Operations: Telecommunications Support Line for States (7/11/00)

9526 Mitigation
9526.1 Hazard Mitigation Funding Under Section 406 (Stafford Act) (8/13/98)

9527 Codes and Standards
9527.1 Seismic Safety – New Construction (1/13/00)
9527.2 Interim Policy on Construction Codes and Standards for the Nisqually Earthquake Disaster (6/8/01)
9527.3 Interim Policy on Construction Codes and Standards for the San Simeon Earthquake

9528 (*Reserved)*

9529 (*Reserved)*

9530 Public Assistance Insurance Requirements
9530.1 Retroactive Application of LOMA or LOMR to Infrastructure Grants (8/8/00)

9540 (*Reserved)*

9550 Fire Suppression Assistance
9550.3 Interim Policy on Fire Suppression Assistance (3/19/01)

9560 Compliance with Environmental, Historic Preservation, Other Laws
9560.1 Environmental Policy Memoranda (8/17/99)
9560.3 Programmatic Agreement-Historic Review (5/29/02)

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

9570.2 SOP Public Assistance Coordinator (9/99)
9570.4 SOP Kickoff Meeting (9/99)
9570.5 SOP Project Formulation (9/99)
9570.6 SOP Validation of Small Projects (9/99)
9570.7 SOP Immediate Needs Funding (9/99)
9570.8 SOP Cost Estimating Format for Large Projects (11/98)
9570.9 SOP Historic Review (9/01)

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

9580.1 Debris Operations Job Aid (8/00)
9580.2 Fact Sheet: Insurance Responsibilities for Field Personnel (8/23/00)
9580.3 Fact Sheet: Insurance Considerations for Applicants (8/23/00)
9580.4 Fact Sheet: Debris Operations – Clarification (1/19/01)

9590 (*Reserved)*

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Other FEMA Sources:

Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended
The Code of Federal Regulations -- Title 44

FEMA 321	PA Policy Digest (Digest and Appendix A to Digest)
FEMA 322	PA Guide (replaced FEMA 286)
FEMA 323	PA Applicant Handbook
FEMA 324CD	PA Eligibility
FEMA 325	PA Debris Management Guide
FEMA 326	*(Reserved)*
FEMA 327CD	National Historic Preservation Act
FEMA 328	Public Assistance Program (Factsheet)
FEMA 328S	El Programa Asistencia Pública
FEMA 329	*(Reserved)*
FEMA 330	*(Reserved)*

◆ • ◆ • ◆

INDEX

50% Rule 9524.4
404 Hazard Mitigation 9523.4
406 Hazard Mitigation 9526.1

ADA 9525.5
Advisory Council on Historical Preservation 9560.3
Alaska Native Tribal Government 9521.4
American Indian 9521.4
Americans with Disabilities Act 9525.5
Applicant-Owned Equipment 9525.8
Arboretums 9521.2
Art Objects 9524.6
Assessments 9525.1

Blizzards 9523.1
Botanical Gardens 9521.2
Building Code Inspections 9523.2
Building Inspections 9523.2
Buyout and Relocation Projects 9523.4

Code Upgrades 9524.4
Collections 9524.6
Community Center 9521.1
Construction Inspections 9523.2
Contiguous Counties 9523.1
Contributions 9525.2
Cost Effectiveness 9526.1

Damaged Equipment 9525.8
Debris 9523.4
Demolition 9523.4
Disabilities Act 9525.5
Disposition of Equipment and Supplies 9525.12
Donated Resources 9523.6, 9525.2
Duplication of Benefits 9525.3

Emergency Operating Centers 9550.3
Emergency Work - Labor Costs 9525.7
Environmental Policy Memos 9560.1
Equipment 9525.12
Excess Credit 9525.2
Exhibits 9524.6

Facility Ownership 9521.3
Fair Market Value 9525.12
Fire Suppression 9550.3
Flood Control Works 9524.3
Flood Damaged Facilities 9530.1

Flood Fighting 9524.3
Flood Insurance Rate Maps (FIRM) 9530.1
Fund Raising 9525.3

Geotechnical Studies 9524.2
Grass 9524.5

Hazard Mitigation 9523.4, 9526.1
Historical Agreement 9560.3
Historical Preservation 9560.3
Homeowners Associations 9521.3

Indian Tribes 9521.4
Insurance Reductions 9530.1

LAN/WAN Connections 9525.15
Landslides 9524.2
Labor Costs - Emergency Work 9525.7
Lease Agreements 9521.3
Levees 9524.3
LOMA 9530.1
LOMR 9530.1

Medical Care 9525.4
Medical Evacuations 9525.4
Membership Fees 9521.3
Model Agreement – Historical 9560.3
Museum (PNP) 9521.2
Mutual Aid 9523.6, 9550.3

NEMIS 9525.15
NCRS 9524.3
NOAA 9523.1
Nursing Facilities 9525.4

Open to General Public 9521.1, 9521.3
Ownership 9521.3

Parks 9524.5
Patient Transportation 9525.4
Path of Travel (ADA) 9525.5
Plantings 9524.5
Primary Function Area 9525.5
Primary Purpose 9521.1, 9521.3
Private Nonprofit (PNP) 9521.1, 9521.2, 9521.3
Programmatic Agreement 9560.3
Property Tax Assessment 9525.1
Public Interest 9523.4

Recreation Centers 9521.3
Regional Environmental Officers 9560.1
Religious Purposes 9521.3
Relocation Costs 9523.3
Replacement Rule 9524.4
Reproductions (Art) 9524.6

Safety Inspections 9523.2
Salvaged Materials 9525.12
Seasonal Employees 9525.7
Seismic 9527.1
Severe Operating Conditions 9525.8
Shrubs 9524.5
Slabs 9523.4
Slopes 9524.2
Snow 9523.1
Snow Removal 9523.1
Sod 9524.5
Stabilization 9524.2
Staging Resources 9550.3
State Historical Preservation Officer 9560.3
Steel Moment Frames 9524.1
Straight Time 9525.7
Supplies 9525.12

T-1 Telecommunications 9525.15
Tax Assessment 9525.1
Telecommunications for States 9525.15
Temporary Relocation 9523.3
Trees 9524.5
Tribal Government 9521.4

USACE 9524.3

Volunteer Credits 9525.2

Welded Steel Moment Frames 9524.1
Winter Storm 9523.1

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** January 9, 2001

2. **Response and Recovery Directorate Policy Number:** 9510.1

3. **Title:** Coordination Requirements for Public Assistance and Fire Management Assistance Program Documentation

4. **Purpose:** This procedure describes and refines FEMA's practices for developing and coordinating new, revised and interim policies in the 9500 series of documents and other documents related to the implementation of the public assistance and fire management assistance programs.

5. **Scope and Audience:** This procedure is an internal administrative procedure intended for FEMA staff generating or revising policies related to the public assistance and fire management assistance programs. This procedure is applicable to policies issued after October 30, 2000.

6. **Background:** FEMA supplements information contained in law and regulation with policies and other guidance documents that are intended to assure nationally consistent program implementation. The publication of this supplementary information is a long-standing practice under the internal guidance authority of 44 CFR §2.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5) Occasionally, an interim policy for specific disasters is required on an emergency basis. When the policy may result in a significant reduction in assistance or in a change in the terms of a written agreement concerning the declaration of the disaster or emergency to which FEMA is a party, special procedures are required:
    a) The Federal Coordinating Officer/Disaster Recovery Manager (FCO/DRM), Regional Director, IS Director, and the EAD consult and must conclude that the need for the interim policy is immediate,
    b) With EAD approval, Disaster Recovery Manager (FCO/DRM) consults to the maximum extent practicable with the grantee and subgrantees,
    c) Disaster Recovery Manager (FCO/DRM) and Regional Director consider comments and issue written policy for the disaster,
    d) EAD and IS Director consider need for the policy for national application and initiate the full notice, comment and consultation procedure.

E. Exceptions to the policy coordination requirements in this procedure must not conflict with the intent of law or regulation. Generally, exceptions include:
    a) Technical advice on application/implementation of policy,
    b) Formalization of past practice,
    c) Interpretations of law, regulation, policy or other text,
    d) Correction of policies/practices inconsistent with law, regulation, policy or national intent,
    e) Appeal decisions,
    f) Administrative issues internal primarily to FEMA systems or to FEMA headquarters.

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

2) Copies of the signed document will be sent to each FEMA Regional Director and to headquarters and regional Response and Recovery Division Directors. In addition, as determined by the IS Senior Policy Advisor, copies also may be sent to the FEMA Inspector General, the FEMA General Counsel, the FEMA Director of Public Affairs, the FEMA Director of Congressional Affairs, the FEMA Director of Regional Operations, Infrastructure Division staff, collaborating offices at headquarters, and RR instructors.

3) Electronic copy. All documents affecting program implementation and intended for public use will be posted on the FEMA web site.

4) Official Government Record. Master file with electronic and hard copy (as well as coordination background and comment reconciliation records) are filed in the RR/IS filing system.

8. Supersession: New document

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

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

11. Review Date: Five years from date of publication

12. Signature:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

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

APPENDIX TO RR POLICY #9510.1[1]

CONSULTATION PROCESS:
INTERIM POLICIES FOR SPECIFIC DISASTERS

The Stafford Act requires: "Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this Act, the President, to the maximum extent practicable, shall solicit the views and recommendations of the grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely--

(A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or

(B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency"

In addition, although not required by the Stafford Act, Federal Emergency Management Agency (FEMA) may opt to solicit views and recommendations on interim policies that are <u>not</u> 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.

<u>Sequence</u>

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

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

7. 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.
8. 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.
9. FEMA consolidates and considers views and recommendations received by the deadline. FCO, Regional Director and FEMA RR/IS coordinate final document.
10. Optional: FEMA conducts follow-up discussions as appropriate.
11. 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, FEMA.

/*Signed*/
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

17 April 2001
Date

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 11, 1998

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 that 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 <u>or</u> 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 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 section 206.211 (e)(6)

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

11. Review Date: Two years from date of publication

12. Signature:

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

SEE ATTACHED APPENDIX FOR FACILITY CASE EXAMPLES

APPENDIX

PRIVATE NON-PROFIT COMMUNITY CENTER POLICY

CASE EXAMPLES

Below are examples of typical community centers. An analysis follows each center's description as a guide in evaluating similar facilities for the purpose of FEMA disaster assistance eligibility. Each of the notional community centers detailed below is based on an actual facility.

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 appliqué baskets, fine hand quilting, hatha yoga, self defense and tae kwon do, and a farmers market on Saturday mornings. However, none of these activities is scheduled for the Parklawn Community Center; instead they will be held at the other 4 centers and a local parking lot.

Analysis

Parklawn Community Center is not an eligible community center for a number of reasons. First, it s 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.

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999

2. **Response and Recovery Directorate Policy Number:** 9521.2

3. **Title:** Private Nonprofit Museum Eligibility

4. **Purpose:** This policy clarifies what constitutes a museum as an eligible private non-profit (PNP) facility for the purpose of funding repair or replacement.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the provisions of the Public Assistance (PA) Program. This policy does not address museum collections or individual holdings; that topic will be the subject of a separate policy.

6. **Background:**

   A. Publicly owned museums have long been eligible for disaster recovery assistance. More recently, Congress specifically added PNP museums as eligible facilities. Museums were included on the list of PNP essential governmental services listed in House Report No. 100-517, which accompanied H.R. 2707 (the bill which became the Stafford Act).

   B. This policy was developed to guide consistent treatment of PNP museums.

7. **Policy:**

   A. PNP museums are confined facilities which are constructed or manufactured whose primary purposes are to:

      - <u>Preserve</u> a documented collection of artistic, historic, scientific or other objects, and
      - <u>Exhibit</u> the documented collection to the general public.

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

   B. Specific inclusions:

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

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

C. Exclusions:

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

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

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

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

11. Review Date: Two years from date of publication

12. Signature:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** May 23, 2003

2. **Recovery Division 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 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 44 CFR 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) The facility, at a minimum, must meet the criteria outlined in 44 CFR 206.221(e).

2) The facility must be <u>primarily used</u> 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, <u>must be open to the general public.</u>

4) <u>Eligible PNP Facilities.</u> 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 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, 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.

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

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 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.

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: National 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.

SEE ATTACHED APPENDIX FOR CASE EXAMPLES

APPENDIX A

PRIVATE NONPROFIT FACILITY (PNP) ELIGIBILITY

CASE EXAMPLES

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

Parkland Hospital Medical Office Building

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

ANALYSIS

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

Springtown Recreation Center

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

ANALYSIS

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

Community Church School

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

ANALYSIS

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

Southlake Hospital Parking Garage

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

ANALYSIS

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

Woodlands Homeowners' Association

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

ANALYSIS

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

Midwest Methodist University

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

ANALYSIS

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** December 28, 1999

2. **Response and Recovery Directorate Policy Number:** 9521.4

3. **Title:** Administering American Indian and Alaska Native Tribal Government Funding

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 <u>Indian Tribe</u> 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(f)(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 Division Directors

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** December 28, 1999

2. **Response and Recovery Directorate Policy Number:** 9523.1

3. **Title:** Snow Assistance

4. **Purpose:** This document describes the procedures for evaluating States' requests for emergency and major disaster declarations due to snowfall. This document also describes eligible work for snow or blizzard related emergencies and major disasters. It updates and replaces the 1998 document of the same name. This newer version of the policy clarifies certain aspects of snowstorm declaration criteria and provides additional guidance on eligible applicants and assistance.

5. **Scope and Audience:** This policy applies to all emergency or major disaster requests received after the date of this policy. It provides guidance to FEMA, State, and local personnel responsible for administering the snow assistance regulation published in Title 44, Code of Federal Regulations (CFR), Section 206.227.

6. **Background:**

   A. History: Prior to the winter of 1976/1977, requests for winter storm assistance under earlier disaster relief acts were rare. Only seven winter storm incidents were declared between 1953 and 1977, and most of these were the result of ice storms that caused enough damage to justify the declaration of major disasters.

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

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

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

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

B. Authority: The authority to provide Federal assistance for such disasters is provided in the Robert T. Stafford Disaster Relief and Emergency Assistance Act P.L. 93-288, as amended and 44 CFR 206.227. 44 CFR 206.227 reads as follows: “Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.”

C. Official Government Records: The NWS, a division of the Department of Commerce, NOAA, is the cognizant Federal agency that collects, forecasts, and performs operational analyses of official information pertaining to snowfall. The National Climatic Data Center, a part of NOAA's National Environmental Satellite, Data, and Information Service, is mandated to perform historical climatological analyses of this data and serve as the official archive of snowfall data. To assist FEMA in implementing the Snow Assistance regulation, NOAA has provided historical snowfall data for approximately 7,000 reporting stations across the country. This information includes the maximum 1-, 2-, and 3-day snowfalls that have been recorded over the time period that records have been maintained.

7. Policy:

A. It continues to be Federal policy that disaster response and recovery is the responsibility of State and local governments. Federal assistance is supplementary and is appropriate only when an event is of such severity and magnitude that response requirements exceed State and local capabilities.

B. In addition to satisfying the requirements under 44 CFR 206.35 or 44 CFR 206.36 for emergency or major disaster declarations, the event must be determined to be a record or near record snowfall using NOAA data. Snowfall for a specific event will be measured against the historical snowfall data maintained and provided by NOAA.

C. Federal assistance is intended for record snowfall situations. However, a very significant snowstorm that is not a record event may exceed State and local response capabilities. Therefore, FEMA will consider the impact of other occurrences, including the following, when evaluating requests for Federal assistance for near record snowstorms:

1. Heavy snowfall over a very extended period of time;
2. Severe winds and extraordinary drifting;
3. Extraordinary ice formation; and
4. Cumulative effect of snow on the ground.

D. In the event of an emergency or major disaster declaration resulting from snow or blizzard conditions, Federal assistance will be provided for emergency protective measures (including, but not limited to, snow removal, de-icing, salting and sanding roads) as described in 44 CFR 206.225. Federal emergency assistance will be provided for only a specified period of time determined by the circumstances of the event. Under the provisions of this policy, Federal assistance is intended for emergency purposes only, not for the total costs of recovery from the snowstorm. The duration of emergency assistance will be recommended by FEMA and decided by the President. The provisions of 44 CFR 206.228(a)(4) apply.

E. The Executive Associate Director has the authority to add counties and to adjust the eligible period for assistance after the President has declared the emergency or disaster.

1. Counties subsequently added to the declaration must meet the basic criteria for a declaration as specified in Paragraph 7.b. above. Requests for additional counties should be made by the Governor or the Governor's Authorized Representative and include supporting documentation. Requests for add-on counties should be made within 30 days of the declaration or the end of the incident period, whichever is later.

2. Generally, FEMA will provide assistance for a continuous 48-hour period, to allow time for eligible applicants to address the most critical emergency needs. The 48-hour period for snow removal assistance may begin at a time other than when the storm actually began. Each applicant will designate the beginning of the 48-hour period.

3. If snowfall quantities greatly exceed record amounts, an additional 24-hours of snow assistance may be requested. The extension of the eligible time period will be made for all designated counties within a State. For the State to qualify for an extension of the eligible time period, a significant number of the designated counties must experience snowfall that greatly exceeds the record amount.

F. The Hazard Mitigation Grant Program under Section 404 of the Stafford Act will not be activated following a "snow" declaration. It may be authorized only for a "severe winter storm" which is declared as a major disaster.

G. A county that does not receive a record or near record snowfall, but is contiguous to a county that receives a record or near record snowfall, may be added to the declaration and be eligible for snow assistance. Contiguous counties are those with some portion of their border common to a designated county. Those counties that are not eligible based on their own snowfall amounts, must have snowfall equal to or greater than that of the designated contiguous county that was designated on the basis of a record or near record snowfall.

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

H. All snow removal insurance proceeds must be reduced from the eligible snow assistance amounts.

8. Procedure:

A. Requests for emergency or major disaster declarations for snow assistance on the basis of extraordinary snowfall shall cite "snow" or "snowfall" as the incident type in the request letter and Regional documentation. This type of declaration allows reimbursement for costs associated with snow removal and emergency protective measures for a specified period of time.

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

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

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

D. Measurement of Snowfall:

1. For the purposes of this policy, the maximum snowfall over a 1-, 2-, or 3-day period, as documented by historical records maintained by NOAA, is defined as a record snowfall.

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

E. Use of official snowfall data:

1. With the Governor's request for an emergency or major disaster declaration, the State will provide official government snowfall data as provided by NWS.

2. The Regional Office will then measure the snowfall against the record values on a county by county basis. For a county to receive FEMA assistance, the snowfall must be a record or near record event.

3. For counties with multiple snowfall reporting stations, at least one reporting station must experience a record or near record snowfall as determined by NOAA data.

4. For counties that do not have NOAA reporting stations, a comparison of the snowfall values for reporting stations within adjacent counties or the nearest reporting station shall be used for declaration recommendation purposes.

F. Request processing:

1. The Governor requests an emergency or major disaster declaration, providing the following information:

   a) identification of counties for which a declaration is sought;
   b) amount of snowfall for each affected county;

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

2. Regional Director:

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

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

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

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

11. Originating Office: RR-IS

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

13. Signature:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** June 23, 1998

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** July 16, 1998

2. **Response and Recovery Directorate Policy Number:** 9523.3

3. **Title:** Provision of Temporary Relocation Facilities

4. **Purpose:** This policy will facilitate national uniformity in determining eligibility for and duration of temporary relocation under the FEMA public assistance program.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for use by all personnel involved in the administration of the FEMA public assistance program. This policy is effective on publication.

6. **Background:** As a result of disasters, services provided at public and private nonprofit (PNP) facilities may be disrupted to the extent that they cannot continue unless they are temporarily relocated to another facility. Applicants may request that their services be relocated temporarily to continue that service. Criticality of the service and safety of the facility are the factors used to determine the need for temporary relocation.

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

7. **Policy:**

   A. General Provisions

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

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

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

- Essential government facilities include facilities for police, fire, and other essential governmental operations. Not all government facilities are essential. For example, recreation facilities, parking facilities, and other facilities that do not provide essential community services are not eligible.

- Specifically for PNPs, essential community services include medical, custodial care, education, emergency, utilities and other health and safety services of a governmental nature. Libraries (other than school libraries), museums, zoos, community centers, senior citizen centers, rehabilitation facilities, shelter workshops, etc. are not considered essential community services/facilities. Because the disruption or discontinuance of these services would not result in a threat to lives, property or public health and safety, these facilities are not eligible for relocation assistance under Section 403 of the Stafford Act.

- The ancillary facilities of essential facilities are not eligible for relocation assistance; examples include: parking garages, athletic stadiums, faculty and student housing, administration buildings, hospital laundry facilities, research facilities, warehouse facilities, and student union buildings.

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

B. Basis for Temporary Relocation:

1. The facility was not damaged by the disaster but lacks a critical utility or operational item (such as potable water, electricity, and cellular telephone service) for a period of time beyond which is reasonable given the nature of the services provided and relocation would restore services to the community more quickly than awaiting restoration of the disrupted vital utility at the current site.

2. The facility was damaged by the disaster to the extent that the facility cannot be occupied safely and the nature of the service provided requires that it be relocated.

3. The facility was damaged by the disaster, but can be used if emergency protective measures, such as temporary shoring, are performed. If this work will take place over a period of time beyond which is reasonable given the nature of the services provided, temporary relocation is permitted both before and during the time emergency work is performed.

4. Temporary relocation is needed for the duration of eligible, disaster-related repairs, which begin and proceed on a work plan within the time lines outlined below.

5. A temporary relocation is needed for the time necessary to construct a replacement facility, if construction begins and proceeds on a work plan within the time lines outlined below.

6. In the case of an improved project (but not alternate project), temporary relocation is needed during the estimated period of time that would have been required for the performance of the eligible repair or replacement project (but not for the full time required for the improved project) and work begins within the time lines outlined below.

C. Time Limitations for Temporary Facilities:

1. The period of time for which temporary relocation assistance may be provided is 6 months, based on the regulatory time limitation for the completion of emergency work (44 CFR 206.204(c)).

2. A time estimate (days, weeks, months) must be provided in the damage survey report scope of work prepared for the temporary facility.

3. The Governor's Authorized Representative (GAR) does not have the authority to grant time extensions for temporary facilities, since time extensions for temporary relocation change the approved scope of work and increase costs and those determinations may only be made by FEMA.

4. The GAR may recommend a time extension based on information provided by the applicant documenting: 1) extenuating circumstances beyond the control of the applicant that prevented the completion of work within the initial time limit (e.g., FEMA delays in historic or environmental reviews), 2) a design proposal, 3) a schematic, and 4) the revised timeline for the project. If a design proposal, schematic and timeline cannot be presented, an extension may not be granted.

5. If the GAR supports an applicant request for temporary relocation, the GAR may request approval of a time extension from the FEMA Regional Director (RD), providing the RD with a new proposed scope of work. If granted, a time extension may not exceed six-months (i.e., for a 12 month total). Exceptions to the 12-month relocation policy may be granted by the Regional Director if construction has begun before the 12-month expiration date. The exceptions may be projected for the duration of the construction based on regional policy and industry standards for construction (e.g., from R.S. Means or equivalent source).

6. If a time extension is approved by FEMA, a new description of the scope of work shall be prepared as a supplement to the original scope of work that funded the temporary relocation.

D. Eligible Temporary Relocation Facilities

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

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

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

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

   - With the exception of modular or manufactured units, all proposed purchase/construction options must be submitted in advance to the Executive Associate Director for review and approval. Before approving a proposal, FEMA may determine it is in the best interest of the federal government to impose conditions on the applicant's use and/or disposition of the facility.

   - Pursuant to 44 CFR 13.24 or Office of Management and Budget Circular A-110, FEMA will require that it be compensated when the authorized temporary relocation time period has ended or the facility is no longer needed by the applicant for the authorized temporary relocation purpose (i.e., the approved scope of work), whichever occurs first. As a general rule, if FEMA has paid only a portion of the cost of the facility, FEMA shall be entitled to compensation in an amount equal to FEMA's proportionate equity in the facility. The amount due FEMA will be computed by applying FEMA's percentage of participation in the cost of the purchase/construction to the fair market value or sale proceeds taking into consideration reasonable out-of-pocket costs related to the sale.

E. Insurance

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

F. Policy Application

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

1. Relocation costs

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

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

2. Alternate Projects

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

3. Improved Projects

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

4. Additional Emergency Services
   Increased capacity for the existing essential service or the addition of new services will not be eligible for relocation costs.

5. Temporary storage space
   If a facility is authorized for temporary relocation, FEMA also will fund additional temporary space for the storage and protection of property (e.g., equipment, supplies, and furniture) for the same period of time for which temporary relocation has been approved. The total space/capacity (for relocation of the essential service and the storage space) must not exceed the original space/capacity of the facility that was damaged or is being repaired or replaced. Temporary storage is eligible if the service is essential, the need has been demonstrated, and the facility/service is otherwise eligible.

6. Increase in Rental Costs
   Applicants that perform essential services in leased facilities may have to temporarily relocate to another leased facility as a result of the disaster. If the rent for the temporary facility is greater than the rent for the pre-disaster facility, only the rental cost differential is eligible for FEMA funding. FEMA considers the pre-disaster rental cost a fixed commitment made by the applicant before the disaster and the increase in rental costs a direct result of the disaster, thus, the differential is eligible for FEMA assistance subject to Sections 7.B. and 7.C. above.

8. Supersession: This policy updates and replaces all previous FEMA public assistance policy memoranda on this subject.

9. Authorities: Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and implementing regulations in Title 44 of the Code of Federal Regulations Section 206.

10. Origintating Office: Infrastructure Support Division, Response and Recovery Directorate

11. Review Date: Two years from date of publication

12. Signature:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** November 9, 1999

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, EO's
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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999

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. Review Date: Two years from date of publication

12. Signature:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** April 14, 2003

2. **Recovery Division Policy Number:** 9523.7

3. **Title:** Public Housing Authorities (PHAs)

4. **Purpose:** The attached memorandum of understanding (MOU) is being numbered as part of the Federal Emergency Management Agency (FEMA) Public Assistance Program policy publication system. It states the policy that FEMA and the Department of Housing and Urban Development (HUD) have agreed to with regard to funding the repair of PHA facilities that are damaged by a major disaster, as declared by the President.

5. **Scope and Audience:** This policy is applicable to PHA facilities that were developed or modernized with funds provided under Section 9(k) of the Housing Act of 1937, as amended, and is applicable to all major disasters declared after January 8, 2001. It is for use by FEMA personnel making public assistance eligibility determinations for the Public Assistance Program.

6. **Background:** Although HUD has specific authority under Section 9(k) of the U.S. Housing Act of 1937, as amended, to provide funds for the repair of disaster damaged PHA facilities, FEMA has generally funded these costs in the past. FEMA and HUD developed the attached agreement to eliminate confusion among the respective agencies and applicants and to ensure that all publicly-subsidized housing facilities have access to appropriate Federal assistance following major disasters. This policy does not result in a significant reduction in assistance for publicly-subsidized housing facilities.

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

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

7. **Policy:** The policy is attached.

8. **Supersession:** R&R Policy #9523.7, dated March 19, 2001.

9. **Authorities:** Section 403, Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended [42 U.S.C. § 5170b(3)]; Section 9(k), United States Housing Act of 1937, authority, as amended [42 U.S.C. § 1437g(k)], The Native American Housing Assistance and Self Determination Act of 1996, as amended (25 U.S.C 4101).

10. **Originating Office:** Recovery Division, Emergency Preparedness and Response Directorate.

11. **Review Date:** Three years from date of publication.

12. **Signature:**

Signed

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

Federal Emergency
Management Agency
Washington, D.C. 20472

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

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

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

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

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

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

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

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

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

- The PHA must submit its request to the local HUD field office (FO) after determining the amount of funds to be provided from insurance and other sources.

- To substantiate the extent of the damage and its request for funds, the PHA may include pictures, a videocassette, engineering surveys, etc.

- The HUD field office at its option, may conduct an on-site inspection or issue a task order to the Corps of Engineers (COE), with whom HUD has an interagency agreement, for such an inspection to verify the PHA's request for funds, e.g., need and cost.

- Within 14 calendar days of receipt of the PHA's request, the FO must complete its review and forward its recommendation for approval, with the PHA's request, to HUD headquarters for review and final decision.

- If the request is approved, HUD headquarters will notify the FO when funds have been assigned for the PHA and the FO will process the PHA's application, reserve the funds and execute an Annual Contributions Contract Amendment.

- If the FO does not recommend approval of the PHA's request the FO shall disapprove the request and notify the PHA in writing, including the reasons for disapproval.

- The PHA may appeal a FO's disapproval to HUD headquarters for a review and final determination.

- Funds received for damages resulting from a disaster do not require repayment.

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** June 4, 2001

2. **Response and Recovery Directorate Policy Number:** 9523.8

3. **Title:** Mission Assignments for ESF #10

4. **Purpose:** The attached memorandum is being numbered as part of the FEMA Public Assistance Program policy publication system. It states the policy that FEMA and EPA have agreed to in regard to funding Mission Assignments for ESF #10 activities in major disasters and emergencies. It clarifies policy that is currently in place in the form of a policy memorandum.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for use by all personnel involved in the administration of the FEMA public assistance program. This policy is effective on publication.

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

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

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

7. **Policy:** The policy is attached.

8. **Supersession:** Policy Memoranda on ESF #10 Mission Assignments from Lacy E. Suiter dated September 27, 1998, and from Robert J. Adamcik dated September 24, 1999

9. **Authorities:** Section 403, Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §5170b(3))

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

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

12. **Signature:**

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

SEE ATTACHED POLICY MEMORANDUM WITH GUIDANCE

Federal Emergency
Management Agency
Washington, D.C. 20472

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

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

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

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

SUBJECT: Policy Guidance on ESF #10 Mission Assignments

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

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

Attachment

Guidance for Implementing Mission Assignments to ESF #10

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

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

Activities that EPA will fund:

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

- EPA will use Oil Spill Liability Trust Fund funds to pay for all response activities related to pre-existing Oil Pollution Act removal actions.

Activities that FEMA will fund through Stafford Act:

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

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

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

Activities that FEMA may fund through Stafford Act;

These are activities, which may occur following a natural disaster. Consultation among the FCO, ESF #10 representative, and the State is critical before a determination is made on funding.
Again, these activities must be specifically requested by the State and be beyond the State's capability before a Mission Assignment and associated funding will be issued.

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

Activities that FEMA will not fund through Stafford Act:

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

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

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** October 17, 2003

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 -

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

(b) The identification of those buildings that have been so severely damaged that they constitute a safety hazard; and

(c) 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:

1. Physical indications that require the search for damaged welded steel moment-frame connections are similar in *FEMA 267* and *FEMA 352*, <u>but not identical</u>.

    a) 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.

    b) 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.

2. 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 –
   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,
   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.

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 $dj \geq 1$.

   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) 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. **References:** *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
Department of Homeland Security

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** August 17, 1999

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

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

DATE: November 30, 1995

Response and Recovery Policy Number: 4311.300 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 predisaster 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, FEMA 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 CFR 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 CFR 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 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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** August 17, 1999

2. **Response and Recovery Directorate Policy Number:** 9524.3

3. **Title:** Policy for Rehabilitation Assistance for Levees and Other Flood Control Works

4. **Purpose:** The attached policy is being renumbered to become part of the redesigned FEMA Public Assistance Policy publication system. The decision tree for flood control works also is attached.

5. **Scope and Audience:** This policy applies to all disasters and is intended for Federal Emergency Management Agency (FEMA) personnel making eligibility determinations for the Public Assistance (PA) Program.

6. **Background:** This attached policy currently is under review. However, the review will not be completed prior to the supersession of the 1996 Policy and Guidance Compendium by the new compilation of PA Program policy. Because the policy is a critical document of the PA Program, it is being temporarily renumbered while the new document is being prepared and coordinated. The revised and simplified policy will provide additional definitions and the eligibility decision tree.

7. **Policy:** The policy is attached.

8. **Supersession:** Response and Recovery Directorate Policy No. 4511.300 PO, EX, dated September 11, 1996, Policy for Rehabilitation Assistance for Levees and Other Flood Control Works, is now renumbered as Response and Recovery Policy #9524.3.

9. **Authorities**: Robert T. Stafford Disaster Recovery and Emergency Assistance Act, as amended.

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

11. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

DATE: September 11, 1996

Response and Recovery Directorate Guidance No. 4511.300 PO, EX

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

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

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

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

The USACE requires that an applicant for assistance be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster to be eligible for assistance. An active status means that the USACE has inspected the flood control work and accepted it into its program.

a. If an applicant/sponsor has requested an inspection prior to the flood event, and the USACE has not inspected the flood control work, and it is damaged in the flood event, then the USACE will conduct an Initial Eligibility Inspection of the flood control work. If the USACE determines that it meets all specified engineering and maintenance criteria, then the flood control work will be placed in an active status and will be eligible for USACE rehabilitation assistance under the Rehabilitation and Inspection Program.

b. Requirements for participation in the USACE program include: (1) it must be inspected by the USACE to ensure that the flood control work meets engineering and maintenance criteria; (2) it must have a public sponsor; and, (3) it must be regularly maintained. Additionally, the required repair work must have a benefit-cost ratio greater than one, and exceed the scope of the sponsor's maintenance responsibility.

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

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

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

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

ELIGIBLE:

Emergency Work

1. Flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program; those that are eligible to join the USACE program but are not an active participant; or those that may be eligible for assistance under the NRCS EWP program may be eligible for ***flood fighting activities*** (e.g. sand-bagging, buttressing, adding freeboard, etc.), ***debris removal and emergency repairs*** (e.g. placing fill material in breached or significantly deteriorated, weakened areas of the flood control work). For the last, however, emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible. As a condition of receiving disaster assistance for emergency repairs, the applicant must agree to join the USACE program or abide by engineering and inspection requirements of the NRCS. FEMA shall limit disaster assistance for emergency repairs to flood control works on a one-time only basis. Therefore, subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) would not be eligible for disaster assistance. When emergency repairs are authorized, they are limited to restoring the original elevation of the flood control work or to an elevation designed to protect against the five-year flood event, whichever is lesser. However, FEMA may provide disaster assistance for flood fighting activities and debris removal in subsequent disasters.

2. Water control structures (including earthen levees) that are ineligible to join the USACE programs or receive assistance from the NRCS may be eligible for emergency protective measures under section 403 of the Stafford Act.

3. Dewatering of areas behind levees by breaching the levees or pumping is eligible if there is a threat to health and safety or improved property; or, if required to facilitate the initiation of a Federal repair project. Deliberate breaches made by the sponsor to accomplish such dewatering are eligible for repair.

4. The costs of removal of flood fight measures on flood control works can be eligible if such removal is necessary to eliminate a health and safety threat, to operate the flood control work as a public facility or to repair the facility.

Permanent Work

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

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

INELIGIBLE

1. Permanent repairs of flood control works that are eligible to join the USACE PL 84-99 Rehabilitation and Inspection Program, whether or not they are active participants in the program, are ineligible. 2. Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible.

2. Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible.

3. Subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) are ineligible.

4. Damages to eligible flood control works that do not meet the USACE PL 84-99 Rehabilitation and Inspection Program minimum threshold amount for permanent repair are ineligible for FEMA funding.

5. Damages that do not meet the criteria for funding for permanent repair under the NRCS EWP Program are ineligible for FEMA funding.

6. Dewatering areas behind levees for the primary purpose of drying the land is ineligible.

7. Secondary levees riverward of the primary levees are ineligible for repair unless they protect human life.

8. Increasing the height of flood control works is ineligible.

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

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

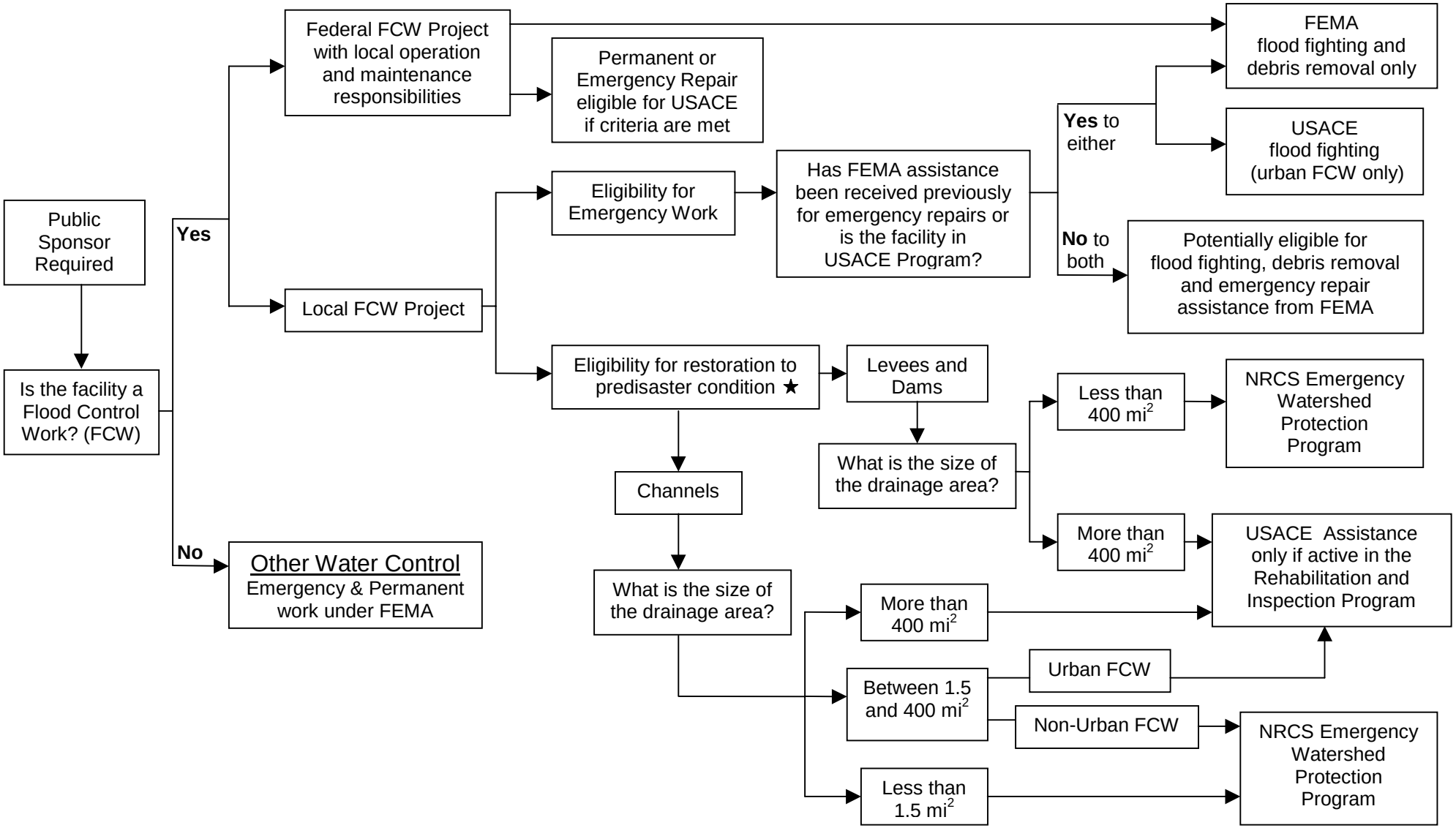
Federal Emergency Management Agency

US Army Corps of Engineers

USDA NRCS Natural Resource Conservation Service

Flood Control Works

Eligibility for Federal Assistance in Presidentially Declared Disasters



Contact the appropriate agency on the reverse side

★ No FEMA assistance in this category

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.

Federal Emergency Management Agency (FEMA)	**US Army Corps of Engineers (USACE)**	**Natural Resources Conservation Service (NRCS)**
FEMA Regional Office (Boston, New York,Philadelphia, Atlanta, Chicago, Denton, TX, Kansas City, Denver,San Francisco, or Bothell, WA)	Local USACE District Commander	Any USDA/NRCS Office

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** September 24, 1998

2. **Response and Recovery Directorate Policy Number:** 9524.4

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

4. **Purpose:** In accordance with the Directorate's revised publications numbering system, the publication number of the policy on facility replacement has been changed from #4511.61 to #9524.4. I have reviewed the policy and determined that it remains the same.

5. **Review Date:** October 2000

6. **Signature:**

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

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

Federal Emergency Management Agency

Washington, D.C. 20472

DATE: June 1, 1995

Response and Recovery Directorate Guidance No. 4511.61 E

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

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

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

DESCRIPTION: The term "*disaster damage*" in 44 CPR 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 wells as it did immediately prior to the disaster*."

ORIGINATING OFFICE: Infrastructure Support Division, Response and Recovery Directorate

REVIEW DATE: June 1997

SIGNATURE:

Signed

Richard W. Krimm
Associate Director
Response and Recovery Directorate

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

Guidance No. 4511.61 E

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

The Regulation: 44CFR §206.226(d)(1):

> *"A facility is considered repairable when disaster damages do not exceed 50% of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster."*

The guidance: "*Disaster damage*"* in the §206.226(d)(l) 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)(l).

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

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

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

Conditions	Eligible Costs
1. When damage repair **does not exceed 50%** of the replacement cost★★. *and* No upgrade trigger is pulled.	Repair of eligible damage★ *only*.
2. Damage repair does **not exceed 50%** of 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★★.	Repair of eligible damage★ *plus* mandatory upgrade cost.
3. 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★★.	Repair of eligible damage* *plus* upgrade cost, *but* the total eligible costs capped at the replacement cost★★.
4. Damage repair **exceeds 50%** of the replacement cost★★.	The building's full replacement cost★★ (but no more than its replacement cost) is eligible.

Notes:

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

★★ "*Replacement cost*" is replacement of the same size or designed capacity and function building to all applicable codes. The calculation shall not include the costs of demolition, site work, and applicable soft costs (even though these costs may be eligible for FEMA funding).

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** September 24, 1998

2. **Response and Recovery Directorate Policy Number:** 9524.5

3. **Title:** Trees, Shrubs, and Other Plantings Associated with Facilities

4. **Purpose:** In accordance with the Directorate's revised publications numbering system, the publication number of the policy on trees, shrubs and other plantings has been changed from #4511.300 to #9524.5. 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 Trees, Shrubs, and Other Plantings Associated with Facilities (November 25, 1997)

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

DATE: November 25, 1997

Response and Recovery Directorate *Policy No.* 4511.300

SUBJECT: *Trees, Shrubs, and Other Plantings Associated with Facilities*

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.

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.

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 Consequence: 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 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.

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.

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, an 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 be eligible only when it is necessary to stabilize slopes and to minimize sediment runoff. 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 93-288, as amended.

KEY WORDS: Trees, Shrubs, Other plantings, Facilities Damaged facilities

SUPERSESSION: This policy supercedes 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.

AUTHORITIES: Section 406 of Public Law 93-288, as amended; 44 CFR Part 206, Subparts G and H.

ORIGINATING OFFICE: Infrastructure Support Division, Response and Recovery Directorate

REVIEW DATE: September 1999

SIGNATURE:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

DISTRIBUTION: Regional Directors, Regional Response and Recovery Division Directors

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published**: August 17, 1999

2. **Response and Recovery Directorate 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.

4) 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.

5) 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.

6) 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.

8. Supersession: This policy updates and replaces relevant provisions of previous Public Assistance policy documents.

9. 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.

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** June 8, 2001

2. **Response and Recovery Directorate Policy Number:** 9524.7

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

4. **Purpose**: This policy provides guidance in determining the eligibility of costs for inspection, evaluation and repair of welded steel moment frames of structures damaged by the Nisqually Earthquake.

5. **Scope and Audience**: This policy is specific to the provision of FEMA Public Assistance recovery grants for the Nisqually Earthquake (FEMA-DR-1361-WA) that occurred on February 28, 2001 in the State of Washington. It prescribes eligible and ineligible costs associated with the inspection, evaluation and repair of welded steel moment frames of structures constructed with steel framing joined by welded connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of *Section 2710 (g) B* of the 1991 **Uniform Building Code** or its equivalent. This policy is intended to guide FEMA personnel responsible for the administration of the FEMA Public Assistance Program. The provisions of this policy are effective immediately.

6. **Background:** The Robert T. Stafford Disaster Recovery and Emergency Assistance Act, as amended, ("Stafford Act") and implementing regulations in 44 CFR Part 206 provide an administrative allowance (sometimes called "the sliding scale") to reimburse subgrantees for costs incurred while requesting, obtaining and administering Federal disaster assistance grants. This allowance, which is based on a fixed percentage of the cost of eligible repairs, is intended to include the costs incurred for an applicant's evaluation of the extent of damage to eligible damaged facilities. FEMA's policy is that there generally is no reimbursement separate from the allowance for costs incurred in the search for damage conducted by an applicant.

   However, FEMA has made an exception to that policy in recognizing the unique situation presented by the inspection of welded steel moment frame connections that potentially can have brittle fractures. These connections typically are covered with architectural finishes and occasionally are protected with asbestos or other fire retardants. These coverings add complexity to an inspection of such connections. Because of the numerous incidents of structural damage to welded steel moment frames (WSMF) caused by the Northridge Earthquake, it was necessary to establish a policy by which FEMA would determine the eligibility of funding for inspection, evaluation and repair of this damage.

A multi-year study of the welded steel moment frame fracture issue has resulted in recommended criteria to the technical community for (a) evaluation of steel moment frame buildings affected by strong earthquake ground shaking to determine if they have been damaged, and to what extent; (b) identification of those buildings that have been so severely damaged that they constitute a significant safety hazard; and (c) repair of damaged structures such that they may safely be restored to long term occupancy. These results are published in **Recommended Post-earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings**, Federal Emergency Management Agency, FEMA 352, July 2000. FEMA 352 provides the technical base for this policy.

The revision of RR #9524.1, Welded Steel Moment Frame Policy, August 17, 1999, will be made following FEMA's normal coordination procedure. That policy was based on FEMA 267, *Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Moment Frame Structures*, August 1995, which is now out-of-date. The revision of RR #9524.1 will replace the recommendations of FEMA 267 with those of FEMA 352.

This Interim Policy is being issued at this time because the revision of RR Policy #9524.1 will take too long to be responsive to the Nisqually Earthquake recovery and because FEMA 352 provides the best current technical information.

FEMA has identified two potential cost impacts caused by the publication of FEMA 352. These impacts are a consequence of the changes between FEMA 267 and FEMA 352 and do not reflect changes in policy. The potential cost impacts are assessed below:

First. Physical indications that require the search for damaged welded moment frame connections are similar in FEMA 267 and FEMA 352 but not identical.

- The number of buildings to be inspected may decrease slightly because FEMA 267 used local ground accelerations equal to or greater than 0.20 g whereas FEMA 352 uses local ground accelerations equal to or greater than 0.25 g.
- However, the number of buildings to be inspected may also increase slightly because FEMA 352 dropped the condition of permanent interstory drift and change in building period, and added local Modified Mercalli Intensity condition.

Second. In the selection of the number of connections to be inspected in the search for damaged connections, the minimum number of connections has been increased slightly. However, whenever significantly damaged connections are found, FEMA 352 recommends that, for an exterior moment frame, 9 additional connections rather than 4 additional connections be inspected, and, for an interior moment frame, 13 additional connections rather than 12 additional connections be inspected. For a severely damaged building the change in cost will be small, but for a minimally damaged building the cost increase may be significant.

The currently published national policy on welded steel moment frame buildings (RR #9524.1) included a discussion of the use of mitigation measures under Section 406 of the Stafford Act. That topic is not being addressed in either the planned revision to

RR #9425.1 or in this interim policy for the Nisqually Earthquake recovery. Instead, proposed mitigation measures for welded steel moment frame buildings, as all other public assistance grant program mitigation measures, will be evaluated under the provisions of RR #9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act).

7. **Policy:** Only eligible facilities constructed with steel framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of Section 2710 (g) B of the 1991 **Uniform Building Code** or its equivalent, are eligible under this Policy.

A. Inspection Reimbursement Under Section 406 of the Stafford Act

1) Preliminary post-earthquake assessment. The preliminary post-earthquake assessment described in FEMA 352, Chapter 3, leads to a building posting as Green, Yellow or Red. Section 3.2 provides conditions that are used to determine if the building needs to undergo a preliminary evaluation. If the conditions of Section 3.2 allow it to be classed as unlikely to have experienced significant damage, building inspections and evaluations are the responsibility of the owner and eligibility for reimbursement is provided in accord with item 3, below. However, if the building may have experienced significant damage, the visual inspections and preliminary evaluation described in Section 3.3 will be eligible for disaster recovery reimbursement through a Project Worksheet (PW). Section 3.3 provides a checklist of indications of potential damage that leads to evaluations requiring posting of the building as Green, Yellow or Red. Section 3.3.3.4 delineates the numbers and locations of welded moment connections requiring visual inspection for the preliminary evaluation.

2) Strong likelihood of significant welded steel moment frame damage. This is to be determined as indicated by Yellow or Red postings based on the evaluation of damage to welded moment connections described in FEMA 352, Section 3.3.4. As provided through a PW, FEMA will reimburse the costs of visual bottom flange connection inspections performed at locations selected in accordance with FEMA 352, Chapter 4, Method 2. Section 4.4.2 (Method 2) provides guidance for the inspection of a sample of the total welded moment frame connections in the building. If certain types of damage are discovered, additional visual inspection of bottom flange connections and/or top flange connections at locations recommended by FEMA 352, Chapter 4 (after the initial discovery of damaged connections) will also be eligible for reimbursement, but only after FEMA has been informed of the frame damage already discovered, and after the PW has been modified to include the follow-on inspection. The modified PW also may authorize nondestructive testing if the visual inspections indicate a significant potential of concealed damage. The eligible cost of inspecting connections includes only:
   - Removal of necessary architectural finishes such as plaster/drywall
   - Removal of fire retardants in the inspection area of the connection.
   - Visual inspections.

- Nondestructive testing only as appropriate, necessary and approved. Testing may include liquid dye-penetrant testing or magnetic particle testing, but not ultrasonic testing.

3) Little likelihood of significant welded steel moment frame damage.
   If either of the following conditions exist:
   - a building was not required to undergo a preliminary evaluation (based on FEMA 352, Section 3.2), or
   - a Green posting was assigned to a building (based on damage to welded moment connections as described in FEMA 352, Section 3.3.4.3, Table 3-2: Postearthquake Condition Designations), then FEMA will reimburse the costs of visual inspections only for those connections where significant damage associated with the declared earthquake disaster is found. Significant connection damage shall be as defined in FEMA 352, Chapter 4 (Table 4-1a: Connection Damage Indices), for dj ≥ 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
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13. **Distribution:** Regional Director, Region X; Response and Recovery Division Director, Region X; Federal Coordinating Officer/Disaster Recovery Manager, FEMA-DR-1361-WA.

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** November 30, 1998

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:

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13. Distribution: Regional Directors, Regional and HQ Response and Recovery Division Directors, Regional Infrastructure Branch Chiefs

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** August 17, 1999

2. **Response and Recovery Directorate:** 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. <u>Eligibility</u>. 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) (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 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 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 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 credits.

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:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** 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 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 benefit. 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.

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

Federal Emergency Management Agency

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1. **Date Published:** August 17, 1999

2. **Response and Recovery Directorate Policy Number:** 9525.4

3. **Title:** Medical Care and Evacuations

4. **Purpose:** This policy describes the circumstances under which applicants may request reimbursement for extraordinary measures taken to treat or evacuate disaster victims.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the Public Assistance Program. The policy addresses:

   A. Eligible medical facilities that have extraordinary costs for providing temporary facilities for emergency medical care to individuals, and

   B. Eligible hospitals and custodial facilities (e.g., nursing home) that need to evacuate individuals with special medical needs to another facility for care.

6. **Background:**

   A. When the emergency medical delivery system within the designated disaster area is destroyed or severely compromised, the Federal government may provide emergency medical assistance directly to the area through a mechanism known as Direct Federal Assistance. In these cases, the costs of the emergency medical operation are paid by FEMA or the providing Federal agency.

   B. When medical facilities in a disaster area experience increased patient loads and operating costs, FEMA generally does not reimburse them for increased costs. However, FEMA will fund some emergency costs associated with providing additional facilities for emergency treatment in <u>extraordinarily</u> catastrophic disasters.

   C. In addition, there are emergency situations in which eligible public and private non-profit hospitals and custodial facilities (e.g., nursing homes) are adversely affected by the disaster and cannot provide proper care for their patients. When an evacuation is required, there may be eligible costs incurred by an eligible applicant in the evacuation and transportation of the patients. This policy outlines situations that may warrant reimbursement.

7. Policy:

A. Eligible Facilities. Only publicly owned and private non-profit (PNP) facilities are eligible to request compensation. Private for-profit organizations are not eligible applicants for public assistance grant funds for either emergency medical treatment facilities or for evacuations.

B. Extraordinary Expenses to Provide Medical Care.

1. Eligible costs must be associated with an eligible applicant providing temporary facilities for treating disaster victims when their existing facilities are overloaded and cannot accommodate the patient load. In most instances eligibility should be related to severe disaster circumstances such as mass casualties and a major threat to the health and safety of the community. Eligible costs may include the following:

   a. Temporary tents or portable buildings for treatment of disaster victims;
   b. Leased equipment for use in the temporary quarters[1];
   c. Security for the temporary treatment area.

2. Ineligible costs include the following:

   a. Cost of emergency medical treatment of any kind (including vaccinations);
   b. Cost of follow-on treatment of disaster victims;
   c. Increased administrative and operational cost to the hospital due to increased patient load;
   d. Costs associated with loss of revenue.

Ineligible costs remain ineligible even if covered under mutual aid or other assistance agreements.

C. Extraordinary Evacuation Expenses. Disasters can so seriously threaten or cause such severe damage to eligible medical and custodial facilities that the patients have to be evacuated and transported to either a temporary facility or an existing facility that has spare capacity. Operating costs in the new facility are the responsibility of the medical or nursing facility, as they would have been in the original facility. However, some costs associated with evacuation and transporting may be eligible.

1. Eligible costs may include:

   a. Overtime for regular full time employees and extra hires to evacuate and assist in the transport of patients from the damaged facility;

[1] In the unlikely event that the purchase of equipment can be justified, salvage value will be taken against the eligible cost.

b. Transportation of the patients.

2. Ineligible costs include:

   a. Medical staff to accompany the patients being transported.
   b. Medication for assisting the patients in their evacuation.

Ineligible costs remain ineligible even if covered under mutual aid or other assistance agreements.

8. Supersession: Memorandum from G. Clay Hollister to Ken Hutchinson dated March 28, 1994; Subject: Request for Opinion, Special Needs Shelter Costs.

9. Authorities: Section 403 and 502 of the Stafford Act; 44CFR 206.225.

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

11. Review Date: Two years from date of publication

12. Signature:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** October 26, 2000

2. **Response and Recovery Directorate Policy Number:** 9525.5

3. **Title:** Americans with Disabilities Act (ADA) Access Requirements

4. **Purpose:** This policy provides guidance in determining the eligibility of costs for federally required ADA access compliance associated with Public Assistance (PA) program grants.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the PA program.

6. **Background:**

   A. In order to eliminate discrimination against individuals with disabilities, Congress enacted the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) in 1990. Titles II and III of ADA are relevant to the PA program. 28 CFR Parts 35 and 36 provide further guidance.

   B. 28 CFR addresses alteration to existing facilities. It defines an alteration as a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof. It further states that alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts of elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. For the purposes of this FEMA policy on the application of the PA program to post-disaster reconstruction, the phrase, "ADA relevant repair," will be used in place of the word, "alteration."

   C. The PA program, under Sections 406 (a) and 406(e)(1) of the Stafford Act, authorizes FEMA to fund the cost of repairing, restoring, reconstructing, or replacing a public or private nonprofit facility in conformance with applicable codes, specifications and standards. This policy provides guidance on the applicability of federal ADA provisions to PA grant projects.

7. Policy:

A. New Facilities. A new facility receiving FEMA funding and constructed as a replacement facility, an improved project, or an alternate project must be designed and constructed to be readily accessible to and usable by individuals with disabilities.

1) Exceptions: There are two exceptions for a new facility.

a) For some eligible private nonprofit (PNP) applicants, exceptions are available for installation of elevators in small buildings less than three stories or less than 3,000 square feet per story. These exceptions do not apply to any publicly owned or operated facility.

b) Full compliance is not required when an entity, private or government, can demonstrate that it is structurally impractical to meet the requirements.

2) Other than the exceptions in Paragraph 7.A.1), FEMA will fund compliance with reasonable ADA requirements in a new facility. This is true even when such compliance was absent in the original facility, as long as the applicant was not cited for the violation.

3) A new facility that is funded as an improved or an alternate project is limited to the eligible funding for the original facility even though the new facility might have to comply with additional ADA requirements.

B. Existing Facilities. When ADA relevant repairs are made to any area of an existing facility, they must be done to meet the needs of disabled individuals. Only ADA relevant repairs trigger accessibility requirements; not all repairs are ADA relevant repairs.

1) ADA relevant repair: An ADA relevant repair is a repair to a damaged facility that affects or could affect the usability of the facility by the disabled (which is referred to as an "alteration" in the ADA).

a) Repairs of structural components of flooring, walls, partitions, or load-bearing elements are considered ADA relevant repairs.

b) Alterations to windows, hardware, controls, electrical outlets, and signage and repair of façades (such as dry wall, plaster, facial brick, etc.), whether interior or exterior, are not considered ADA relevant repairs.

c) Items such as normal maintenance, re-roofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not considered ADA relevant repairs unless they affect the usability of, or access to, an area containing a primary function.

2) Primary Function Areas. This area is where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, the meeting rooms of a conference center, and public offices providing governmental services to the public. When ADA relevant repairs are made to the primary function area of a facility, there are some special requirements and considerations:

   a) ADA relevant repairs to the damaged primary function area must meet ADA access requirements.

   b) When ADA relevant repairs are made to a damaged primary function area, the path of travel, and restrooms, telephones, drinking fountains and similar service facilities serving the primary function area also must be made ADA accessible to the maximum extent feasible (subject to the limitations in Paragraph 7.B.2)d)).

   c) Path of Travel. The accessibility requirement includes a "path of travel" to access the primary function area even though these areas may not be damaged. A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the repaired primary function area may be approached, entered, and exited and which connects the repaired primary function area with an exterior approach (including sidewalks, streets, and parking areas, and other parts of the facility). The "path of travel" also includes access to the service facilities (e.g., restrooms) serving the primary function area.

   d) Funding Limitations. Funding for providing an accessible path of travel and accessible service facilities to a repaired primary function area may not exceed 20% of the total cost associated with the repair of the primary function area.

      i) For calculation purposes, the total costs associated with repair of the primary function area also include the repair costs of the roof, heating/air conditioning/ventilating system, mechanical rooms, janitorial closets, locker rooms, private offices directly associated with the repair of the primary function area.

      ii) When the funding of 20% is not adequate to meet ADA accessible path of travel and service facility requirements, the ADA access must be made to the maximum extent possible with the limited funds. Limited changes should be made in the following order of priority: accessible entrance, accessible route to the altered area, at least one accessible restroom for each sex or single unisex restroom, phones, drinking fountain, and other elements such as parking, storage, and alarms. See 28 CFR 36.403(g).

3) Non-primary Function Areas. If ADA relevant repairs are required during the repair of parts of a facility other than the primary function areas, they must be

done to provide ADA access. However, these repairs do not trigger the "path of travel and service facility" requirements like the ADA relevant repairs to a primary function area do.

a) If ADA relevant repairs are made to *damaged* walls, stairs, corridors, restrooms, etc. that also happen to provide access to and usability of the repaired primary function area, the cost of those repairs are eligible costs as non-primary function areas and are not charged against the 20% cap.

b) The costs of these repairs to non-primary function areas will not be added to the base rate noted in Paragraph 7.B.2)d) when calculating the maximum allowance for accessibility path of travel or service facility repairs.

C. Non-damaged areas. The non-damaged areas of a partially damaged facility are not required by Federal law to be reconstructed for ADA access unless they are the "path of travel or service facility" to a repaired primary function area requiring ADA relevant repairs.

D. Legal Violations. If the applicant was notified of being in violation of an ADA law or building code prior to the disaster and was required to bring the facility into compliance, then triggered accessibility requirements related to the violation will not be eligible costs.

E. Codes and Standards.

1) ADA accessibility requirements in this policy refer to federal requirements. Costs for additional State and local ADA requirements may be eligible on a case-by-case basis if they are found reasonable. In any event, path of travel costs may not exceed 20% of the cost of repair to the primary function area.

2) The repair of existing facilities generally does not have to meet the codes and standards for ADA compliance for new construction.

F. Ineligible Repairs: If the applicant triggers ADA requirements by engaging in repairs that are not eligible for PA program funding, the cost of those ADA changes are not eligible costs under the PA grant program.

G. Historic Preservation: There are some special provisions that apply when a repair would "threaten or destroy the historic significance of qualified historic buildings and facilities." Refer to Section 504(c) of the ADA and 28 CFR 36.405 for guidance.

8. Supersession: Relevant provisions of previous public assistance policy documents.

9. References: Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 93-288 as amended; and 44 CFR 206.226(b)(3).

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

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

12. Signature:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** April 22, 2001

2. **Response and Recovery Directorate Policy Number:** 9525.6

3. **Title:** Project Supervision and Management Costs of Subgrantees

4. **Purpose:** This policy provides guidance in determining the eligibility of project supervision and management activities of subgrantees.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.

6. **Background:** Subgrantees have several types of eligible supervisory and management costs that serve different purposes and need to be identified and claimed separately. Commingling of the various costs and claiming them incorrectly may result in loss of eligible reimbursement for the subgrantees. This policy clarifies the eligibility of the various project supervision and management activities and how to account for the cost. It supplements the provisions of 44 CFR 206.228 on allowable costs and RR Policy #9525.7, *Labor Costs - Emergency Work*.

7. **Policy:**

   A. Supervision and Management of Force Account Work. Regular-time of a subgrantee's employees for direct supervision of force account employees performing eligible emergency work generally is not an eligible cost. However, the regular and overtime for the same direct supervision of force account employees performing 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 subgrantee's permanently employed personnel who supervise or manage emergency work performed by the subgrantee's employees (or by contractors) are not eligible costs. (reference 44 CFR 206.228(a)(4)). (Overtime costs are eligible for eligible emergency work.)

      2) Labor costs of second level supervisors (and above) are ineligible unless the subgrantee can account for specific time spent on eligible permanent projects. (Generally, the labor costs of only first line supervisors of permanent work are eligible.)

3) In general, subgrantee expenses for administration and management activities not specifically accountable to a work project are ineligible.

B. Project Management Activities. Project management is the oversight of an eligible project from the design phase (when necessary) to the completion of the work.

1) Eligible project management activities are those activities that the subgrantee would have performed in the absence of Federal funding. They include:

a) Direct management of projects in the concept and design stages that are being designed by a subgrantee's in-house staff, or by an architectural/engineering firm retained to analyze and design the repair or replacement of damaged facilities;

b) Procurement activities for architectural/engineering services and performance of work.

c) Review and approval of the project design regardless of who performs the design work.

d) Oversight:

i) Reasonable straight- or regular-time and overtime contractor costs are eligible costs if the subgrantee is using contractors for oversight.

ii) If the subgrantee is using its own regularly employed staff for oversight of emergency work, it may claim overtime costs but not straight- or regular-time costs.

iii) If the subgrantee is using its own regularly employed staff for oversight of permanent work, it may claim overtime costs and straight- or regular-time costs if the costs are tracked.

e) Comprehensive project management activities of the construction phase that may be included in an architectural/engineering contract or may be performed by a subgrantee's own staff. If a contract is used, costs are estimated using the cost curves in the *Public Assistance Guide*, FEMA 322, pages 75-79 (1999 edition). Final payment will be based on reasonable actual costs.

f) Construction inspection activities that are usually of a limited scope (for example, when projects do not require design). The construction inspection services may be provided by the subgrantee's own staff or a contractor. If a contract is used, the estimated fee is limited to 3% of construction costs as described in the *Public Assistance Guide*, FEMA 322, pages 79-80 (1999 edition). Final payment will be based on reasonable actual costs.

g) Testing and other procedures that may be mandated by State or local standards.

2) *Project Worksheets* (*PW*s):

a) Large Projects. The eligible costs will be included in the *PW* cost estimate based upon:

i) The actual project management cost for the specific project; or

ii) A reasonable percentage of the estimated construction cost when a project management contract is being negotiated but actual costs are not available. The percentage should be based upon past experience with project management contract costs for similar projects in the area.

The cost must be an actual expense that justifiably will be incurred by the subgrantee and it must be reasonable. If the subgrantee is uncertain as to the extent of project management activities to be used, an estimate should be made of the possible costs and included in the *PW*. The accounting of costs at closeout of the large project will determine final eligible cost.

b) Small Projects. Most small projects do not require project management activities. However, project management costs may be claimed on a *PW* when they are reasonable and are based on:

i) The actual project management costs for each small project; or

ii) A single project management *PW* for a contract that includes management of multiple small projects. Each small project under the contract must be identified and the need for project management efforts justified but costs for individual projects do not have to be identified as long as the total cost of the contract is reasonable when compared to the total cost of the small projects.

A flat percentage estimate, added to each small project *PW* for project management, is not acceptable.

C. Administrative Allowance Activities. There are activities that subgrantees may consider to be project specific, but are actually grant administration activities and, therefore, are not eligible as a project supervision and management cost. These administrative activities are those necessary in requesting, obtaining, and administering Federal disaster subgrants. Examples include identifying damage; writing *PW*s; assessing damage; attending Grantee and FEMA meetings; completing forms to request assistance; establishing files; collecting cost data; developing cost estimates; and working with the Grantee and FEMA during project monitoring, final inspections and audits. These grant administration activities are covered by the statutory administrative allowance (sliding scale) that is automatically added as a percentage of the total amount of assistance for a subgrantee when the projects are processed. The administrative allowance may not cover all costs that a subgrantee incurs performing grant administration activities but excess costs may not be claimed.

8. **Supersession:** Memorandum from Richard W. Krimm to Regional Directors dated July 6, 1995, Subject: Inclusion of Management and Supervision Costs in DSRs. This policy updates and replaces any other previous public assistance policy documents on this subject.

9. **Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Section 406; 44 CFR 206.228(a)(2)(ii); 44 CFR 206.228(a)(4)

10. **References:** Public Assistance Guide, FEMA 322, dated October 1999

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

12. **Review Date:** Five years from date of publication

13. **Signature:**

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** July 20, 2000

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 date of publication.

12. Signature:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999

2. **Response and Recovery Directorate Policy Number:** 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 widespead and massive amounts of wind-generated debris. The conditions usually occur during emergency operations and are not encountered in situations for which the equipment was designed.

D. Eligible Costs. Examples of items that could be eligible during or after operations in severe conditions include:

1. Damage caused by hitting submerged objects,

2. Damage that is caused by the disaster as a result of accomplishing emergency work, such as equipment that gets washed away when working on a breached levee or dam,

3. Cleaning of moving parts to remove foreign material that would cause damage in the equipment,

4. Fluid changes for equipment when high water operation was required,

5. Repairing or replacing tires and repairing undercarriage damage after operating in severe debris conditions left by high winds and floods when the damaged equipment is not designed to work in that environment,

6. Damage to equipment from civil unrest or terrorist activity occurring during disasters or emergencies declared by the President for reasons of civil unrest or terrorist activity, and

7. Replacement of fire hoses that were used to pump raw sewage or other contaminated liquids when the cleaning of the hoses is not possible.

E. Ineligible Costs. Equipment damaged or destroyed during use for other than its intended design and function is ineligible unless it was the only equipment available to save lives or protect property from imminent threat of harm.

Examples of specific costs that are not eligible for reimbursement include:

1. Corrosion,

2. Changing of fluids, except when required by other eligible damage or as provided in 7.D.4., and

3. Damage to equipment that is not related to performing eligible work, e.g., damages due to traffic accidents (even though en route to perform eligible emergency work), damage as the result of operator error, or vandalism.

F. Repetitive Damage. Generally, applicants operating in a high-risk environment who have failed to maintain their equipment for that environment, will not be eligible for maintenance costs that would have been avoidable under a more rigorous maintenance program.

8. Supersession: Memorandum from Dennis H. Kwiatkowski to Stephen Kempf, Jr. dated April 22, 1993, Subject: Damage to Applicant-Owned Equipment due to Coastal Environment and other relevant provisions of previous policy documents

9. Authorities: 44CFR 206.228(a)(1)

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

11. Review Date: Two years from date of publication

12. Signature:

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

Federal Emergency Management Agency

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1. **Date Published:** April 22, 2001

2. **Response and Recovery Directorate Policy Number:** 9525.11

3. **Title:** Payment of Contractors for Grant Management Tasks

4. **Purpose:** This policy is to provide guidance on the eligibility of costs when a Grantee or subgrantee employs contractors to manage the Public Assistance (PA) Program in place of Grantee or subgrantee employees.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication of this policy. This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the PA Program.

6. **Background:**

   A. Most Grantees and subgrantees have the personnel capacity to respond to a disaster. The personnel are either located within the emergency management office or they are available from other state agencies or local government departments. However, some State, Tribal, and local governments are finding it necessary to outsource work as their resources continue to shrink. Several have indicated an interest in using contracts and similar instruments to secure a workforce to administer or assist with the PA Program.

   B. This new policy recognizes the trend toward Grantee use of contractors for grant management work and streamlines the payment procedures by defining the contract costs as eligible under "State Management Administrative Costs" *PW* (also known as the Grantee Management Cost Project Worksheet or Management *PW*). Under previous procedures, Grantees have been denied management contractors' expenses for overtime, travel and per diem. In the past, FEMA treated the contractor expenses as though they were Grantee employee expenses and held that all overtime, travel and per diem expenses were covered by the "Statutory Administrative Costs" allowance (also known as the Grantee's Administrative Allowance or sliding scale).

      FEMA will no longer treat the contractors as State employees and all eligible contractor costs will be reimbursable through the State Management Administrative Costs. Therefore, all reasonable contractor costs, including overtime, travel and per diem, will be allowed as State Management Administrative Costs. There is no similar provision for subgrantees because all of their grant management and administrative costs are required by statute to be considered under the Statutory Administrative Costs allowance (also known as the subgrantee's Administrative Allowance or sliding scale).

C. The term "State Management Administrative Costs" is used in 44 CFR 206.228(a)(3). The paragraph permits the payment of some Grantee costs. This includes the payment of some Tribal government costs when the Tribal government is operating as the Grantee.

D. The criteria for allowable State Management Administrative Costs are included in Office of Management and Budget (OMB) Circular A-87.

E. In the course of research on the subject of payment of contractor assistance in Grantee management tasks, FEMA determined that it, incorrectly, had been providing a Statutory Administrative Costs allowance on State Management Administrative Costs *PW*s. 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 *PW*s, 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 *PW*s 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 *PW*s 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 *PW*s 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:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 29, 2000

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 subgrantee will not have sufficient equipment and supplies to respond to a Presidentially 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 subgrantees 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 laws 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 less 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 laws 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 subgrantee.

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 subgrantee opts to purchase instead of lease.

d) If the subgrantee 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 subgrantee actually incurred for the equipment.

ii) If the subgrantee 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 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.

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:

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** July 31, 2001

2. **Readiness, Response and Recovery Directorate Policy Number:** 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%x75%) of the eligible cost of the original project.

[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.

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.

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 NHPA. 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

Federal Emergency Management Agency

Washington, D.C. 20472

DATE: July 11, 2000

Response and Recovery Directorate Policy No. 9640
Response and Recovery Directorate Policy No. 9525.15

TITLE: Disaster Recovery Operations: Telecommunications Support Lines for States

PURPOSE: The purpose of this directive is to establish policy regarding the Federal Emergency Management Agency's (FEMA) financial support for States administering the Individual and Family Grant (IFG) Program, Infrastructure Support (IS) and Mitigation (MT) Programs in the area of telecommunications equipment such as T-1 LAN/WAN connections.

SCOPE and AUDIENCE: The implementation of this policy is a national mandate to be followed by all Federal Emergency Management Agency (FEMA) and State disaster recovery managers including FEMA and State agency employees administering the IFG, IS, and MT programs. This policy is applicable to all major disasters and emergencies declared by the President for Individual Assistance, Public Assistance and Hazard Mitigation Programs.

DESCRIPTION: The National Emergency Management Information System (NEMIS) is an evolving agency-wide system of hardware, software, telecommunications and applications software that provides a new technology base to FEMA and its partners to perform the emergency management mission. The NEMIS system includes the Human Services (HS) module, the Infrastructure Support (IS) module, the Mitigation (MT) module, the Emergency Support (ES) module, and the Emergency Coordination (EC) module, and is now being used to process all disasters. NEMIS electronic interface remote access mechanisms include the options of T-1 LAN/WAN connection, modem dial-up using PC anywhere, and Internet access. Use of T-1 LAN/WAN connections by remote NEMIS users directly affects their performance from receiving applicant information transmissions to eligibility processing, mission completion, and customer service. Supporting the use of T-1 LAN/WAN connections is expensive and one of the issues that this computer-based process has raised is the extent to which FEMA will support the installation and maintenance of the high quality data transmission T-1 lines for States. Presently FEMA both provides T-1 support to State disaster recovery operations when they process in Disaster Field Offices (DFO), and installs T-1 lines at any State-identified processing location for an indefinite period of time. This practice is extremely costly and this policy memorandum will clarify FEMA's position with respect to what costs FEMA will incur and what FEMA expects the States to bear in the installation and maintenance of T-1 LAN/WAN connections for State-administered disaster programs.

INDIVIDUAL AND FAMILY GRANT PROGRAM POLICY: When State processing operations are co-located in the DFO, FEMA will incur all T-1 LAN/WAN connection installation and maintenance costs for up to 180 days from the date of declaration (IFG Grant Award Activity Period), including any extensions granted by FEMA to extend the timeframes of the program or, until the DFO closes, whichever come first. Once the DFO closes or the 180 days have expired, FEMA will disconnect all T-1 LAN/WAN connections. At this point the State can either incur the cost of installing a T-1 line at the DFO or the newly identified State processing location, or can choose to communicate remotely via modem dial-up. *Please note*: Costs incurred by the State in installing and maintaining T-1 LAN/WAN connections are eligible costs under the IFG Program's State administrative costs allowance as mandated by Section 411 (d), *Administrative Expenses*, Robert T. Stafford Disaster Relief and Emergency Assistance Act. The allowance of these costs is authorized in FEMA's Federal regulations at 44 CFR Part 13.22, *Allowable Costs*, and the associated requirements of Office and Management and Budget (OMB) Circular A-87, *Cost Principles for State and Local Governments.*

When State processing operations are not co-located in the DFO, FEMA will incur all T-1 LAN/WAN connection installation and maintenance costs for up to 180 days from the date of declaration (IFG Grant Award Activity Period), including any extensions granted by FEMA to extend the timeframes of the program. After the 180 days have expired, FEMA will disconnect all T-1 LAN/WAN connections. At this point the State can either incur the cost of installing a T-1 line at their processing location or can choose to communicate remotely via modem dial-up. *Please note*: Costs incurred by the State in installing and maintaining T-1 LAN/WAN connections are eligible costs under the IFG Program's State administrative costs allowance as mandated by Section 411 (d), *Administrative Expenses*, Robert T. Stafford Disaster Relief and Emergency Assistance Act. The allowance of these costs is authorized in FEMA's Federal regulations at 44 CFR Part 13.22, *Allowable Costs*, and the associated requirements of Office and Management and Budget (OMB) Circular A-87, *Cost Principles for State and Local Governments.*

Questions on the IFG policy should be directed to Charles D. Robinson, Chief, Program Guidance and Implementation Branch, Human Services Division, at (202) 646-4262 or Sharon A. Hordesky at (202) 646-2778

INFRASTRUCTURE SUPPORT POLICY: Generally, when a Disaster Field Office is established FEMA installs T-1 lines to support program operations. If State program operations are performed in a State facility, FEMA will incur all T-1 LAN/WAN installation and maintenance costs for up to 180 days from the date of declaration. After 180 days, FEMA will disconnect all T-1 LAN/WAN connections, unless the State requests and FEMA approves an extension. The State may request an extension of the FEMA T-1 service in writing to the Disaster Recovery Manager (DRM) at least 30 days prior to the planned termination of service. FEMA will consider the number of current and projected users, actual time logged into the system and which functional areas of NEMIS the State uses in evaluating a State's request for extension of the T-1 service.

When the T-1 service is terminated, the State can either incur the cost of installing a new T-1 line or choose to communicate remotely via modem dial-up. Dial up access to NEMIS is normally set up to use toll free phone lines. If the State incurs reasonable expenses for remote access to the Infrastructure module of NEMIS, the costs are reimbursable on a State Grant Management Project Worksheet.

Questions on the IS policy should be directed to James A. Walke, Engineering Branch Chief, at (202) 646-2751 or Alex Burns at (202) 646-4550.

MITIGATION POLICY: The Mitigation Directorate will issue T-1 Line policy guidance under separate cover.

KEY WORDS: T-1 LAN/WAN connections, 180 days, NEMIS, modem dial-up, Individual and Family Grant Program, IFG State administrative costs, Infrastructure Support, Mitigation.

SUPERSESSION: N/A

AUTHORITIES:

- *The Robert T. Stafford Disaster Relief and Emergency Assistance Act*, Public Law 93-288, as amended by Public Law 100-707.

- 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*; and,

- Office of Management and Budget Circular A-87, *Cost Principles for State and Local Governments.*

ORIGINATING OFFICE: Human Services Division, Response and Recovery Directorate

REVIEW DATE: June 2003

SIGNATURE: ***SIGNED 7-11-00***
Lacy E. Suiter
Executive Associate Director
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Office of the Inspector General

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Signed:** August 13, 1998

2. **Response and Recovery Directorate Policy Number:** 9526.1

3. **Subject:** 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 Presidentially 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 (code/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 <u>not</u> 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 <u>repair</u> 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. Supersession:

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 E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

SEE ATTACHED APPENDIX FOR POTENTIAL MEASURES THAT ARE PRE-DETERMINED TO BE COST EFFECTIVE

Appendix (4/29/98)

The following potential mitigation measures (reference: See Paragraph 7.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**

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

1. <u>Infrastructure Systems</u>:

A. Drainage/crossings and bridges

1) Drainage structures – 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 slip-out 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 floodproofed.

   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 floodproofing 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.

2. Buildings - General

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, 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 floodproofed. If dry floodproofing is not feasible, these buildings should be wet floodproofed.

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 –

a) Bracing of overhead pipes and electrical lines to meet seismic loads.

b) Bracing interior walls and partitions that could collapse, preventing safe exit from the building.

c) Bracing parapets, anchoring veneer or cladding, and bracing other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake.

G. Replacement of glass – Replacement of glass (with break resistant material) in mullions to prevent breakage and fallout in the event of building movement.

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** January 13, 2000

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** June 8, 2001

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 Presidentially 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 standard[1] 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.

[1] Codes, specifications and standards are referred to as "codes" in this document.

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.

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 subgrantee 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 (HVAC, 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)(1) 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.

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEMA

1. **Date Signed:** June 25, 2004

2. **Response and Recovery Directorate 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 Presidentially-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 standard[1] 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.

[1] Codes, specifications and standards are referred to as "codes" in this document.

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 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 Division Policy #9526.1, *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. 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 FEMA-funded repair, restoration, or replacement of a facility be on the basis of the predisaster design in conformity with current applicable codes, specifications, and standards. The Stafford Act does not require that FEMA provide funding to make an eligible facility meet current codes for new construction, only that FEMA must provide the assistance necessary for an applicant to undertake eligible repairs in a code-conforming manner using 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 non-structural), 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 non-structural 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)(1) 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.

i) 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 7A(3)(b)].

ii) 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) <u>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.</u>

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) <u>Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility</u>.

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) <u>For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.</u>

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 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 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 <u>requires</u> that the building be repaired and <u>requires</u> 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. Review Date: Five years from date of publication

12. Signature:

Signed

Daniel A. Craig
Director
Recovery Division
Emergency Preparedness and Response

13. Distribution: Regional Directors, Regional and Headquarters Recovery Division Directors, Regional Public Assistance Officers.

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 8, 2000

2. **Response and Recovery Directorate Policy Number:** 9530.1

3. **Title:** Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants.

4. **Purpose:** This policy reiterates FEMA policy on the application of flood insurance reductions for underinsured or uninsured properties located in a Special Flood Hazard Area (SFHA) at the time of a disaster when a LOMA or LOMR is requested and obtained after the declaration date.

5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making public assistance eligibility determinations.

6. **Background:**

   A. FEMA provides federal disaster assistance for the repair, restoration, reconstruction or replacement of certain public and Private Nonprofit (PNP) facilities that are damaged by a major disaster as defined in the Stafford Act. In the event that such a facility is damaged by flooding, FEMA is required to reduce the amount of federal assistance in accordance with the Stafford Act and implementing regulations. Specifically, Section 406(d) of the Stafford Act states that if an eligible insurable facility damaged by flooding is located in a SFHA identified for more than one year by the Director or is not covered by flood insurance on the date of such flooding, FEMA shall reduce federal disaster assistance by the maximum insurance proceeds which would have been received had the buildings and contents been fully covered by a standard flood insurance policy. Effective March 1, 1995, the maximum flood insurance coverage limit for a nonresidential building is $500,000 and the maximum limit for contents is $500,000.

   B. There is an exception to this requirement which is specifically noted in the law and in FEMA regulation 44 CFR 206.252, *Insurance requirements for facilities damaged by flood*. A PNP facility which cannot be insured because it is located in a community which is not participating in the National Flood Insurance Program (NFIP) may be exempt from the reduction in Federal assistance pursuant to Sections 406(d)(2) and (3) of the Stafford Act. If the community enters into the NFIP, the PNP may receive Federal disaster assistance provided the required flood insurance is purchased (44 CFR 206.252(b)); if the community does not do so within six months of the declaration, the PNP may not receive any Federal disaster assistance.

C. Section 406(d) of the Stafford Act requires that the amount of the infrastructure grant be reduced if a facility is located within a SFHA. A SFHA is any land area subject to a one percent or greater chance of flooding in any given year. Flood Insurance Rate Maps (FIRMs) are the official maps used to delineate the SFHAs of a community. SFHAs are designated on these maps as Zones A, AO, AH, A1-30, AE, A99, AR, AR/AO, AR/A1-30, AR/AE, AR/AH, AR/A, VO, V1-30, VE, or V (44 CFR 59.1).

D. FEMA regulations provide a mechanism by which a community may request changes to the FIRMs (44 CFR Parts 65-70). It is, in fact, the responsibility of a community to assist FEMA in keeping a current and accurate record of floodplain boundaries whether it be based on more current information or physical changes to the floodplain or floodways. A change to an effective FIRM is reflected in a LOMA, LOMR, or a republication of the FIRM.

1) A LOMA removes from the floodplain a specific structure or property that was inadvertently included in the designated floodplain on a community's FIRM. The LOMA states that the structure or property was never in the SFHA. A request for a LOMA is typically submitted by an individual, and must include, among other items, a certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest adjacent grade of the structure is above the base flood elevation shown on the community's effective FIRM (44 CFR Part 70).

2) A LOMR is an annotated copy of the FIRM which officially changes the floodplain boundaries along certain waterways in the community. A LOMR may be based solely on more accurate and detailed scientific or technical information or on actual physical changes to the floodplain that affect flooding conditions. Pursuant to 44 CFR 65.3, *Requirement to submit new technical data*, a community is required to submit new scientific or technical data confirming physical changes within six months after the date such information becomes available. Submission of such information is necessary in order that risk premium rates and floodplain management requirements will be based upon current data.

3) FEMA will republish the FIRM when changes are too extensive to show on a LOMR.

Once issued by FEMA, LOMAs and LOMRs are incorporated into the official data or record used in all determinations concerning local floodplain development and flood insurance requirements.

E. The intent of FEMA regulations governing insurance coverage and disaster assistance funding is to encourage individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance. FEMA meets this intent by limiting otherwise available assistance to flood-damaged structures located in a SFHA; requiring recipients of federal disaster

assistance to obtain and maintain insurance for the future; and prohibiting all future assistance for that facility if an applicant fails to meet the previous requirement**.**

F. FEMA recognizes that more detailed and more accurate scientific and technical information may remove a structure from an identified floodplain. FEMA has developed an administrative procedure for amending and revising current FIRMs. Although a FIRM may identify a facility as being located in a SFHA, a LOMA or LOMR may confirm that the structure is actually excluded from the SFHA. It is not the intent of FEMA to unduly penalize an applicant in a major disaster situation whose facility is determined after-the-fact never to have been in the identified SFHA.

G. This policy addresses how and when FEMA should consider a LOMA or LOMR obtained after a declared disaster when determining the amount of infrastructure grants.

7. Policy:

A. FEMA will not reduce the amount of the infrastructure grant pursuant to Section 406(d) of the Stafford Act if:

1) The applicant has a request for a LOMA or LOMR submitted and pending prior to the declaration, or the applicant submits a request for a LOMA or LOMR no later than six months following the declaration,

2) The technical data supporting the LOMA or LOMR request reflects actual conditions that existed at the site prior to the flood event, and

3) In the case of a LOMR, the request does not seek to have base flood elevations modified based on new hydrology or man-made changes.

B. FEMA will reduce the amount of federal assistance until such a time as the applicant has informed FEMA in writing that a LOMA or LOMR has been obtained. Upon receipt of a copy of a LOMA or LOMR, FEMA may reinstate funding, provided the above parameters have been met.

C. It is the sole responsibility of a Public Assistance applicant to request a LOMA or LOMR if it believes that a structure is not actually located in the identified SFHA as identified on the effective FIRM.

D. Costs incurred in pursuit of a LOMA or LOMR are not eligible for reimbursement.

8. Supersession: This policy updates and replaces RR #9530.1, *Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants*, dated August 17, 1999.

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

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** March 19, 2001

2. **Response and Recovery Directorate Policy Number:** 9550.3

3. **Title:** Interim Policy on Fire Suppression Assistance

4. **Purpose:** This revision to the Interim Policy on Fire Suppression Assistance dated April 15, 1999, is intended to clarify and broaden the Federal Emergency Management Agency's (FEMA's) policy on the eligibility of staged resources, mutual aid agreements, declaration delegation, timing of the declaration process, and emergency operations center costs.

5. **Scope and Audience:** The revisions in this policy apply to all fire suppression grants approved since January 1, 2001. This policy is intended to provide guidance for FEMA and State personnel responsible for the administration of the Fire Suppression Assistance Program.

6. **Background:** The Disaster Mitigation Act of 2000 established the Fire Management Assistance Program. The program is scheduled for implementation on October 30, 2001, one year after enactment of the Disaster Mitigation Act. Until such time as implementation occurs, the Fire Suppression Assistance Program remains effective.

   In light of the forecasts for the 2001 Fire Season predicting another severe and potentially record setting fire season, we have decided to revise and reissue this policy in an effort to provide States with the fullest level of fire suppression assistance allowable under the law and FEMA regulations until implementation of the Fire Management Assistance Program. This will be a very short-lived policy, and will terminate upon implementation of the Fire Management Assistance Program. This revision to the Interim Policy will not influence the rule making for the Fire Management Assistance Program.

7. **Policy:**

   A. Staging 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.

[1] For the purposes of this policy, "staging" is synonymous with "prepositioning" of resources.

2) To receive reimbursement, the State must meet all program requirements, including the floor cost requirements. For reimbursement, all resources must have been specifically requested and staged by the State.

3) Reimbursement of staging costs may be eligible for up to thirty days prior to the approval of a fire or fire complex for which Federal, in-State (State-owned only), out-of-State, and international resources were staged.

   a) Reimbursement of eligible staging costs will be limited to the actual period in which resources were staged.

   b) Eligible staging costs will be reimbursed on the basis of reasonable costs incurred, up to a maximum of 16 hours/day for each person and 24 hours/day for equipment.

   c) Suppression costs incurred using the staged resources on unapproved fires during this period are <u>not</u> 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.

<u>B. Mutual Aid</u>

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 Assistance[2] contains a provision designating the State responsible for payment of

[2] The FEMA-State Agreement for Fire Suppression Assistance is a yearly agreement that once signed is applicable for all fire incidents approved during a calendar year. The Agreement may be amended throughout the year; however, amendments must apply uniformly to all fire incidents approved during the year.

such organizations when authorized and directed by the Incident Commander, before deployment, to participate in the fire incident.

4) The written mutual aid agreement or the FEMA-State Agreement for Fire Suppression Assistance must designate a State agency as the Grantee responsible for the monetary reimbursement of the local governmental and volunteer firefighting organizations.

5) Reimbursement of Mutual Aid Agreements.

   a) Reimbursement of fire suppression assistance grants is based upon actual and eligible costs incurred during suppression efforts. Since FEMA recognizes the State as the Grantee under the Fire Suppression Assistance Program, local governmental and volunteer firefighting organizations must submit their expenditures to the State agency designated as Grantee for reimbursement.

   b) If the State requests and receives reimbursement by FEMA for eligible fire suppression costs incurred by local governmental and volunteer firefighting organizations, the State agency, in its role of Grantee, must disburse payment in a manner consistent with this policy (i.e., as stipulated in written mutual aid agreement or in the FEMA-State Agreement for Fire Suppression Assistance).

   c) When reimbursing local governmental and volunteer firefighting organizations, we may use the rates specified in written mutual aid agreements or other reasonable rates.

   d) Reimbursement of local governmental firefighting organizations straight time and overtime will be determined according to the written policies and labor union contracts in effect prior to approval of the fire or fire complex. Such costs must be determined reasonable to be eligible for reimbursement.

   e) Upon request, the State must be able to provide FEMA with all the documentation of services rendered and costs incurred by local governmental and volunteer firefighting organizations.

C. Timing of the Declaration Process

FEMA shall base the decision to authorize or deny fire suppression on the conditions existing at the time of the State's request for fire suppression assistance.

D. Declaration Delegation

The Executive Associate Director, Response and Recovery Directorate may delegate the declaration authority for fire suppression assistance to the Regional Director. The Regional Director may re-delegate this authority, but re-delegation is limited to the Deputy Regional Director or the Response and Recovery Division Director.

E. Payment of Emergency Operations Center Costs

We have determined that it is appropriate to reimburse the State for emergency operations center (EOC) expenses that are above normal operating costs if the EOC is considered to be a Unified Command Center used for direction and control of fighting declared fires or fire complexes, providing assistance to the management of the fire situation, tracking of fire-related costs, and coordination of the State response. FEMA will reimburse PFT State personnel for their overtime at the established cost share. Overtime costs associated with the EOC must be approved by the Regional Director.

8. **Supersession:** This policy supercedes the April 15, 1999, Interim Policy on Fire Suppression Assistance and any documents or parts of documents on the use of fire suppression funds for pre-disaster activity, staging of resources, mutual aid, declaration delegation, and the timing of the declaration process.

9. **Authorities:** Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act), and implementing regulations in 44 CFR Part 206.390-395.

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

11. **Review Date:** This policy will terminate with the implementation of the Fire Management Assistance Program on October 30, 2001.

12. **Signature:**

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** August 17, 1999

2. **Response and Recovery Directorate Policy Number:** 9560.1

3. **Title:** Environmental Policy Memoranda

4. **Purpose:** This policy compiles all environmental policy memoranda that have been issued by FEMA National Headquarters and makes them readily available for guidance in administering the Public Assistance Program.

5. **Scope and Audience:** These environmental policy memoranda are the ones in effect as of May 1999. They have been compiled for easy reference by Public Assistance program staff in coordinating Public Assistance grant activities involving environmental issues.

6. **Background:**

   A. All Federal agencies are required by the National Environmental Policy Act (NEPA) to follow a specific planning process to ensure that agency decision-makers and local governments have considered the environmental consequences of Federal actions. In addition to NEPA, environmental review addresses the requirements of many associated laws and executive orders including: National Historic Preservation Act, Endangered Species Act, Clean Water Act, Clean Air Act and the executive orders on wetlands, floodplains and environmental justice. General guidance to FEMA on environmental considerations is provided by 44 CFR Part 10.

   B. Environmental policy memoranda have been issued since 1994 by the FEMA Headquarters Environmental Officer to address specific issues.

7. **Policy:**

   A. The attached environmental policy memoranda have been issued by FEMA National Headquarters as official guidance for the specific issues addressed in them.

   B. Each region has a Regional Environmental Officer (REO), who is responsible for assuring that the environmental laws, executive orders, and policies are effectively implemented. The REO supports the Public Assistance Program in policy implementation and should be the primary source in the region for interpretation of environmental policy and its application to special situations.

C. The following environmental policy memoranda included as attachments are:

1. Attachment 1 – ENVIRONMENTAL POLICY MEMO #1; Categorical Exclusion (CATEX) of Projects Involving the Acquisition of Damaged Properties and Implementation of E.O. 12898 Concerning Environmental Justice; dated April 18, 1994.

2. Attachment 2 – ENVIRONMENTAL POLICY MEMO #2; Other Federal Agency Clearance for Environmental Assessments; dated May 24, 1994.

3. Attachment 3 – ENVIRONMENTAL POLICY MEMO #3; Policy for Projects Completed Without Environmental Review Required by the National Environmental Policy Act (NEPA); dated March 24, 1995.

4. Attachment 4 – ENVIRONMENTAL POLICY MEMO #4; Availability and Use of the Updated List of Categorical Exclusions Published February 5, 1996, as a Revision of 44 CFR 10.8; dated February 27, 1996.

5. Attachment 5 – ENVIRONMENTAL POLICY MEMO #5; Documentation of National Environmental Policy Act (NEPA) Categorical Exclusions (CATEX); dated June 20, 1997.

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

9. Authorities: Robert T. Stafford Act Disaster relief and Emergency Assistance Act, as amended, Section 316; and 44 CFR Part 10.

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

11. Review Date: Two years from date of publication

12. Signature:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

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

ATTACHMENTS (5)

Federal Emergency Management Agency

Washington, D.C. 20472

APR 18, 1994

OP

MEMORANDUM FOR: Associate Directors
FEMA Regional Directors
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs
Mitigation Division Chiefs
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)
Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #1
Categorical Exclusion (CATEX) of Projects Involving the Acquisition of Damaged Properties; and Implementation of E.O. 12898 Concerning Environmental Justice

The purpose of this memorandum is to provide information concerning: 1) the changes to 44 CFR Part 10 (FEMA's Environmental Regulations) as published in an interim rule in the Federal Register on Friday, January 7, 1994; and 2) FEMA policy for the implementation of E.O. 12898 which addresses environmental justice. Copies of both are attached. Effective immediately, this interim rule amends 44 CFR 10 by adding certain purchases of properties to the list of actions that FEMA categorically excludes from reviews under the National Environmental Policy Act (NEPA). Likewise implementation of E.O. 12898 is immediately effective.

Categorical Exclusion of Projects involving Acquisition of Damaged Properties

This rule is intended to speed the administrative process for acquisition projects which include subsequent conversion to open space and which will not have a significant environmental impact. This CATEX was developed in response to the increased number and scope of properties being acquired by the States and communities to resolve public health and safety concerns following the Great Flood of 1993. By utilizing the new CATEX in conjunction with mitigation program funding, it is intended that the acquisition of significant numbers of qualified properties may be efficiently processed, thereby avoiding repeated damage and threat to public safety associated with those same properties. This CATEX is effective nationwide and applies to all acquisition projects that will be converted to open space regardless of the reason.

This CATEX does not apply to projects involving the relocation of structures or the development of other sites. In addition, a normally excluded acquisition project that has characteristics described under "Actions That Normally Require an Environmental Impact Statement" (44 CFR 10.8(b)(2)) or that would trigger any criteria described under "Extraordinary Circumstances " (44 CFR 10.8(e)) will require that the appropriate assessment process be followed.

Additionally, the new CATEX does not change FEMA's responsibility to comply with other environmental statutes. These include, but are not limited to, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and the Resource Conservation and Recovery Act. In many communities, historic properties may be a part of an acquisition project. Consequently, the National

Historic Preservation Act must be followed in the acquisition process, including consultation with the State Historic Preservation Officer (SHPO). Consultation with the Advisory Council on Historic Preservation should be coordinated by the SHPO.

FEMA's responsibilities under Executive Orders 11988 and 11990, FEMA's implementing regulations at 44 CFR 9, and FEMA's National Flood Insurance Program regulations at 44 CFR 59 through 77 are not affected by the new CATEX.

Implementation of E.O. 12898 Concerning Environmental Justice

On February 11, l994 President Clinton signed E.O. 12898, entitled, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." (Copy attached) The Executive Order directs Federal agencies "to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . .." A preliminary assessment of FEMA programs indicates that some of the hazard mitigation projects proposed in the floodplain may potentially fall within the scope of agency actions which have a greater impact on minority and low-income populations.

The NEPA environmental review process provides a convenient vehicle for fulfilling FEMA's environmental justice responsibilities. This environmental justice consideration should be included in the assessment of socioeconomic or other relevant impacts of proposed actions and their alternatives in the environmental assessment (EA) or the environmental impact statement (EIS). For those actions which would otherwise qualify as categorical exclusions (CATEX), and thus not require a NEPA review, the Regional Director shall assess the impact of the proposed action on minority and low-income populations and make a finding on whether the proposed action would have a "disproportionately high and adverse effect" on the populations identified in E.O. 12898. This finding shall be incorporated in the documentation supporting a CATEX for a proposed action. If the proposed action is deemed to have a disproportionately high and adverse impact, mitigative actions should be incorporated as part of the proposed action.

For example, in the acquisition of residential property in the floodplain to remove structures from the floodway pursuant to Section 404 of the Stafford Act, it appears that these properties tend to represent the least expensive real estate in the area and are more likely be owned by a lower income population than the homes located above the floodplain. If the Regional Director assesses the proposed action and determines that the proposed acquisition would have a disproportionately high and adverse effect on a minority and/or low-income population because replacement housing is scarce, relocation assistance might be recommended as a mitigative action.

If you have any questions regarding this new CATEX or the implementation of E.O. 12898, contact my office at 202-646-3011.

Attachment
Executive Order 12898 (Federal Register Vol. 59, No. 32, Wednesday 2/16/94)

cc Director
Chief of Staff
Public Affairs
Congressional Affairs
Regional Operations

Federal Emergency Management Agency

Washington, D.C. 20472

MAY 24, 1994

OP

MEMORANDUM FOR: Associate Directors
Administrators
Regional Directors

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO # 2
Other Federal Agency Clearance for Environmental Assessments

Questions have arisen concerning the level of input and clearance required from other Federal agencies for environmental assessments (EA) generated by FEMA. This memo is intended to clarify those questions.

When an environmental assessment is done our regulations (44 CFR 10.9(c) and the Council on Environmental Quality regulations (40 CFR Parts. 1500-1508) ask that we involve affected Federal, State, and local agencies and concerned groups to the extent practicable. In addition, however, there are numerous other requirements that must be considered in evaluating each project. Three that are of particular importance address:

1) The identification of historic, archeological or cultural resources which could require a section 106 consultation with the State Historic Preservation Officer (36 CFR 800).

2) The occurrence of threatened or endangered species which could require a section 7 consultation with the Fish and Wildlife Service (50 CFR Part 402).

3) The undertaking of any work, structure, or activity occurring in, or affecting any body of water in the United States, including wetlands and coastal waters which could require review by the U. S. Corps of Engineers to determine whether some level of a section 404 (40 CFR Part 6) permit is required.

Each of these resources should be discussed in the "existing conditions" portion of the EA indicating a determination of whether they are or are not found in or near the project area. If it is shown that the project results in adverse impacts to any of these resources, then specifically defined procedures and consultations may be required and compliance with these procedures must be documented in the EA .

If you have questions in any of these areas please feel free to call (646-3610) or E-mail me. I would like to move the EAs through the review process as quickly as possible and having these three areas fully addressed will help immensely.

Federal Emergency Management Agency

Washington, D.C. 20472

May 3, 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs
Mitigation Division Chiefs
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #3 (Issued 3/24/95, Revised and Reviewed at CEQ 3/1/96)
Policy for Projects Initiated Without Environmental Review Required by the National Environmental Policy Act (NEPA)

This memorandum, which reissues ENVIRONMENTAL POLICY MEMO #3, maintains the original policy but includes clarifications recommended by the Council on Environmental Quality.

Occasionally FEMA funding is requested for an action that has been initiated and/or completed prior to environmental review and documentation as required by NEPA and outlined in 44 CFR Part 10, FEMA's Environmental Considerations. Often when these actions occur, the applicant has already requested and attained local, state and Federal permits required for such actions. However, due to lack of prior Federal involvement, the full NEPA environmental review process has not been followed in which reasonable alternatives and their impacts are fully investigated and documented **before** the action takes place.

There is minimal guidance in FEMA's regulations on how to address such situations, and this memorandum is intended to clarify policy and procedures for such actions.

Policy: It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding.

Exception: A statutory exclusion to this requirement already exists in the Stafford Act. An action taken or assistance provided pursuant to Sections 402, 403, 407, 502, or 422, or an action that has the effect of restoring a facility substantially to its condition prior to the disaster or emergency pursuant to Section 406 , shall not be deemed a major Federal action affecting the environment. In this case, no NEPA documentation is required and no coordination with the Environmental Officer would be required. Be aware, however, this exclusion does **not** relieve FEMA of the responsibility to comply with other Federal statutes, permits, and requirements such as, National Historic Preservation Act, Endangered Species Act, Section 404 of the Clean Water Act, Executive Orders 11988, 11990, and 12898, etc.

In addition, there may be a rare situation where an extension of this exception can be considered. Actions proposed for FEMA funding which were completed without fulfilling the documentation and procedural requirements of NEPA, but which were initiated in an emergency situation to prevent or reduce an immediate threat to life, health, property or severe economic losses may be considered, if otherwise eligible. Situations that might be considered under this extension could be HMGP or Public Assistance actions which were taken to avoid imminent loss from an ongoing event or from a highly probable future event whose anticipated occurrence could not possibly allow appropriate time for NEPA review.

The Regional Director has responsibility for determining the immediate course of action in such exceptional situations, but must coordinate with the Environmental Officer when these requests are made. The following paragraphs outline the procedure and documentation required when the Regional Director determines that an already initiated and/or completed project might qualify to be considered under this extension.

Procedure: If an action is proposed which is not statutorily excluded from the NEPA process and has been or will be initiated and/or completed prior to NEPA documentation due to the circumstances noted above, the Regional Director should contact the Environmental Officer at the earliest possible time so that the Environmental Officer may consult with the President's Council on Environmental Quality (CEQ), the body which has oversight for Federal agency NEPA compliance. If it is determined that the proposed action is likely to qualify under this extension then the following steps will be required:

1) The Regional Director will see that all substantive Federal, state and local statutes, regulations, and permits (local building permits, USACE 404 Permits, Section 106 historic preservation consultation, Endangered Species consultation, Executive Order considerations, etc.) are satisfied for the action. This information is to be documented in an "Environmental Record of Completed Action" which is approved by the Regional Director and submitted for review by the Environmental Officer. This document should include:

(a) The purpose and need for the action, specifically defining its emergency nature;
(b) A description of the action;
(c) A description of the preexisting affected environment;

(d) A description of the potential and actual impacts to the environment, including a summary of the results of all environmental evaluation conducted prior to and since the completion of the project, supporting consultation letters from applicable agencies, and a description of any environmental mitigation measures which were implemented; and
(e) A description of any significant unaddressed environmental impacts resulting from the action and the mitigation measures required to reduce these impacts below the level of significance.

2) With the document provided, the Environmental Officer, in consultation with the Regional Director and CEQ should determine whether the action initiated and/or completed prior to NEPA review has potential of actual significant impacts not previously mitigated and whether or not those impacts can be mitigated. Examples of impacts that could be of issue include significant impacts to the natural environment, irretrievable loss of critical habitat, the taking of threatened or endangered species, or unacceptable upstream or downstream effects. Where there is reason to suspect that the action did have a significant impact on the environment, but that the actual impact cannot be verified, significant impact will be presumed. If the significant impacts can be mitigated to below a level of significance, public notice will be given and the necessary mitigation measures will be required to be implemented before funding can be considered. A recommendation that the action not receive funding would result where the significant impacts cannot be mitigated.

Please explain this policy to the states and potential applicants to ensure they are clear on how the requirements of the NEPA regulations can preclude the funding of completed actions except in the rare situation define above. If you have any questions on this policy, please contact Brent Paul at (202) 646-3032.

Federal Emergency Management Agency

Washington, D.C. 20472

FEB 27, 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #4
Availability and Use of the Updated list of Categorical Exclusions
Published February 5, 1996 as a Revision of 44 CFR 10.8.

This memorandum distributes and discusses use of the final rule for the revision of 44 CFR 10.8 which became effective February 5, 1996, the day it was published in the Federal Register. This rule generally expands the categories of FEMA actions that normally would not require an environmental impact statement or an environmental assessment to fulfill the requirements of the National Environmental Policy Act (NEPA). Actions fitting these categories are commonly referred to as categorical exclusions or CATEXs.

Any action that FEMA initiates or funds whether through program funds (mitigation, public assistance, flood insurance, etc.), funds provided to states, or internal administrative or construction expenditures must undergo environmental review pursuant to NEPA unless that action is statutorily excluded from NEPA by section 316 of the Stafford Act or qualifies as an emergency action under 44 CFR 10.13. NEPA review, for a significant portion of those actions, can be satisfied by a relatively simple documented determination that the action fits one of the exclusion categories defined in this rule. This CATEX documentation, as with any NEPA documentation must be completed prior to initiation of the action.

When it is determined that an action fits an exclusion category, two additional considerations must be addressed. First, it must be determined if extraordinary circumstances exist. The identification of one or more extraordinary circumstances associated with an action, that would otherwise qualify for a CATEX, can override that CATEX and trigger the need for an EA or EIS. (The list of extraordinary circumstances, which has also been revised in this rule change, is found in 10.8.(d)(3)). Second, there are other environmental and related Federal statutes and Executive Orders (EOs) that are often addressed within the NEPA process which, however, have their own separate legally enforceable requirements and penalties. Actions whose NEPA review is shortened by being CATEXed or actions excluded from NEPA review for statutory or emergency reasons, must still meet the full requirements of these other statues and EOs which address such areas as wetlands, historic preservation, cultural resources, endangered species, hazardous materials, etc.

The CATEXs on this revised list can be immediately applied to any qualifying project. A project for which an environmental assessment has been started, but which now qualifies for a CATEX may be processed as a CATEX. The exception might be those projects where a formal review or comment process for the EA has been publicly initiated by published announcement.

While we hope these new CATEXs have captured all the areas where CATEXs are needed and can be used, we realize that the identification exclusion categories is the result of ongoing experience. Therefore the submission of additions and modifications to this list is encouraged and will be thoughtfully considered by this office. Please direct any questions on this memo to Brent Paul (202/646-3032).

Enclosure

(Federal Register Vol. 61, No. 24, page 4227-32, February 5, 1996. Also see 44CFR 10.8.)

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–330–1020–00–24 1A]

RIN 1004–AB89

Grazing Administration, Exclusive of Alaska; Amendments to the Grazing Regulations; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains correcting amendments to the final amendments to the grazing regulations of the Bureau of Land Management, published on February 22, 1995, in the Federal Register [60 FR 9960], and to the pre-existing grazing regulations not affected by the 1995 amendments.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Reed, 202–452–5069.

SUPPLEMENTARY INFORMATION: The Department of the Interior is making correcting amendments to the final regulations pertaining to livestock grazing published in the Federal Register on February 22, 1995 [60 FR 9960], and to the pre-existing grazing regulations not affected by the 1995 amendments. The following revisions are made as editorial, and not substantive, changes. The changes include correction of erroneous cross-references, removal of an unnecessary and inaccurate paragraph and removal/replacement of several inaccurate or unnecessary acronyms, words and phrases.

The Department of the Interior has determined that, because this rulemaking makes only correcting amendments to the final rulemaking published on February 22, 1995, it is a rule of organization, procedure and practice and does not require notice and an opportunity for public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)(A)). Therefore, these correcting amendments are published as a final rulemaking effective February 5, 1996. The Department of the Interior has determined that this rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. Neither an environmental impact analysis nor a regulatory flexibility analysis is required. This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The principal author of this final rulemaking is Matthew Reed, Regulatory Management Team, Bureau of Land Management.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record-keeping requirements.

For the reasons stated in the preamble and under the authority of 43 USC 1740, part 4100, group 4100, subchapter D, of subtitle B of chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 4100—[AMENDED]

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

1A. Section 4100.0–3(g) is removed.

2. In § 4110.2–2(b), the phrase ''grazing preference'' is revised to ''permitted use.''

3. In § 4110.2–3(a)(2), the phrase ''cooperative agreements'' is revised to ''cooperative range improvement agreements.''

4. In § 4120.2(e), the word ''multiple'' is removed.

5.–6. In § 4120.3–1(c), the section reference ''§ 4130.6–2'' is revised to read ''§ 4130.3–2.''

7.–8. In § 4120.3–2 (a), (b) & (d), the acronym ''BLM'' is revised to read ''the Bureau of Land Management.''

9. In § 4120.3–4, the phrase ''cooperative agreements'' is revised to read ''cooperative range improvement agreements''.

10. In § 4120.3–6(d), the phrase ''cooperative agreement'' is revised to ''cooperative range improvement agreement.''

11. In § 4120.3–8(b), the acronym ''BLM'' is revised to read ''the Bureau of Land Management.''

12. In § 4130.1–2(a), the section reference ''§ 4130.2(d)'' is revised to read ''§ 4130.2(e).''

13. In § 4130.2(g) introductory text, the acronym ''AMP'' is revised to read ''allotment management plan.''

14. In § 4130.2(g)(1), the word ''nonuse'' is revised to ''use.''

15. In § 4130.2(i), the section reference ''§ 4130.6–2'' is revised to read ''§ 4130.3–2.''

16. In § 4130.2(i), the section reference ''§ 4130.4–1'' is revised to read ''§ 4130.6–1.''

17. In § 4130.4(a), the section reference ''§ 4130.7–3'' is revised to read ''§ 4130.8–3.''

18. In § 4130.8–1(c), the acronyms ''BLM'' and ''AUMs'' are revised to read ''the Bureau of Land Management'' and ''animal unit months'' respectively.

19. In § 4130.8(d), the acronym ''AUM'' is revised to read ''animal unit month.''

20. In § 4140.1(a)(4), the phrase ''range improvement cooperative agreements'' is revised to read ''cooperative range improvement agreements.''

21. In § 4140.1(b) introductory text, the phrase ''shall be subject'' is inserted after the word ''rangelands'' and prior to the phrase ''to civil and criminal penalties.''

22. In § 4140.1(b)(1)(iv), the section reference ''§ 4130.5(c)'' is revised to read ''§ 4130.7(c).''

23. In § 4140.1(b)(8), the phrase ''cooperative agreements'' is revised to read ''cooperative range improvement agreements''.

24. In § 4150.3(e), the section reference ''§ 4160.1–2'' is revised to read ''§ 4160–1.''

25. In § 4160.2, the phrase ''affected interests'' is revised to read ''interested public.''

26. In § 4160.3(b), the pronoun ''his'' is revised (four times) to read ''her/his.''

27. In § 4160.4, the word ''decision'' is revised to read ''appeal'' the first time it appears in the second sentence.

Dated: January 26, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–2193 Filed 2–2–96; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

RIN 3067–AC41

Environmental Considerations/ Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the categories of actions or categorical exclusions that normally would not require an environmental impact statement or environmental assessment. These changes are intended to reduce the administrative processes and decrease the time required for project funding and implementation, while still ensuring that FEMA satisfies

environmental concerns and issues. The changes are consistent with Federal directives, regulations and statutes.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Shivar, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646–3610.

SUPPLEMENTARY INFORMATION: On August 3, 1995, FEMA published a proposed rule for comment in the Federal Register, 60 FR 39694. The proposed rule contained changes responding to numerous suggestions for additional exclusion categories and for modifications to existing exclusion categories. They reflect several years' experience on the types of actions that generally receive a finding of no significant impact after FEMA makes an environmental assessment. These changes are intended to speed the approval of those projects with no potential for significant environmental effects and to allow attention to be focused on those projects with potential environmental concerns. The publication of the proposed rule allowed for a 45-day comment period ending on September 18, 1995. During this period, comments were received from one state, two Federal agencies, an environmental group and from within FEMA. The concerns identified in these comments are addressed later in this section.

In order to produce a complete and effective update of exclusion categories, we conducted a review of the environmental assessments (EA) and the findings of no significant impact (FONSI) that FEMA has issued. In the last few years we have completed over 340 EAs, but there is only one case where an environmental impact statement (EIS) was written. While many EAs identified impacts that were able to be mitigated below the level of significance, we found that the clear majority of actions have no significant impact. Reviewing this last group revealed specific types of projects that historically did not produce significant environmental effects. In conjunction with the review of FEMA's EAs, we conducted a literature review of other Federal documents containing similar types of exclusions to ensure consistency of FEMA's exclusions with other Federal agencies' regulations. The results of these two reviews are the basis for these changes to FEMA's list of exclusion categories.

These changes are also in keeping with the Council on Environmental Quality's guidance to Federal agencies on this subject (48 FR 34263, July 28, 1983). That guidance encourages Federal agencies to add flexibility to implementing procedures to allow new types of actions to be classified as categorical exclusions (CATEXs) with minimal documentation required. This is done by developing more broadly defined categories as well as providing examples of typical CATEXs, rather than a comprehensive list, so that specific actions not previously listed by an agency can be considered for CATEX status on a case-by-case basis.

These revised exclusion categories will not affect FEMA's responsibility to comply with all other applicable local, state, and Federal laws and regulations relating to health, safety and the environment. This encompasses Federal environmentally oriented statutes including, among others: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archaeological and Historic Preservation Act. It would not affect FEMA's responsibilities under Executive Orders 11988, 11990, and 12898. Nor would it affect FEMA's implementing regulations at 44 CFR part 9, or FEMA's National Flood Insurance Program rules at 44 CFR parts 59 through 77.

A point of clarification of the term ''categorical exclusion'' is necessary in the discussion of this revised rule. Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 93–288, as amended, 42 U.S.C. 5159, provides (1) for a statutory exclusion from NEPA requirements for certain actions taken under specific sections of that Act (§§ 402, 403, 407 and 502), and (2) for those actions under § 406 of the Stafford Act that have ''the effect of restoring a facility substantially to its condition prior to the disaster or emergency.'' While statutory exclusions are exempted from all NEPA documentation, actions that are categorically excluded from preparation of an EA or an EIS must be documented by FEMA under this part. However, as with actions categorically excluded, an action statutorily excluded from NEPA is *not* exempt from the requirements of the other environmentally oriented statutes indicated above. To help determine the level of environmental review required and, specifically, when neither an EA nor an EIS is likely to be required for a proposed action, the list of exclusion categories presented by this rule is comprehensive in that it includes both categorical exclusions and those actions that are statutorily excluded (denoted by [SE]).

The list of exclusion categories is presented with administrative type actions appearing first followed by emergency and other actions. The administrative actions relate mainly to activities that in and of themselves do not normally impact the environment, such as: planning, design, procurement, acquisition, training, studies and other administrative processes. The emergency and other actions mainly address emergency, disaster-related, or other activities that could impact features of the human and natural environment, such as: construction; maintenance or repair of facilities or vegetation; relocation of structures; floodproofing; emergency response and deployment; physical and other assistance.

Since this revision republishes and redesignates some paragraphs, and modifies other paragraphs, the following discussion is directed only at those items that are added, removed, or revised from the current 44 CFR § 10.8.

44 CFR § 10.8 is revised to redesignate and revise the discussion of statutory exclusions to recognize the difference between the basic nature of the statutory exclusion and of the CATEX. We also updated references to sections of the Stafford Act.

New paragraph (d)(2) modifies the nomenclature ''List of categorical exceptions'' to ''List of exclusion categories'' to reflect the categorical nature of the list as opposed to a list of exceptions. This change is also reflected in new paragraph (d)(6).

New paragraphs (d)(2) (i), (ii), (iii), (v), (vii), and (x) make minor wording revisions and clarify the language of existing categories but do not change their general substance.

New paragraph (d)(2)(iv) addresses inspection and monitoring processes that are part of the compliance requirements for various programs. These activities are passive as to the environment. Any federally funded action that the inspections or monitoring might recommend is subject to the NEPA process.

New paragraph (d)(2)(vi) expands the scope of the old paragraph (d)(2)(iii) on procurement of goods and services for operational support of facilities to include support of emergency operations together with temporary storage of those goods.

Paragraph (d)(2)(viii) addresses the purchase or leasing of existing facilities

when land use requirements allow the proposed use.

Paragraph (d)(2)(ix) covers the acquisition, installation, or operation of utilities, gauges, communication and warning systems when using existing systems or facilities, or currently utilized infrastructure rights-of-way.

Paragraph (d)(2)(xi) would allow for the planting of indigenous vegetation, for example, to reduce erosion or fire hazard.

Paragraph (d)(2)(xii) applies to the removal of uncontaminated structures, improvements or debris to sites permitted for such material. The paragraph also applies to the demolition associated with the removal of structures or improvements.

Paragraph (d)(2)(xiii) applies to small, individual structures that are to be relocated to a new site, where FEMA is not involved in the selection or development of the new site.

Paragraph (d)(2)(xiv) excludes the act of granting a community exception for residential basement floodproofing pursuant to the National Flood Insurance Program.

Paragraph (d)(2)(xv) provides to actions under the mitigation and other programs a slightly broader exclusion than that available by statute to actions funded pursuant to § 406 of the Stafford Act whereby a facility can be restored to its approximate preexisting design, function and location. The broader interpretation also applies to § 406 actions. Some existing statutory exclusions are incorporated into the CATEX list in this paragraph and in paragraph (d)(2)(xix).

Paragraph (d)(2)(xvi) allows for improvements to an existing facility or for the construction of small scale mitigation measures in an already developed and appropriately zoned area on previously disturbed or graded lot(s). This includes improvements in the disturbed portion of a lot of an existing building, culverts, and berms within the previously disturbed perimeter of a road, storm drainage or utility system or existing facility. Any action covered by this category cannot change the basic function, exceed the capacity of other system components, violate land use requirements, or operate in a way as to affect the environment adversely.

Paragraph (d)(2)(xvii) permits actions within enclosed facilities which comply with local construction, noise, pollution and waste disposal regulations.

Paragraph (d)(2)(xviii) excludes, in addition to the existing category for the deployment and support of Emergency Support Teams, direct response activities including activation and support of the Catastrophic Disaster Response Group, Regional Operations Centers, Emergency Response Teams, Urban Search and Rescue Teams, and situation assessment, reconnaissance and other data gathering efforts in response to and for recovery from a disaster.

Paragraph (d)(2)(xix) excludes emergency assistance and relief activities and rephrases terminology to reflect the amended Stafford Act. This includes general Federal and essential assistance (Stafford Act §§ 402 and 403), food coupons and commodities (§§ 412 and 413), and Federal emergency assistance (§ 502). Debris removal (§ 407) becomes less restrictive. The temporary housing definition (§ 408) is simplified as are the definitions of the individual and family grant (§ 411) and community disaster loan (§ 417) exclusions.

In paragraph (d)(3) the list of Extraordinary Circumstances, which was § 10.8(e), is updated to clarify the circumstances that may cause an action that is normally categorically excluded to have the potential for significant environmental impact. The previous paragraph (e)(2) describing ''actions in highly populated or congested areas'' is replaced in paragraph (d)(3)(ii) with a more workable ''actions with a high level of controversy.'' In paragraph (d)(3)(iv) clarifying language is added to the term ''unproven technology.'' In paragraph (d)(3)(vi) the hazardous substance condition was changed from ''use'' to ''presence'' and linked to levels that would trigger local, state, or Federal requirements. Paragraph (d)(3)(vii), which addresses flood plains or wetlands, is expanded to include other special or critical resources, i.e., coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, etc.

Three new categories are added to insure that adverse health and safety effects, paragraph (d)(3)(viii); the potential violation of Federal, state, local or tribal requirements, paragraph (d)(3)(ix); and cumulative impacts, (d)(3)(x); will now be considered as extraordinary circumstances.

Paragraph (d)(5), Revocation, is added to assure that if the conditions upon which a categorical exclusion was granted have changed or new information is discovered indicating that the action no longer meets the conditions of the categorical exclusion, the responsible official must revoke the exclusion and ask for a full environmental review.

Paragraphs (d)(6)(i) and (d)(6)(ii), which address changes to the list of exclusion categories, adds ''directorates'' to ''offices and administrations'' to more correctly reflect all the organizational entities in FEMA.

The comments received during the comment period centered on four areas: (1) hazardous materials; (2) exception categories being too expansive; (3) extraordinary circumstances; and (4) clarification of terms and the scope of several of the proposed categories. In addition, it has been suggested that some of the categories could be combined and that some could be eliminated because they were not germane to FEMA activities. The following discussion addresses those comments directed at the substance of the proposed rule.

Several comments expressed concern about the integration of hazardous waste requirements into the categories, specifically the original sections (d)(2)(viii), (x), (xiv), and (xv). That integration already exists in the form of the extraordinary circumstance defined in (3)(vi) and in general FEMA policy regarding hazardous materials. The extraordinary circumstance would override the categorical exclusion if special hazardous material situations were identified associated with any categorically excluded action. In addition, it is FEMA policy that before the acquisition of property all state and local hazardous material ordinances must be adhered to and that the property itself must be free of contaminates. Original sections (d)(2)(vii) and (d)(2)(x) have been dropped and sections (d)(2)(xiv) and (d)(2)(xv) are adequately covered by existing policy and the extraordinary circumstance.

Commenters felt that the proposed (d)(2)(xvii) was too expansive in what it could include and that it went beyond the definition used to describe what was allowed by the statutory exclusion of the Stafford Act, 42 U.S.C. 5159. The new wording intentionally goes beyond that of the statutory exclusion. Our experience in working with this type of project indicates that many projects that truly fit the categorical exemption criteria were not covered and this language now includes them for all FEMA programs. Any project qualifying for this exclusion that is not covered by the statutory exclusion will still be evaluated for extraordinary circumstances and will lose its categorical exclusion if any of those circumstances apply.

One comment suggested adding a new extraordinary circumstance to section (d)(3) that could override the categorical exclusion of an action if that action impacted the recovery of an endangered species or could be used be

affirmatively used in that recovery. It was felt that the existing endangered species extraordinary circumstance, (d)(3)(v), would be invoked by the mere presence of a protected species and once the environmental assessment was required the opportunity for affirmatively considering recovery efforts would be available.

A suggestion was made to modify the wording of the extraordinary circumstance (d)(3)(vii) which addresses ''special status areas or other critical resources'' to include rare habitat that may not be on the critical list. This modification has been made by adding the quality of ''uniqueness'', i.e., ''special status areas or other unique or critical resources.''

The addition of a new extraordinary circumstance, (d)(3)(x) was suggested to address situations where normally excludable actions have impacts which by themselves are not significant, but when combined with impacts of other past, present, or foreseeable future activities have the potential for significant impact.

Two proposed categories addressing the acquisition of real property for future use, (d)(2)(viii), and the transfer of administrative control, (d)(2)(x), were eliminated as not germane to normal FEMA activities.

Newly designated sections (c)(1), (c)(2), (d)(2), (d)(2)(vi), (d)(2)(vii), (d)(2)(ix), (d)(2)(x), (d)(2)(xii), (d)(2)(xiii), (d)(2)(xv), (d)(2)(xvi), (d)(2)(xix)(F), (d)(3)(v), (d)(3)(vi), and (d)(5) have been modified from the corresponding proposed sections in response to specific suggestions to improve clarity and definition. The explanation presented above which addresses any of these modified sections reflects the new changes since the proposed rule was published.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, exclude this rule according to § 10.8(c)(2)(i). FEMA has not prepared an environmental impact statement.

Regulatory Flexibility Act

I certify that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds eight categories to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) will affect adversely the availability of disaster assistance funding to small entities, (2) will have significant secondary or incidental effects on a substantial number of small entities, or (3) will create any additional burden on small entities.

Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, Regulatory Planning and Review, 3 CFR, 1994 Comp., p. 638. To the extent possible this proposed rule adheres to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, 44 CFR part 10 is amended as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E. O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

2. Section 10.8 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 10.8 Determination of requirement for environmental review.

* * * * *

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159;

(1) Action taken or assistance provided under sections 403, 407, or 502 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties and the associated demolition/removal [see paragraph (d)(2)(xii) of this section] or relocation of structures [see paragraph (d)(2)(xiii) of this section] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;

(x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;

(xi) Planting of indigenous vegetation;

(xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;

(xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;

(xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications (§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, or archaeological, cultural, historical or other protected resources;

(vi) Presence of hazardous or toxic substances at levels which exceed Federal, state or local regulations or standards requiring action or attention;

(vii) Actions with the potential to affect special status areas adversely or other critical resources such as wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(x) Potential for significant cumulative impact when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting an exclusion, the Regional Director determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.*

(i) The FEMA list of exclusion categories will be continually reviewed and refined as additional categories are

identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and the Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the Federal Register at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

Dated: January 26, 1996.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 96–2087 Filed 2–2–96; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–32; RM–8545]

Radio Broadcasting Services; Parker and Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Southern Broadcasting Companies, Inc., reallots Channel 233C from Port St. Joe, Florida to Parker, Florida, and modifies Station WPBH(FM)'s license accordingly. *See* 60 FR 15275, March 23, 1995. Channel 233C can be allotted to Parker in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.9 kilometers (29.8 miles) southeast at Station's WPBH(FM)'s presently licensed transmitter site. The coordinates for Channel 233C at Parker, Florida, are North Latitude 29–49–09 and West Longitude 85–15–34. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–32, adopted December 15, 1995, and released January 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 233C at Port St. Joe, and by adding Parker, Channel 233C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–2280 Filed 2–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–79; RM–8620]

Radio Broadcasting Services; De Kalb, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Choctaw Broadcasting, allots Channel 289C2 to De Kalb, Mississippi, as the community's first local aural transmission service. *See* 60 FR 31277, June 14, 1995. Channel 289C2 can be allotted to De Kalb, Mississippi, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C2 at De Kalb are 32–46–03 and 88–39–03. With this action, this proceeding is terminated.

DATES: Effective March 15, 1996. The window period for filing applications will open on March 15, 1996, and close on April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–79, adopted January 16, 1996, and released January 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding De Kalb, Channel 289C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–2279 Filed 2–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–136; RM–8682]

Television Broadcasting Services; Sioux Falls, SD

AGENCY: Federal Communications Commission.

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Regional Environmental Officers

FROM: Richard S. Shivar [signed]
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #5
Documentation of National Environmental Policy Act (NEPA) Categorical Exclusions (CATEX)

The amount of environmental analysis and documentation required for FEMA actions that are categorically excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to NEPA, as implemented at 44 CFR Part 10 may be reduced according to the terms of this policy memo. After consultation with the Council on Environmental Quality (CEQ), FEMA has concluded that it is appropriate to reduce the amount of CATEX documentation required by FEMA for certain categories of action that, due to the nature of the action, have little potential to impact the environment. The determination that a FEMA action qualifies as a CATEX is under the authority of the Regional Director (44 CFR 10.8(d)(4)) or the Associate Director when addressing programmatic or directorate activities. In regions with a Regional Environmental Officer (REO), the oversight responsibility of CATEX determination and appropriate level of CATEX documentation ultimately rests with the REO.

This memo defines three levels for the administrative recordation of a CATEX:

Level 1 — No Documentation

Categorically excludable FEMA actions that are of a day-to-day administrative nature and generally have no potential to impact the environment require no NEPA documentation. These actions are described in exclusion categories: 44 CFR 10.8(d)(2)(i), (ii), (iii), (iv), (v), (vi), (viii), (x), (xi), (xiv), (xviii), and (xix) (see attachment). Unless available information indicates to the contrary, extraordinary conditions need not be addressed at this level.

Level 2 — Notation

Categorically excludable actions that generally have no potential to impact the environment require no documentation except that which might be necessary with respect to historic resources. These actions are described in exclusion categories (vii), (ix), (xii), (xiii), (xv), and (xvii). When required the administrative record should document all consultation and agreements implemented to comply with the National Historic Preservation Act (NHPA). If the action is in compliance with the NHPA, the only NEPA recordation required is the notation of the particular qualifying CATEX on the application, approval, or funding document. The potential for extraordinary circumstances related to the proposed action must still be addressed but may be determined by FEMA. If the nature of a particular action is such that extraordinary circumstances can be expected, it should be reviewed and documented at Level 3.

Level 3 — Full Documentation

Any action that can be 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

44CFR10.8(d)(2) List of Exclusion Categories

FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in (d)(5) exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties and the associated demolition/removal [see ¶ (xii)] or relocation of structures [see ¶ (xiii)] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;

(x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;

(xi) Planting of indigenous vegetation;

(xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;

(xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;

(xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;
(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;
(C) Deployment of Urban Search and Rescue teams;
(D) Situation Assessment including ground and aerial reconnaissance;
(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]
(B) Essential Assistance (§ 403); [SE]
(C) Debris Removal (§ 407) [SE]
(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;
(E) Unemployment Assistance (§ 410);
(F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;
(G) Food Coupons and Distribution (§ 412);
(H) Food Commodities (§ 413);
(I) Legal Services (§ 415);
(J) Crisis Counseling Assistance and Training (§ 416);
(K) Community Disaster Loans (§ 417);
(L) Emergency Communications (§ 418);
(M) Emergency Public Transportation (§ 419);
(N) Fire Suppression Grants (§ 420); and
(O) Federal Emergency Assistance (§ 502) [SE].

Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** May 29, 2002

2. **Response and Recovery Directorate Policy Number:** 9560.3

3. **Title:** Programmatic Agreement - Historic Review

4. **Purpose:** This policy makes available a sample executed Programmatic Agreement (Agreement) to accomplish FEMA's Section 106 requirements under the National Historic Preservation Act of 1966, as amended (NHPA).

5. **Scope and Audience:** The Agreement is intended for Federal Emergency Management Agency (FEMA) personnel in coordinating historic review for FEMA undertakings using Public Assistance [as well as other FEMA] grant funds.

6. **Background:**

   A. Section 106 of NHPA requires all Federal agencies to review the effect of an agency undertaking on historic properties prior to funding the project, activity, or program. 36 CFR 800.16(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; and,
4. the State/Tribal Historic Preservation Office.

C. The Agreement is in effect immediately after all signatories have signed the document and will continue to be in effect for the period of time specified in the Agreement. If a disaster occurs near the end of the specified period, the Programmatic Agreement will remain in effect until the close of that disaster.

D. FEMA Regional Environmental Officers should work with Headquarters Historic Preservation Program personnel to initiate, negotiate and execute a Programmatic Agreement with the involved parties.

8. Supersession: This policy replaces RR# 9560.3, *Model Programmatic Agreement - Historic Review*, issued August 17, 1999.

9. Authorities: National Historic Preservation Act of 1966, as amended; 36 CFR 800.

10. References: RR #9570.9, *Historic Review Standard Operating Procedures*, issued September 2001.

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

12. Review Date: Five years from date of publication

13. Signature:

Signed
Kenneth S. Kasprisin
Assistant Director
Readiness, Response and Recovery Directorate

14. Distribution: Regional Directors, Regional and Headquarters RRR Division Directors

ATTACHMENT: SAMPLE EXECUTED PROGRAMMATIC AGREEMENT

PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER, THE WASHINGTON STATE EMERGENCY MANAGEMENT DIVISION, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, in response to the Washington Nisqually Earthquake, FEMA-1361-DR-WA (Disaster), the Federal Emergency Management Agency (FEMA) proposes to administer the Federal disaster Public Assistance, Hazard Mitigation Grant, Individual and Family Grant, and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5204c, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may affect properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), pursuant to 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, as a result of the Disaster, Washington State will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible applicants to alleviate the effects of the Disaster, and as such the Washington State Emergency Management Division (EMD) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, the SHPO, EMD, and the Council acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO and Council review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of Undertakings on historic properties may be considered while delays to FEMA’s delivery of disaster assistance are minimized; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on historic properties that have religious and cultural significance to Federally recognized tribes (Tribes), and FEMA may request that these Tribes participate in the terms of this Agreement to fulfill the requirements of Section 106;

NOW, THEREFORE, FEMA, the SHPO, EMD, and the Council agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106

responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, EMD, and the Council, FEMA shall require that the following measures are implemented:

I. LEAD AGENCY COORDINATION

A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded by the Programs.

B. FEMA may request that a Tribe become a signatory to this Agreement by entering into an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of a Tribe without further change to this Agreement will not require an amendment to the Agreement. A sample Tribal Addendum is attached as Appendix A.

II. APPLICABILITY

A. This Agreement applies to the Programs implemented for the referenced Disaster.

B. FEMA has determined that the following types of activities are not Undertakings under 36 CFR §800.16(y), and FEMA has no further Section 106 responsibilities, pursuant to 36 CFR Part 800.3(a)(1):

1. Implementation of the Programs as related to assistance to individuals and households (Sections 408 and 411 of the Stafford Act, Individual and Family Grant Programs), with the exception of ground disturbing activities and construction related to temporary housing;

2. Funding the administrative action of acquiring properties in buyout projects. EMD will ensure that applicants secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. Applicant communities will agree to these provisions as a condition of the grant before FEMA will release any project funding.

3. Implementation of Federal assistance pursuant to Section 422 of the Stafford Act, Simplified Procedures, when it has the effect of restoring a facility to its pre-disaster condition, and using in-kind materials.

C. FEMA will determine when an Undertaking meets applicable criteria of the Programmatic Allowances (Allowances) listed in Appendix B. FEMA will document this determination in the project file and authorize the release of funding for the Undertaking.

D. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of the Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, Washington State agency, or contractor staff who meet the Secretary of the Interior's (SOI's) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in ensuring compliance with this Agreement.

2. FEMA acknowledges that Tribes possess special expertise related to properties that possess Tribal religious and cultural significance, and FEMA may utilize this expertise in determining if any such properties are eligible for the National Register.

B. All time designations will be in calendar days. If any party does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the party's concurrence with FEMA's determination.

C. FEMA responsibilities:

1. FEMA may request that Federal, Washington State agency, or applicant staff who meet the Qualifications, as determined by FEMA's FPO, conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR §800.4(b,c).[1]

2. FEMA will review any National Register eligibility determinations resulting from the performance of these delegated activities.

3. FEMA will provide the SHPO and Council with an annual report for the previous calendar year by March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement the terms of this Agreement, and recommend any actions or revisions that should be considered during the next year. These parties will review this information to determine if amendments to the Agreement are necessary.

D. SHPO responsibilities:

1. The SHPO will concur or non-concur with FEMA's National Register eligibility determinations within the timeframes required by this Agreement.

[1] FEMA will provide 100 percent funding under the Stafford Act through standard procurement procedures for the performance of these delegated activities.

2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of a representative, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER

Upon entering into this Agreement, FEMA will meet with the SHPO and EMD to establish points of contact and protocols for the implementation of the Agreement. SHPO and EMD representatives will then attend a historic scoping meeting, where FEMA and EMD will provide guidance on program issues and processes. EMD and FEMA, as appropriate, will also present information related to the Section 106 review process to all applicants, at the applicants' briefings and kickoff meetings.

A. FEMA will:

1. Determine with the SHPO those historic properties (standing structures) that have not retained integrity. This Agreement will only apply to historic properties that retain integrity in the aftermath of the Disaster, pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a listed property has retained integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.

2. Consult with other Federal agencies and any Tribes having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic laws and regulations.

3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process.

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:

   a. properties listed in or previously determined eligible for the National Register through a Section 106 review or by the SOI;

   b. properties listed in the Washington Heritage Register;

   c. geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and

d. previously identified Traditional Cultural Properties, and known properties of religious and cultural significance to Tribes.

2. Work with FEMA to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.

3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and to identify in coordination with FEMA specific activities that the SHPO may perform at FEMA's request for specific projects.

4. Assist FEMA in identifying any Tribes, organizations, or individuals that may have an interest in historic properties affected by the Disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.

5. Assist local jurisdictions in identifying staging and landfill sites for debris disposal, and sites for chipping of vegetation debris, if applicable, that will have a minimal or no effect on historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d)).

B. As a result or in anticipation of the Disaster, FEMA may be requested to authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:

1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.

2. The FCO will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, request an extension in writing from the Council. FEMA will immediately assume the Council's concurrence unless otherwise notified by the Council.

3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. The SHPO will respond to any FEMA request for comments within 3 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.

4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. STANDARD PROJECT REVIEW

The signatories of this agreement will follow the following review for all non-emergency undertakings:

A. Area of Potential Effects (APE): For all project review of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.

B. In accordance with 36 CFR §800.4(b,c), FEMA will determine, in consultation with the SHPO, if the APE contains properties (including archaeological properties) that are listed in or eligible for the National Register.

C. If no historic properties are present, or if an Undertaking is designed to avoid affecting the character defining features of such historic property or properties, FEMA will make a determination of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation. Unless the SHPO or any consulting party objects to this determination within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.

D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 14 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR

§800.5(a)(1), or determine if the Undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards. FEMA will also consider any views provided by consulting parties and the public related to such effects.

1. For standing structures only:

    a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding.

    b. If the SHPO objects to the "no adverse effect" determination, FEMA will request through EMD that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.

    c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

    a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.

    b. If the SHPO or any other consulting party objects that identified archaeological properties can be avoided through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties, or concurs that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

A. If FEMA determines that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR §800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e).

1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to treat adverse effects to historic properties. FEMA may consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.

2. Secondary Programmatic Agreement: FEMA, the SHPO, EMD, the Council, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by an applicant.

B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation* and consult with the other consulting parties to prepare a data recovery plan. For sites where FEMA determines extraordinary circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.

C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).

D. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA also will notify and invite the Secretary of the Interior (Secretary) to participate in consultation. When the Council participates in consultation related to an NHL, the Council will report the outcome of the consultation to the Secretary and the FEMA Director.

VIII. CHANGES TO AN APPROVED SCOPE OF WORK

EMD will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO

to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

IX. UNEXPECTED DISCOVERIES

A. EMD will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. EMD will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO.

B. FEMA will notify the SHPO of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. EMD and the applicant may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the Undertaking.

C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.

X. DISPUTE RESOLUTION

A. Should the SHPO, EMD, the Council, or a consulting party object within the timeframe provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward to the Council all documentation relevant to the dispute, including FEMA’s proposed resolution to the objection.

B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.

XI. ANTICIPATORY ACTIONS

A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consulting with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VII.

B. FEMA will specifically advise EMD of this Stipulation and will require that EMD advise its applicants in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. EMD will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XII. DURATION, AMENDMENTS, AND TERMINATION

A. Unless terminated pursuant to Stipulation XII.C. below, this Agreement shall remain in effect from the date of implementation until FEMA, in consultation with all other signatories, determines that the terms of this Agreement have been satisfactorily fulfilled. Upon such determination, this Agreement will terminate, and FEMA will provide all other signatories with written notice of the determination and termination.

B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, the signatories will consult to seek amendment of the Agreement. Any amendment will be specific to the applicable Disaster unless otherwise agreed to by the signatories.

C. FEMA, the SHPO, EMD, or the Council may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.

D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR §800.14(a).

XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.

B. Execution of this Agreement by the Council and implementation by FEMA evidences that FEMA has afforded the Council a reasonable opportunity to comment on all of the Programs pursuant to the Stafford Act and the National Flood Insurance Reform Act, and that FEMA has satisfied its Section 106 responsibilities for all Undertakings.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: *signed* _____ 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. Also, cement asbestos shingles may be replaced with asphalt based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.

2. In kind replacement or installation of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.

G. Seismic Upgrades

1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

III. ROADS AND ROADWAYS

A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.

B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. This Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.

C. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.

D. In kind repair of road lighting systems, such as period lighting.

E. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.

F. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.

IV. FEES AND SERVICES

A. Miscellaneous labor costs.

B. Rental or purchase of vehicles or other motorized equipment.

C. Builders fees.

D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.

E. Reimbursement of an applicant's insurance deductible, not to exceed $1,000.

V. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 412, 415, and 416 of the Stafford Act:

A. The minimal repair program.

B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites.

C. Disaster unemployment assistance.

D. Legal services.

E. Crisis counseling.

F. Loans to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.

G. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

VI. VECTOR CONTROL

A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

FEMA 9580.2
August 23, 2000

PUBLIC ASSISTANCE PROGRAM

FACT SHEET: INSURANCE RESPONSIBILITIES FOR FIELD PERSONNEL

This Fact Sheet provides information on the insurance responsibilities for Field Personnel. Additionally, this Fact Sheet supplements information listed on the "*Public Assistance Fact Sheet – Insurance Considerations for Applicants*".

The Public Assistance Officer (PAO) 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 Public Assistance funding for flood losses in the Special Flood Hazard Area, and if appropriate, making reductions from the Public Assistance grants when the loss is covered by insurance. The State PAO is responsible for ensuring that the Applicant has purchased an insurance policy or binder for losses being covered by Public Assistance funding. After the State forwards the documents to the PAO, FEMA will approve the Project Worksheets.

In the event that a Region does not have adequate insurance support for a Disaster Field Office (DFO), the PAO can obtain this resource through the Standby Technical Assistance Contract (TAC), managed by the Infrastructure Division at FEMA Headquarters. Once the task order is issued by Headquarters, the PAO is responsible for managing the task order assignment, from the initial stages of the TAC request through the closeout process. The PAO should work with the TAC to develop a Work Plan. This Work Plan defines the scope of work to be performed by the Insurance Specialist. Please refer to the TAC Standard Operating Procedure (*Draft Joint OFM and RR/IS SOP, March 25, 2000*) and the Project Monitor Responsibility Checklist for proper procedures in managing TAC resources.

The Insurance Specialist should be among those first deployed in order to assist the Public Assistance Coordinator (PAC) and/or Project Officer. 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 insurance and/or general property adjuster. An Insurance Specialist can either be a FEMA employee or a TAC. He/she will address insurance issues as identified throughout the Public Assistance Program process.

2. Why should the Insurance Specialist be deployed to a DFO 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 in 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, Sept 98.

- *"Does the damaged facility or item of work have insurance coverage and/or is it an insurable risk (e.g., buildings, equipment, vehicles, contents)?"* - Question #1, on the Special Considerations Questions Form – FEMA Form 91-120, Nov 98.

- *"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 91-120, Nov 98.

All three questions must be answered when the Applicant or the Project Officer develops the Project Worksheet. When the answer is Yes or Unsure, the PAC must require an insurance review for that Project Worksheet. This is accomplished by the PAC prompting the Insurance Review in NEMIS' Reviews queue.

4. What types of assignments can the Insurance Specialist expect at a DFO?

The Insurance Specialist's assignment will typically fall into one of four general categories. These categories are briefly described below:

Technical Support to the PAC: After reviewing the Applicant information, a PAC may request an Insurance Specialist to attend Applicants' Briefing(s) and/or Kickoff Meeting(s). The PAC 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.

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.

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 Project Officer while the scope of work is being prepared. It may be that the Insurance Specialist has both the insurance background and the Public Assistance 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.

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 prior to contacting the Applicant. When the Project Worksheet is completed and all insurance issues have been addressed, the PAC 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. What is the TAC's responsibility when assigned to conduct an insurance review?

The FEMA PAO activates the TAC Insurance Specialist. The PAO will be assigned as the Project Monitor and will approve a Work Plan that outlines the duties and expectations of the Insurance Specialist. The Work Plan includes such duties as: preparing estimates for the damaged insurable facilities, analyzing existing insurance coverage, and preparing NFIP flood insurance adjustments for losses that occur in the Special Flood Hazard Area. The TAC Insurance Specialist evaluates insurance policies, develops the task order scope of work and provides technical recommendations to the Project Monitor, but does not have Project Worksheet approval authority.

7. 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; and
5902 – Mandatory NFIP Reduction – Maximum Proceeds Available.

8. Who is responsible to make sure the Applicant has obtained and maintained insurance?

The State has the lead responsibility to ensure that the Applicant has obtained and/or maintained insurance for insurable facilities (i.e., buildings, contents, vehicles, and equipment) that received Public Assistance funding. The PAC approves Project Worksheets after receiving either the insurance binder or a policy for the insurable loss.

FEMA 9580.3
August 23, 2000

PUBLIC ASSISTANCE PROGRAM

FACT SHEET: INSURANCE CONSIDERATIONS FOR APPLICANTS

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 <u>outside</u> 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 <u>and</u> 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 <u>greater</u> 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

FEMA 9580.4
January 19, 2001

PUBLIC ASSISTANCE PROGRAM

FACT SHEET
DEBRIS OPERATIONS - CLARIFICATION
EMERGENCY CONTRACTING VS. EMERGENCY WORK

SUMMARY: Contracting for debris operations, even though it is "emergency work" in FEMA operations, does not necessarily mean the contracts can be awarded without competitive bidding. Applicants should comply with State laws and regulations, but should be aware that non-competitive contracting is acceptable ONLY in rare circumstances where there can be no delay in meeting a requirement. In general, contracting for debris work requires competitive bidding. The definition of "emergency" in contracting procedures is not the same as FEMA's definition of "emergency work".

DISCUSSION: There appears to be some confusion regarding the awarding of some contracts, especially for debris, without competitive bidding. The reason cited for such actions is that the contract is for emergency work, and competitive bidding is not required.

Part 13 of 44 CFR is entitled "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments". These requirements apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or regulations authorized in accordance with the exception provisions of Section 13.6. In essence, these regulations apply to all Federal grants awarded to State, tribal and local governments.

Non-competitive proposals awarded under emergency requirements are addressed as follows:

"Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A) …….

(B) The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation." (44 CFR Part 13.36(d)(4)(1)(B))."

Staff of the Office of General Counsel and the Office of the Inspector General have expressed concern that contracts are being awarded under this section without an understanding of the requirement. Simply stated, non-competitive contracts can be awarded only if the emergency is such that the contract award **cannot be delayed by the amount of time required to obtain competitive bidding**.

FEMA's division of disaster work into "emergency" and "permanent" is generally based on the period of time during which the work is to be performed, and not on the urgency of that work. Therefore, the award of non-competitive contracts cannot be justified on the basis of "emergency work", as defined by FEMA.

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a public exigency or emergency which "will not permit a delay resulting from competitive solicitation".

Regarding competitive solicitations, applicants can use an expedited process for obtaining competitive bids. In the past, applicants have developed a scope-of-work, identified contractors that can do the work, made telephone invitations for bids, and received excellent competitive bids. Again, applicants must comply with State and local bidding requirements.

Please remind applicants that no contractor has the authority to make determinations as to eligibility, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Such determinations are to be made by FEMA.